BERR | Department for Business Enterprise & Regulatory Reform

RESOLVING DISPUTES IN THE WORKPLACE CONSULTATION

Government Response

MAY 2008

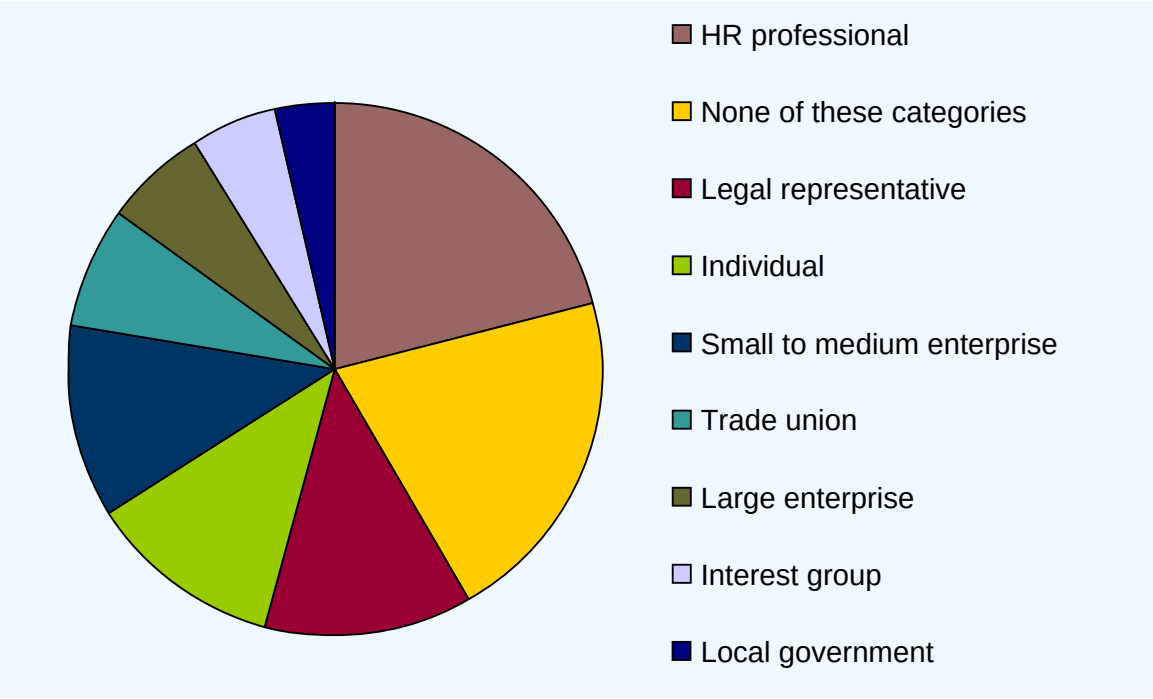
Contents

Section 1

Introduction

1.1 In December 2006 the Secretary of State for Trade and Industry, Alistair Darling, invited Michael Gibbons to carry out an independent review of the 2004 statutory dispute procedures, and more widely of the options for simplifying and improving employment dispute resolution. Mr Gibbons' report, "A review of employment dispute resolution in Great Britain", was published on 21 March 2007. Alongside that document, the Government published a consultation paper, "Resolving disputes in the workplace". This sought views on a number of measures intended to help resolve disputes successfully in the workplace in the light of the Gibbons Report, and invited responses by 20 June 2007. Following changes in the responsibilities of Government Departments, this work is being taken forward by the Department for Business, Enterprise and Regulatory Reform (BERR).

1.2 The Government received over 400 responses to the consultation and is grateful to everyone who took the time and trouble to comment. Several responses summarised the views of a number of stakeholders; for example, both Allen and Overy LLP and Hammonds Solicitors consulted their clients and included details of client views within their responses. Many others were from representative organisations, on behalf of their members. A number of meetings in England, Scotland and Wales were attended by over 200 people. Formal written responses to the consultation came from a broad spectrum of interests, summarised in the chart below. As shown in the chart, employers and their organisations were strongly represented among respondents. Most legal representatives who responded predominantly represent employers in tribunal cases.



1.3 A full list of the consultation questions is contained at Annex A. A full list of those who responded is included at Annex B.

1.4 The detailed analysis of the comments received and how the Government proposes to respond to them is set out in the following sections of this document. This document groups issues in the same way as the original consultation document, under the following section headings:

- **Resolving more disputes in the workplace;**
- **Beyond the workplace; and**
- **More effective employment tribunals.**

Some respondents only expressed views on some of the 28 questions in the consultation document. Where percentage figures of views are given in the text that follows, these are percentages of those expressing a view on the relevant issue, not percentages of those who responded to the whole consultation.

1.5 The consultation process enabled the Government to identify key legislative reforms which needed to be taken forward in the Employment Bill which was published on 7 December 2007. The Bill is currently being considered by Parliament. Other measures outlined in this document will be taken forward as soon as Parliamentary time permits (where secondary legislation is required), and as soon as possible where no legislation is needed. None of the changes requiring legislative amendment will come into force before 2009, given the need for Parliamentary consideration of any proposed legislation, and because of the Government's commitment to

ensuring there is a reasonable period to adjust to legislative changes, and that guidance on new requirements issues in good time.

Section 2

Resolving more disputes in the workplace

Questions 1-2: Repeal of the 2004 statutory dispute resolution procedures

2.1 Statutory procedures for resolving workplace disputes ("the statutory procedures") were introduced in 2004. These lay down a three-step process which must be followed by an employer considering dismissing an employee, or by an employee considering bringing an Employment Tribunal claim – initial written notification, a meeting and an appeal. The Gibbons Review found although there is some evidence that the procedures have encouraged more early resolution of disputes, they have also created a high administrative burden and had significant unintended negative consequences which outweighed the benefits. In particular, they led to the formalisation of disputes and involvement of lawyers at an early stage, and tend to impose a "one size fits all" solution on diverse situations.

2.2 The consultation document sought views on removing the statutory procedures by repealing the 2004 Regulations and the related parts of the Employment Act 2002, and making other necessary amendments to legislation. The consultation also asked whether repeal would have other unintended consequences.

Views of consultees

2.3 76% of respondents favoured repeal, and 20% opposed it.

Arguments for repeal

2.4 Amongst those who favoured repeal, some of the commonly cited reasons were that the statutory procedures:

- were overly prescriptive and had led to the formalisation of disputes and to positions becoming entrenched at an early stage;
- made parties feel the need to involve lawyers early and to focus on process to avoid being penalised at a subsequent tribunal case;
- were less suited to situations such as redundancy and the termination of fixed-term contracts than to dismissals for misconduct;
- were too complex and difficult for small employers in particular to comply with.

2.5 For instance, Royal Mail commented that the statutory procedures had "led to increased formality at an early stage, taking up time and resources on matters that might otherwise have been nipped in the bud", whilst law firm Osborne Clarke noted that "employees themselves at times find it unsatisfactory that a simple grievance cannot be resolved informally but quickly escalates to an unwieldy procedure which the employee did not necessarily want".

2.6 Proponents of repeal also commented that the interplay between the dismissal and grievance procedures causes real difficulties, and that the uncertainty over when a grievance had been raised caused employers to play it safe by treating even minor complaints as a formal grievance.

2.7 There was a widespread sense that the principles behind the statutory procedures were correct, but that the problems had arisen from their being formalised in statute. Thus the National Hairdressers Federation supported repeal but proposed that the "current procedure [should] become an outline framework for dispute resolution".

Arguments against repeal

2.8 Opponents of repeal included a number of trade unions, representatives of vulnerable workers and individuals. Many cited the benefit of having a standard required procedure in all workplaces, which operated to the benefit of workers in all types of organisations and encouraged good practice. The National Union of Teachers, for instance, argued for "the right of all staff… to have access to fair workplace grievance and disciplinary procedures".

Potential to retain the regulations in part

2.9 Many of those who wanted to retain the statutory procedures nonetheless argued that certain parts of them should be removed, in particular the pre-acceptance procedures for bringing a claim, which could lead to claims being rejected without a hearing. Some argued for retention of the disciplinary procedures, where a more rigid process is appropriate, but for the removal of the grievance procedures; others pressed for more extensive amendment to narrow the scope of the procedures to misconduct cases and to remove automatic unfairness and automatic penalties if the procedures are not complied with. It was suggested by some that the problems arose not so much from the statutory procedures themselves as from their interplay with employment tribunal rules and time limits (see discussion in section 3).

Possible unintended consequences of repeal

2.10 As far as unintended consequences of repeal were concerned, a number of respondents highlighted the risk that there would be fewer restraints on bad employers and more likelihood of employees bringing claims. Others noted that there would be an increased need for clear guidance and support; that it would be important for the change to be communicated effectively; and that appropriate transition measures would be needed. A number of respondents said that it would be important not to return to a situation where an employer could be unaware of a grievance until receipt of formal notification of an employment tribunal claim.

Government response

2.11 The Government does not believe that the shortcomings of the statutory procedures, in particular their tendency to formalise disputes, can be remedied by amendment. It is persuaded by the wide consensus and strength of the arguments in favour of repeal. It recognises and shares the general support for the principles behind the statutory procedures, and the justified concerns that fair dismissal and grievance procedures should be available in all workplaces.

2.12 The Employment Bill, published on 7 December 2007 provides for the complete repeal of the statutory dispute procedures. This repeal together with other related primary legislation, forms part of a package of legislative and non-legislative measures to ensure fair and consistent standards of dispute resolution. Other elements of this package, including a revised statutory Acas Code and supporting guidance, with incentives to encourage compliance, are discussed below.

Question 7: The role of procedural unfairness in unfair dismissal

2.13 The consultation document pointed out that if the statutory dispute procedures were repealed, it would be necessary to revisit the related statutory provisions on the role of procedural fairness in unfair dismissal.

2.14 Before the 2004 procedures came into force, case law (notably the House of Lords decision in *Polkey v A E Dayton Services Ltd*) had established the precedent that if an employer failed to comply with a procedure the dismissal would be found to be unfair, even if the employer could show that the failure did not affect the outcome. However, the compensation award could be reduced to reflect the likelihood that the dismissal would have gone ahead even if the correct procedure had been followed.

2.15 Since 2004, failure by an employer to comply with the statutory procedures has automatically led to a finding of unfair dismissal. However, if an employer fails to comply with any *other* procedure in respect of a dismissal, that dismissal can be found to be fair if the employer can show that that failure did not affect the outcome, i.e. the Polkey precedent no longer applies.

2.16 The consultation asked whether the Government should deal with this issue by (i) reverting to the pre-2004 position; or (ii) reviewing the procedural unfairness provisions to see whether they should be restated entirely. Since early responses were strongly in favour of a review, the Government issued one on 18 May to run alongside the main consultation. This considered three options:

- to revert to the pre-2004 position following the Polkey case as described above;
- to provide for alternative findings depending on the balance of procedural and substantive unfairness in the dismissal;
- to revert to the position before the Polkey case, whereby the employer could argue that a dismissal was not unfair because of a failure to follow procedure, if that failure made no difference to the outcome – known as the “no difference” rule.

Views of consultees

2.17 Of the 302 responses to the consultation question, 55% were in favour of a review, whilst 38% supported reversion to Polkey outright. Of the 58 responses to the supplementary review, 47% favoured a return to Polkey; 24% favoured alternative findings; and 16% favoured reversion to the “no difference” rule. The following analysis combines comments made in response to the consultation question and the supplementary review.

2.18 A wide range of responses argued for reversion to Polkey on the grounds that it was a well-understood position which achieved a fair balance. For instance, the University and College Union argued for reversion to the situation following the Polkey judgment “where all concerned – workers, their unions, employers and tribunals – were clear and where there was a sensible balance”, whilst the Construction Confederation argued that it would be a

return to a position which “was generally understood and allowed tribunals to exercise judgment and common sense”. The TUC considered it “essential” for the Government to reinstate the Polkey line of cases, and most trade unions supported this. Some wished to see the precedent strengthened, for instance to limit the reduction of compensation.

2.19 The CBI saw pros and cons in each of the three options in the review, but thought their members were more likely to accept a reversion to Polkey in the context of a new Acas Code giving clear and simple guidance. The Law Society also supported reversion to Polkey, on the grounds that it was well understood and accepted. In common with many other respondents, they thought that the second option of alternative findings would lead to more cases and longer hearings.

2.20 The EEF proposed an alternative solution, based on the tribunal deciding whether or not the employer’s action was outside the band of reasonable responses as developed in case law. If it was, then the employee should be compensated for their loss or re-employed; if it was not, then the employee would receive only a basic award in recognition that the employer could have handled the matter better.

2.21 Responses in favour of reversion to the “no difference” rule tended to come from employers and legal representatives. Arguments in favour of this approach included that it was in the interests of justice in situations where the dismissal would have gone ahead anyway, and that employers should not be penalised for procedural failings.

Government response

2.22 The Government is persuaded that the right course is to revert to the situation following the Polkey case, whereby a dismissal may be found to be unfair on procedural grounds but the tribunal may reduce the compensation award in proportion to the likelihood that dismissal would have gone ahead even if the correct procedure had been followed.

2.23 This solution strikes a fair balance between the interests of employer and employee, and has the additional advantage of being well understood by practitioners already. The Employment Bill therefore provides for the repeal of all of section 98A of the Employment Rights Act 1996.

Questions 3-6: Enhanced guidelines and incentives to encourage early dispute resolution

2.24 The Government recognised in its consultation paper that repeal of the statutory dispute resolution procedures could result in some employers and employees not attempting to resolve disputes in the workplace prior to an employment tribunal claim. Respondents were invited to comment on:

- whether the Government should offer new guidelines on resolving disputes;
- whether there should be a mechanism to encourage parties to follow such guidelines;
- whether the mechanism should take the form of discretion for employment tribunals to impose penalties on those who have made wholly inadequate attempts to resolve their dispute; and
- what form any such penalties should take.

2.25 The majority of consultation respondents supported both new guidelines on resolving disputes and a mechanism to encourage parties to follow the guidelines.

Consultees' views on guidelines

2.26 76% of respondents agreed that the Government should offer new guidelines on resolving disputes. A large number of respondents believed these should take the form of a revised Acas Code with statutory status, which tribunals would have to take into account in determining cases. Many respondents, particularly business and intermediaries, favoured a clear and concise statutory Code which sets out the principles that should be followed by employers and employees in dispute. For instance, the Chartered Institute of Personnel and Development (CIPD) said:

> "CIPD believes that Acas should be invited to produce high level guidelines that reflect the principles of fairness and natural justice. These guidelines should be taken into account by employment tribunals in considering cases before them. They should not be too detailed however in specifying the precise actions required of employers or employees or they would run the risk of reproducing the discredited regulations. The guidelines should help employers understand and implement those principles but allow room for them to do so in a way that is appropriate for the size and structure of the organisation."

2.27 A number of respondents suggested that a simple statutory Code should be supported by non-statutory guidance and assistance on good and best practice, to help those with less experience of dispute resolution achieve optimal outcomes. This case was well made by the Equal Opportunities Commission: "In terms of statutory guidance, we agree with the suggestion of a Code of Practice and consider that Acas, as an expert, independent and impartial body, would be best placed to author this. The Code of Practice

should be supported by comprehensive and practical non-statutory guidance for employers and employees. It would also be helpful to tailor such guidance to certain industries or sectors to make it more accessible for employers, and particularly the small business community"

2.28 Others argued for a more comprehensive document, which would set out the specific statutory requirements in full and also guide on best practice. The TUC advocated: "the introduction of a strengthened statutory ACAS Code of Practice. The Code should actively encourage employers to develop effective grievance and disciplinary procedures. It should set out standards of fairness and natural justice and clear guidance on the range of steps employers should take when resolving disputes, including, carrying out effective and appropriate investigations, meeting with staff and providing for an appeal."

Government response on guidelines

2.29 The Government proposes that a short, non-prescriptive statutory Acas Code of practice on disciplinary and grievance should be introduced. This will allow tribunals to consider the appropriateness of parties' behaviour in the particular circumstances of a case rather than assessing compliance with a set procedure. The Government believes that a long, comprehensive statutory Code would be unlikely to meet the needs of smaller employers, would tend to lead to the same formalisation of disputes and legal involvement as the current statutory procedures, and would restrict the ability of tribunals to make flexible findings in the light of the circumstances of a particular case. However, it also believes that comprehensive accompanying non-statutory guidance issued by Acas would provide clarity for employers and employees in looking for practical ideas about how to resolve their differences.

Consultees believing there should be incentives to follow guidelines

2.30 80% of respondents agreed that there should be a mechanism to encourage parties to follow the guidelines. Tesco commented: "If there is no penalty, there is no incentive for unscrupulous parties to enter into meaningful dispute resolution". St Regis Paper Ltd made the point that any penalties should be capable of being imposed on either party: "Penalties should apply equally to both parties to a dispute if the guidelines are not followed." Peninsula Business Services commented: "The Government needs to make the existence of the Acas Code of Practice more widely known and more widely available and make it clear that failure to obey the basic guidelines contained therein, which thereafter result in unnecessary claims to employment tribunals, will attract a financial penalty." Core Solutions Group said: "This is an important way to introduce a change in culture and encourage those who are less willing/aware or fearful of following the guidelines."

2.31 In his review, Michael Gibbons suggested cost orders and modifications to awards as incentives to comply with the new guidelines, and the consultation sought other innovative suggestions as well. Respondents gave a range of views on the appropriate solution.

2.32 Many respondents who commented on the form of incentive suggested it should be a financial penalty including awards of compensation being increased or reduced, similar to the existing arrangements. Rolls-Royce commented: “Employers and employees should be encouraged to resolve disputes at an early stage but if claims progress to an Employment Tribunal both parties should be treated alike and receive a financial consequence for either a dereliction of their duties as an employer or spurious claims.” McKenzie Myers Ltd said: “Awards made by employment tribunals should not just be restricted to actual loss. If one party has acted irresponsibly, a punitive amount should be added to any award made against them.” BP International commented: “Failure to comply is to increase/decrease the award that is linked to the value of the claim.”

2.33 Some consultees saw the main purpose of the incentive as driving good employer practice in disputes. The TUC said: “it would support the use of powers for tribunals to modify compensation awards to penalise employers who do not have in place effective workplace procedures or who do not take reasonable steps to comply with the Acas Code of Practice when seeking to resolve an employment dispute prior to making an Employment tribunal claim.” Citizens Advice commented, “The overriding aim of the mechanism should be to encourage employers to follow new guidelines, by imposing a penalty on those employers who do not operate or follow proper procedure….. The penalty should be a modification of the award, expected to be an increase in all but the most exceptional cases”.

2.34 Some respondents suggested expanding the costs regime. Unlike in the civil courts, it is normal practice in employment tribunals for each party to bear their own costs. Presently, however, costs may be awarded if the tribunal decides that a party has acted frivolously, vexatiously or otherwise unreasonably in bringing or conducting a case. The costs regime could be extended to allow tribunals to make costs orders to reflect a party’s failure to comply with the Code. UCATT suggested that the costs of a tribunal hearing should also be paid by employers who have failed to follow a fair procedure: “Trade unions such as UCATT spend thousands of pounds every year in pursuing claims against employers who have failed to follow a fair procedure. Tribunals rarely award costs in these circumstances. UCATT proposes that an employer who fails to follow any, or any fair, procedure should be ordered to pay the costs of the tribunal hearing in addition to any compensation awarded.”

2.35 Some respondents, including the Federation of Small Businesses, suggested that penalties should take the form of a fine with the amount of the fine being proportionate to the resources of the businesses.

2.36 Many respondents strongly opposed changes to the costs regime because of a potential disproportionate impact on employees and concerns about their use to intimidate individuals. The National Group of Home Workers commented, for example: “We do not believe the threshold for making cost orders against parties should be lowered. The threat of costs is frequently used by employer’s representatives to discourage employees from pursuing a claim, and if the threshold were lowered the impact of such threats would be increased, at the expense of a just outcome.”

Consultees believing no specific incentives are required

2.37 A small number of respondents believed an incentive is unnecessary. The Disability Rights Commission said: “The Commission does not believe that there should be a specific mechanism to encourage parties to follow such guidelines. The guidelines should be voluntary”. The Road Haulage Association said: “It is our experience that most employers wish to be professional and to do the right thing, although they are usually mindful of the penalties if procedures are not correctly followed. The prospect of a tribunal is deterrent enough.”

2.38 Some stakeholders, including the Law Society, CIPD and CBI believe it is sufficient incentive to have guidelines set out in a statutory Code that can be taken into account by the employment tribunal. The CIPD commented: “Guidelines will only be effective if there are incentives for employers and employees to follow them. The likelihood that tribunals will find against parties that ignore the guidelines should in itself provide such an incentive.’ The Law Society made a similar point: “The Acas Code will be addressed to employers and will provide guidance on the handling of disciplinary and grievance matters. It will be admissible in evidence, and a failure to follow a procedure described in the Code may lead a tribunal, after having due regard to the sizes and resources of the employer, to find that a dismissal was unfair”.

Government response on incentives

2.39 After careful consideration of the issues, and in the light of the significant majority of consultation responses supporting the need for a mechanism to encourage parties to follow the guidelines, the Government believes that this is the right course of action. It believes that allowing tribunals to adjust awards to reflect non-compliance with the statutory Code offers the most appropriate incentive to encourage the right behaviours and resolve disputes in the workplace as recommended by Gibbons.

2.40 The Government recognises the force of the concerns expressed about adjusting the costs regime and does not believe that it should be expanded as a mechanism to encourage parties to follow the guidelines. Doing so might have a disproportionate effect on employees and less well-informed employers, and unscrupulous employers might use the threat of cost orders to intimidate employees into withdrawing.

How the Government intends to proceed

2.41 In the light of the consultation, the Government has written to Acas to set out the considerations which it feels should serve as the basis for Acas to revise the Code of Practice on disciplinary and grievance procedures. The Government considers the way forward should be a short, non-prescriptive statutory Code setting out the principles of what an employer and employee must do, supported by fuller, non-statutory guidance. The statutory Code would, where relevant, be taken into account by employment tribunals in reaching their decision. The non-statutory guidance would provide practical help to employers and employees bearing in mind what would be appropriate for the size and resource of the employer and the nature and gravity of the complaint.

2.42 In response to consultees' views on a mechanism to encourage parties to follow the guidelines the Government proposes a similar modification of award as at present. Currently tribunals must increase or decrease any awards by between 10% and 50% if either party fails to comply with the statutory dispute procedures, but this will be repealed should the 2004 Regulations and related parts of the Employment Act 2002 be repealed as provided for in the Employment Bill. The Government has therefore proposed through Clause 3 of the Employment Bill to introduce new powers to enable tribunals to increase or decrease a tribunal award by between 0% and 25% if either party has acted unreasonably in complying with the relevant statutory Code. This will be a power rather than a duty in order to allow the employment tribunals discretion to apply it in the interests of justice and equity.

Question 8: Encouraging early resolution

2.43 The consultation document recognised that employer and employee organisations could play an important role in promoting the benefits of the early resolution of disputes, and asked whether the Government should invite the CBI, TUC and other representative organisations to produce guidelines aimed at encouraging and promoting early resolution.

Views of consultees

2.44 68% of respondents answered 'yes' to this question while 25% answered 'no'. Some of those who disagreed with the proposal did so because they were concerned that 'guidelines' developed by different representative organisations might clash with the statutory Codes of Practice and other guidance produced by Acas, thus causing confusion. Many of the major representative organisations with an interest in employment dispute resolution echoed this point, while confirming their willingness to work with the Government to promote early dispute resolution:

> "The TUC would welcome the opportunity to work with the Government and the CBI to produce guidelines. It is important that this guidance complements and does not conflict with the ACAS Code of Practice."
>
> "The CBI would ... be willing to encourage parties to explore alternative mechanisms where parties feel that would be useful, but does not see the need for further quasi official guidance."
>
> "EEF would be willing to endorse official encouragement of early resolution of disputes but we doubt whether Acas, for example, needs any endorsement to establish its credibility with employers and employees."
>
> "There is every case for encouraging employer bodies and others to promote and encourage early dispute resolution and CIPD has identified a number of actions which it intends to take to this end. However it is sensible to have only a single set of 'guidelines' … to avoid duplication and inconsistency."

2.45 Acas themselves commented that "it would be confusing to users of the system if different organisations produce conflicting guidance on what is ostensibly the same subject. As far as possible there should be common understanding of the practices to be followed in the workplace."

Government response

2.46 The Government welcomes the interest that representative organisations have shown in helping to promote early dispute resolution. It now intends to discuss with those organisations how they might best

encourage their members, and employers and employees more generally, to seek to resolve employment disputes as quickly as possible. The Government does not intend that this should be done via guidelines with quasi-official status, for the reasons given by many respondents to the consultation – the risk of confusion caused by overlapping guidelines published by different organisations would be considerable.

2.47 The Government also intends to maintain a dialogue with organisations representing HR professionals and mediation providers, to explore the scope for these groups to promote early dispute resolution more effectively. Discussions with such organisations during the consultation period indicated that there may be scope for private sector mediation providers to communicate what they do, and what benefits they can offer to those involved in employment disputes, in a better and more joined-up way.

Section 3

Beyond the workplace

Questions 9-10: New advice service

3.1 The consultation asked whether more could be done to advise potential claimants and respondents about the employment tribunal system, and about potential alternative ways of resolving their disputes. Specifically, it asked whether the Government should develop a new advice service including helpline and internet access; and whether the employment tribunal application process should be redesigned so that potential claimants access the system through the new advice service.

Views of consultees

3.2 These two questions are linked, and many respondents considered them together. The responses raised a number of important issues.

Should there be a new service, or better resourcing of existing sources of advice?

3.3 The principle that better advice should be available to those involved in workplace disputes, or seeking information on how to deal with them, was widely supported. At the same time, many consultees said that the best way of improving the advice available to employers, employees and others would be to expand and upgrade existing services, and particularly the telephone service currently provided by Acas, rather than to create an entirely new service. Many consultees emphasised the importance of giving Acas sufficient resources for this role.

3.4 Overall, 53% of consultees who expressed a view on this question supported the proposal for a new service. The CBI commented: “An enhanced advice service should spell out the realities of what is involved in claims and hearings, point to possible alternative mechanisms for resolving disputes, and, for employees, dispel any illusions about levels of compensation and likelihood of success. The CBI would welcome an advice service of this kind.”

3.5 40% of respondents opposed a new service, many of them on the basis that Acas should provide expanded services and that a new service was therefore unnecessary. The Centre for Effective Dispute Resolution, for

example, commented: “Acas is well known for the role that it performs and we believe that creation of another or an alternative body would simply cause confusion and additional cost. We believe however that Acas could be restructured to enable it to draw on the expertise of other service providers.” Employer Solutions Limited made a similar point: “Why should Acas not do this? They are frequently contacted by both employers and employees. A new service simply complicates the situation and may confuse all parties.”

3.6 Some consultation responses argued that a new advice service would not be able to consider specific disputes in sufficient detail to add value. The Law Society said: “The majority of (our) members were opposed to an advice service because if the service was not capable of focussing on individual cases, there would simply be no point in it existing.”

The implications of an advice service acting as the front-end of the employment tribunal process

3.7 60% of those who expressed a view were in favour of the proposal that the employment tribunal application process should be redesigned so that potential claimants access the system through a new advice service. 34% were against it. Some respondents, including major representative bodies, saw considerable value in using such an expanded service as the front end to the employment tribunal system. The EEF commented: “We believe there is much to be said for potential claimants accessing the ‘dispute resolution system’ through Acas which would provide factual information.” However, respondents also raised a number of queries and concerns about this proposal.

The potential for the advice service to act, deliberately or inadvertently, as a ‘gateway’ or barrier to justice

3.8 Some consultees argued that because of this risk, the advice service should not be linked to the tribunals system. The TUC, for example, “supports the principle that anyone contemplating a tribunal claim should be provided with adequate information on the potential costs (and) consequences. They should also be made aware of other options which are available to them. The TUC would not however support proposals for a new advice service to form the single entry point to ETs. There is concern that such a service would act as a filtering system for ET claims, thereby restricting access to justice.” In contrast, the EEF argued: “The argument that actively encouraging people to sort out their differences without resorting to law amounts to a denial of justice must be strongly resisted.”

3.9 Others pointed to the risk of a *perceived* barrier to justice and the need for Government to clarify that there would be no restriction on the right to access a tribunal. The CIPD commented: “All those involved in the statutory process will need to be persuaded of the legitimacy of Acas giving advice to claimants that may in effect discourage them from taking their case to a tribunal. The Government should be prepared to debate the issues publicly

and explain the distinction between statutory rights and methods of enforcement, as well as between the enforcement of rights and the resolution of disputes."

3.10 The Presidents and Regional Chairmen of Employment Tribunals in England and Wales objected in principle to an enhanced advice service: "It would be wrong in principle for a Government sponsored helpline using civil servants to go beyond what is already done, in giving advice on the mechanism of completing forms, and advising prospective claimants on the merits of pursuing alternative courses of action."

What kind of advice such a service could provide in practice

3.11 Lawyers' representative organisations in particular were sceptical as to how far an expanded service providing generic guidance, rather than expert advice based on the details of each case, could add value. As the Law Society put it: "We do not consider it the role of government to provide such advice, which should be provided to claimants by an independent legal adviser, as part of a balanced appraisal of their individual case."

How such a service would deal with potential claimants represented by a lawyer, union official or other intermediary

3.12 The TUC were concerned that represented claimants might receive inappropriate advice. They commented that "this could result in individuals receiving conflicting advice which could generate confusion and act as a deterrent to individuals pursuing legitimate claims." The Employment Lawyers Association felt that needless bureaucracy could result: "the vast majority of [ELA members] were opposed to the idea of claimants obtaining an ET1 only after speaking to an adviser."

Government response

3.13 The Government believes that there is clear value in an expanded service which could help potential tribunal claimants, particularly unrepresented claimants, to understand the options available to them. It could help all users of the system, including employers and employees to achieve outcomes that work better for them, and to reduce the administrative burdens which employment disputes generate for employers and employees.

3.14 However, in the light of the responses to the consultation it is clear that there are design challenges which need to be addressed in expanding the existing Acas service in this way, so as to meet consultees' concerns about the quality of advice and guidance to be provided, and about access to justice.

3.15 The Government has therefore announced significant new investment in Acas by up to £37 million over 3 years. This will allow Acas to build upon

its existing Helpline service by increasing its capacity to handle enquiries and to provide its advisers with the additional skills and support needed to deal with enquiries about disputes and potential tribunal claims in the way proposed by the Gibbons review. This expanded service will be designed to be capable of linking up effectively with other Government-funded helplines in the employment field, in line with the principles of Transformational Government.[1] The Government aims to launch this expanded service by the time that the statutory dispute resolution procedures are repealed.

3.16 To address the concerns raised in consultation, the Government is engaging with key stakeholders, including employee and employer representatives, in the process of designing the expanded service. In particular, it is working with all the interested parties to ensure that:

- the new service does not present any barrier to justice. People who wish to bring a claim to an employment tribunal will be able to do so, without any filtering or impediment. The new service will simply offer prospective claimants clear, up-front advice on what bringing a claim involves and what their options are, as part of the application process;
- the advice offered by the service will not be directive, rather it will be an objective discussion about the experience of taking a claim through the tribunal system, the outcomes that a claim may produce, and the help that is available to find alternative ways of resolving disputes; and
- the new service would not replace the role of expert advisers such as lawyers and union officials. Beside their representational role such advisers are already expected to give their clients well-rounded advice on the options open to them and the implications of bringing a claim to a tribunal.

[1] For background see http://www.cio.gov.uk/transformational_government/index.asp

Question 11: New approach for simple monetary claims

3.17 The consultation asked whether there should be a new, swift approach for dealing with straightforward claims without the need for employment tribunal hearings. It noted that such a service could be delivered within the Tribunals Service or outside it; that it could be conducted over the telephone and by mail; and that it would be necessary for parties to any dispute handled by the new service to have the right to seek a full tribunal hearing.

Views of consultees

3.18 Responses were generally welcoming in principle. Over 70% of consultation responses answered 'yes' to the question, and some of those who disagreed did so because they believed that certain employment tribunal regions already handle such cases efficiently so that there is no need for a completely new service. For example, law firm Charles Russell said, "It would be helpful if there was uniformity between the tribunal regions, some currently operate a "fast track" type approach to straightforward claims. This is helpful and should be applied across all regions."

3.19 Other issues and concerns expressed included whether any new process would come before the tribunal process, or replace it – if the former, it could simply add an extra layer of bureaucracy, but if the latter, it could result in people being denied access to a full hearing. Law Firm Field Fisher Waterhouse commented: "It is unclear whether the proposal is for this approach to be final or whether the parties will be able to resort to a tribunal hearing if they are dissatisfied with the initial 'fast track' approach. Such an option in their opinion would potentially lengthen the process. Another issue is that in almost all circumstances any new approach would need to deal with 'live' evidence as it would be unsatisfactory for matters to be dealt with on the papers alone. There is also the risk that parties' rights to a fair trial under Article 6 of the Human Rights Act 1998 may be compromised if no hearing is held."

3.20 Others expressed concern that more complex cases needed a full hearing. The Free Representation Unit commented that it supported the principle, but was concerned about whether there was an easily-definable group of simple cases which could be heard under a fast track: "A fast-track approach is potentially beneficial for both parties, if it allows them to resolve a straightforward issue quickly and efficiently. This approach, however, should not preclude claims being brought and considered in the normal way. Those jurisdictions where claims would often be appropriate for such a system, such as wages and holiday pay, are sometimes extremely complicated (even where the amounts may be relatively small). These complex cases will still need to be considered by the full process. The fast-track approach should not apply where either party requests an oral hearing or the claim also contains other jurisdictions to which it does not apply. If, for example, an unfair dismissal claim is brought with a wages claim it makes sense to consider them together rather than splitting the claim in two."

Enforcement of tribunal awards

3.21 A broader issue, raised by a number of consultees, was the concern that employment tribunals' effectiveness as a means of enforcing employment rights is constrained by the difficulty that some claimants experience in enforcing awards made by tribunals. Citizens Advice argued: "The usually small and sometimes rogue employers against whom straightforward rights claims are brought are also those most likely to fail to engage in the tribunal process and pay any resultant award ... So any new approach to dealing with such straightforward claims would need to be more than a speedier (and, from the Government's point of view, cheaper) means of issuing the claimant with a worthless piece of paper."

Government response

3.22 The Government has decided against establishing a wholly new system outside the tribunals. Instead it will establish within the tribunal system procedures to enable determination without the need for tribunal hearing in some cases in a limited number of jurisdictions which raise straightforward issues. Such a process has the potential to benefit both parties by reducing unnecessary burden on the parties' time and saving them from disproportionate costs associated with attendance at or representation at tribunal hearings.

3.23 Subject to further design work and consultation with the Tribunals Service and other interested parties, the Government intends that the main features of paper-based determinations would be:

- determination of cases without a hearing, based on the papers, could only happen with the positive consent of all the parties and where an employment tribunal chairman (now known as Employment Judge) considers it appropriate;
- the eligible jurisdictions would be: unlawful deductions from wages, breach of contract, redundancy pay, holiday pay, and the national minimum wage. The Government intends to consult on whether Holiday Pay should be added to the list of jurisdictions routinely heard by a Chair sitting alone;
- claims that combine these jurisdictions with others outside the list will not be eligible for determination without hearing;
- there would be no monetary limit on which claims are eligible for this approach, other than breach of contract cases which are limited to an award of £25,000 – all claims in the relevant jurisdictions will be eligible in principle;.
- Employment Judges will be able to decide that a case should be heard by a full tribunal, using the criteria that currently apply to their powers to sit alone;
- determinations made without a hearing will be appealable to the Employment Appeals Tribunal in the usual way;
- the administration of cases to be determined without hearing will draw on existing good practice within the Tribunals Service, e.g. in terms of case directions and listing practices.
- tribunals will be given powers to make compensatory awards for full financial loss in these five jurisdictions. This will enable employees who have suffered direct financial loss as a consequence of the event underlying their claim (e.g. bank charges arising from unlawful deductions from wages) to obtain redress for that loss.

3.24 A wide power for employment tribunals to determine proceedings without hearing is already contained within the Employment Tribunals Act 1996. However, Government is proposing through Clause 4 of the Employment Bill, to tighten the circumstances in which that can happen by ensuring that determinations without hearing could only happen with the consent of all the parties. Employment tribunals will also be empowered to make compensatory awards for financial loss if the Employment Bill is passed. Other changes needed to enable determinations without hearing will be taken forward via changes to Regulations or Rules, and the Government will consult on the detail of such changes in due course.

3.25 Alongside development of a system for determinations without hearing, the Government intends to consider further the issues raised in consultation about the enforcement of employment tribunal awards, taking into account the work of the Vulnerable Worker Enforcement Forum, which is considering a wide range of issues relating to the enforcement of the employment rights of vulnerable workers. The Forum is expected to conclude its work in June 2008.

Questions 12-14: Additional conciliation services

3.26 The Government's consultation paper suggested that broader availability of conciliation before a tribunal claim is made could facilitate more early resolution of disputes, saving parties time, cost and stress. It asked whether additional Acas dispute resolution services should be made available to the parties in potential tribunal claims, in the period before a claim is made. It also asked whether, in the event that such services were to be made available, the Government should guide Acas on what types of dispute should be prioritised, and if so what the priorities should be.

Views of consultees

3.27 85% of respondents agreed that additional Acas dispute resolution services should be made available in potential tribunal claims. Many agreed with the Federation of Small Businesses who said: "it would save on cost and valuable time for all parties if a dispute could be successfully mediated at a pre-claim stage." Law firm Osborne Clark added: "While there is a variety of private providers of ADR, there is no one clear and well-recognised source for employment law disputes; if Acas provided and advertised this service it is more likely employers and employees would consider using it before bringing claims".

3.28 A number of responses, particularly from HR and mediation practitioners, referred to the desirability of encouraging mediation by providers other than Acas, and in some cases to the possibility that expanded Acas services could affect other providers. As The Simple Way put it: "Acas is probably the single most valuable source of support for employers and employers' advisers. However, there is also a very large source of private advisers for dispute resolution who are active in the pre-tribunal period. My concern is the situation that will arise with a significant transfer of work-load from the private to the public sector. The obvious repercussions are the predictable over-load of Acas resource… and the considerable deterioration in the position of current advisers with respect to their client workload vis-a-vis free service from Acas."

3.29 Since Government funded pre-claim conciliation services will be finite even if the Government provides additional resources to Acas for this purpose, there is a risk that demand for the services may exceed supply. The consultation paper proposed that government could address this risk by setting criteria to guide Acas in allocating its pre-claim conciliation resources. Responses to the consultation were divided about this approach; 45% agreed that the Government should set criteria and 39% disagreed.

3.30 Many respondents argued that government is not best-placed to determine how to allocate Acas resources to particular cases, and that enshrining priorities in statute would be inflexible. It was frequently suggested that instead, Acas should be given autonomy to decide where to allocate resources for additional early conciliation. The Police Federation commented: "Given the inevitable stretching of resources, it would be appropriate to

prioritise discrimination claims and more complex unfair dismissal claims such as whistle blowing. The possible existence of such a "hierarchy" by which claims should be resolved should not however be used to detract resources away from fast-track or simpler monetary claims. The setting of such criteria should not impact on Acas' current independent decision making ability." Thompsons Solicitors made a similar point: "It would be preferable for Acas to have a statutory discretion that would allow it to set its own priorities."

3.31 Of those who commented on the specific criteria set out in Q14, the percentage of respondents that supported each criterion was as follows:

- disputes likely to occupy the most tribunal time and resources if they proceed to a hearing – 75%;
- disputes where the potential claimant is still employed – 67%;
- disputes where the employer is a small business with fewer than 250 employees – 66%.

Government response

3.32 As outlined in para 3.15 above additional funding of up to £37 million over 3 years is being made available to Acas. This will enable Acas to expand the provision of early conciliation for potential employment tribunal claims. The Government is working with Acas and other interested parties to pilot these additional services before making them generally available, to ensure that they are delivered in a way that meets the needs of employers and employees, and are consistent with the wider changes to the employment dispute resolution system that are discussed in this consultation response. The Government anticipates that the additional services should become generally available by the time the statutory dispute resolution procedures are repealed.

3.33 The Government has noted the concerns expressed by some private sector mediation providers about the potential impact of expanding Acas conciliation services. The Gibbons review reported that private mediation providers are often used to resolve disputes involving senior-level employees, in which Acas are less likely to be asked to intervene. Others concentrate on mediating at an earlier stage in the dispute lifecycle than the point where the additional Acas services would become available. The Government intends to work with private sector service providers, to explore how they might better promote their services to those engaged in employment disputes as outlined in paragraph 2.47 above, and will continue to engage with them to ensure the expansion of Acas pre-claim conciliation services does not have unintended consequences. The proposed expansion of the Acas helpline (see paragraphs 3.13 to 3.16 above) will provide an opportunity both to identify disputes which might benefit from early Acas conciliation, and to communicate information about other providers of alternative dispute resolution services.

3.34 The Government is also proposing a change to Acas' current statutory duty to conciliate in pre-claim cases to a statutory power and has included such a provision in Clause 5 of the Employment Bill. This will reduce the need for Acas to adopt a narrow interpretation of its statutory role in providing pre-

claim conciliation, in order to protect its legal position and manage its resources effectively.

3.35 In view of the consultation responses and further consideration of the issues with Acas and others, the Government does not propose to set statutory criteria to guide Acas' selection of pre-claim conciliation cases. Acas will account to the Government for its efficient use of these additional resources under its existing financial management arrangements with its sponsor department.

Question 15: Time limits on Acas duty to conciliate after submission of an employment tribunal claim

3.36 Before 2004 Acas had a duty to offer conciliation in all cases from the time that the tribunal notified them that a claim had been made until all matters of liability and remedy had been determined. It was observed that many cases were being settled very close to the date of the scheduled tribunal hearing, creating stress and inconvenience for employers and employees alike, and generating costs both for the parties and the tribunal itself.

3.37 The aim of the legislation was that limiting the guaranteed availability of free conciliation via Acas to a shorter period would concentrate minds and encourage parties to settle earlier, saving time, cost and stress, and maximising the effective use of tribunal time.

3.38 The 2004 legislation therefore provided that in respect of certain jurisdictions (broadly, the cases that centre on specific monetary entitlements and tend to be more straightforward), the Acas duty to conciliate lasts for seven weeks after the acceptance of the claim. In most other jurisdictions, the period lasts for 13 weeks. In a limited further number of jurisdictions, almost all of them relating to claims of discrimination, the Acas duty to conciliate is open-ended. After the end of the fixed conciliation periods, Acas has powers to offer conciliation, but no duty to do so. Generally, Acas offers conciliation only within the fixed periods in the relevant jurisdictions, respecting the direction of Parliament in passing the relevant legislation.

3.39 Michael Gibbons found in his review that the time limits were not in fact acting to promote earlier settlement of disputes, as many disputants reached the position of wishing to settle only close to the tribunal date. The time limits were acting to prevent Acas from conciliating late in the process, even where both parties had realised they wanted help. The consultation asked for views on whether the time limits should be removed to ensure that Acas assistance is available at the time when parties most want it.

Views of consultees

3.40 Over 77% of consultees agreed that the time limits on Acas conciliation should be removed. 13% disagreed while 10% expressed no view.

3.41 Those seeking the removal of the time limits mostly took the view that, as Zurich Employment commented: “if a claim can be settled by Acas this has to be preferable, and therefore the opportunity to conciliate with Acas shouldn’t have a time limit”. Many respondents observed that in many cases, parties only realised close to the tribunal date that they wanted to settle. The Free Representation Unit commented: “in practice, though some claims are resolved at an early stage, many more are settled shortly before a tribunal hearing… the impending tribunal date focuses the parties on the dispute and puts pressure on them to avoid a hearing. The current rules mean that many litigants are deprived of Acas assistance because, at the point where they are

considering settlement, they are outside the conciliation period." Acas pointed to statistical evidence that cases in the "short period" category, where there is a fixed 7 week conciliation period, are considerably less likely to be resolved prior to a tribunal hearing than was the case before the introduction of the fixed conciliation periods.

3.42 A number of small and medium enterprises who responded were among those favouring retention of the fixed conciliation periods. 15 took this position, with 14 backing removal. Ingoldale Park commented that "a speedy resolution helps everyone". Ford UK commented that "such deadlines put timing discipline into… resolving the issue."

Government response

3.43 The Government proposes to remove all time restrictions on Acas's duty to conciliate through Clause 6 of the Employment Bill. This will mean that Acas will be under a duty to provide conciliation at any time between receiving a copy of the claim and the point at which it is determined by the tribunal, enabling it to provide assistance where parties realise late that they wish to settle and would like help in doing so. Recognising the benefits of early settlement where this is possible, Acas will continue to offer conciliation services as early as its resources will allow in all cases where a claim is passed on to them by the Tribunals Service.

Section 4

More effective employment tribunals

Questions 16-17: Employment tribunal forms

4.1 The consultation document sought views on whether the forms should be simplified and whether it was reasonable to ask claimants to provide a statement of loss.

Views of consultees: simplification of forms

4.2 Of the 320 responses to the question about simplifying the claim forms, 73% favoured simplification while 15% did not. A further 12% had no view.

4.3 Amongst those who favoured simplification, some of the commonly cited reasons were that the forms:

- were too long (running potentially to 8 pages, though not all sections are completed in all cases);
- were not intuitive to complete, particularly the requirement to break the description of the event or events into the different employment rights the claimant argued were infringed;
- made life difficult for intermediaries who had their own desk-top versions of the forms.

4.4 The Confederation of Passenger Transport stated a popular view: "any process which reduces bureaucracy is welcomed [but] any new forms must contain concise information regarding the claim."

4.5 Opponents of simplification centred their arguments around the view that the forms were simple enough already and that they should not be made too simple as taking an employer to an employment tribunal was a serious step and proper thought should go into filling in the form. Typically, Marshall-James Human Resources felt "simplification would mean that employees see it as the easy option."

Views of consultees: statement of loss

4.6 Looking at whether claimants should provide a statement of loss, 70% said yes, 24% thought not and 6% had no view.

4.7 Currently certain sections of the claim form provide for an estimate of loss in simple cases to be calculated, but some consultees felt that a fuller estimate should be provided in more complex cases, including those involving discrimination. Of these, some accepted this was an expert job, but that the benefits of so-doing would include focussing both parties' minds on the actual substance of the claim, and so encourage settlements rather than proceeding to full hearings. Personnel Solutions stated that "the more information we have at an early stage, the better. This can help the employer to decide whether to try to settle financially and would reduce the time taken to resolve many claims."

4.8 Those against took the view that, without legal and possibly actuarial advice, it was simply not reasonable to expect claimants to provide a meaningful estimate of their claim. Solicitors Morton Fraser felt that "this may be extremely difficult at an initial stage and off-putting for unrepresented claimants. If the provision of an estimate was made mandatory and formed a central part of the claim, this could form a barrier to justice for claimants and lead to negotiations to settle that were unrealistic."

Government response

4.9 The Government proposes to simplify the employment tribunal forms, building on changes that will in any case be needed to accommodate other changes proposed in the existing procedures. It will consult further with users and the results will be thoroughly tested before new forms are introduced.

4.10 The Government is not persuaded that a statement of loss should be a mandatory requirement for all claims. With the complexities which assembling a statement of loss involves, it believes that this would be more of a barrier than an aid to justice. It is very often the case in more complex claims that the exact nature of the claim – and so the likely financial remedy possible – is not apparent until the full details have either been drawn out in the conciliation process or through the input of an Employment Judge through case management discussions.

4.11 However, the Government agrees that there is merit in rationalising those sections that deal with the simple arithmetic calculations of loss covered by the current claim form and that where claimants can identify their loss it would be helpful for the forms to enable this. It believes that doing so would be likely to crystallise the substance of many disputes and aid their settlement without recourse to a full tribunal hearing.

Questions 18-21: Time limits for making employment tribunal claims, and the grounds on which late claims may be heard

4.12 The time limits within which claims to an employment tribunal must be made are set out in the legislation governing the relevant legal jurisdictions. In most cases, the time limit is three months from the date of the event that caused the claim. Equal Pay and redundancy payments legislation have a six-month time limit.

4.13 The operation of time limits was complicated by the introduction of the statutory dispute procedures in 2004. The regulations created extensions to the time for making a claim where employers and employees were, or should have been, involved in the "three-step" statutory dispute processes. They also provided that where the tribunal claim arose from an employee's grievance, 28 days had to elapse following the raising of the grievance before a claim could be made.

4.14 Tribunals' ability to hear claims late in particular cases is set by the legislation relating to the jurisdiction under which a claim is made. In some jurisdictions, tribunals may consider claims made out of time where it was not reasonably practicable for a claim to have been submitted within the time limit. In others, late claims may be considered where it is just and equitable to do so.

4.15 The Government asked in its consultation whether time limits should be harmonised across jurisdictions, and if so at what length. It also asked whether the grounds for extension should be harmonised, and if so, whether the harmonised test should be "reasonably practicable" or "just and equitable".

Consultee views on time limits

4.16 77% of respondents favoured harmonisation, with 8.5% opposed. Among those supporting harmonisation, many argued that the present situation was complex and both employers and employees found it difficult to understand. Some respondents agreed with harmonisation in principle but only on condition that harmonisation was at their preferred length of time. A number of respondents commented that harmonisation was not a strong priority; for example, Hammonds solicitors consulted a number of their interested clients, and reported: "none of the respondents expressed a strong desire for harmonising time limits."

4.17 Some 55% of respondents favoured harmonisation at three months, with 23% favouring six months, and 7% favouring some other period, either longer or shorter. Analysis of the responses shows sharp division between employers and those representing their interests, including legal representatives who act mainly for respondents, and individual employees and those who act for them, including legal representatives and trades unions. The former group overwhelmingly favours a three month or shorter period, while the latter is overwhelmingly in favour of extending to six months or a longer period.

Arguments for 3 months

4.18 Arguments in favour of a harmonised three month time limit concentrated on the extent to which three months was enough time to allow a worker to consider bringing a case and start the process, and minimised uncertainty for respondents. Justice was better served by ensuring that claims were made in a timely way, when records were still available and events were fresh in the minds of involved parties. The National Trust commented: "If someone feels strongly enough about an issue they should be able to register this with a tribunal within 3 months. Any longer, especially for large employers, and the organisation will have moved on, archived records, changed staff etc making gathering facts and evidence very difficult."

Arguments for 6 months

4.19 A number of those who argued for a six month or longer time limit expressed concerns that short time limits forced workers to submit tribunal claims even while internal procedures continued, and that this made internal settlement less likely. The Police Federation for example commented that: "because of the inevitable bureaucracy and formalism of internal police investigation procedures, claimants have no option but to submit "protective" employment tribunal proceedings…some Forces misinterpret it as an aggressive act on the part of the claimant that reflects a desire for litigation. Our view is that a longer period (than 3 months) would permit the resolution of more grievances internally and the presentation of fewer claims to the employment tribunal." Others were concerned that workers often failed to realise quickly they had a valid claim and may have other immediate priorities, for example to find another job or coping with a new baby if sacked during pregnancy.

Consultee views on grounds for accepting a claim made out of time

4.20 The consultation asked whether total or partial harmonisation of the grounds for extension (to the extent possible subject to legal constraints) would be a helpful additional reform. Of those who answered this question, 55% favoured harmonising the grounds for extension for employment tribunal claims, with around 15% opposing this. 30% did not express a positive preference either for or against harmonisation.

4.21 Harmonisation was strongly supported by those representing employees, including trades unions; the Communication Workers Union said that "currently (grounds for extension) are difficult to follow and need constant rechecking." Views among other groups, including employers and legal representatives, were more mixed. Most respondents from these groups who expressed a preference supported harmonisation: Morrish and Co Solicitors commented that "the current legal position is unclear and overly complicated", while First Business Support felt that harmonisation "would lessen confusion and create uniformity between claims." Others were not persuaded of the

case for change: Countrywide plc commented that “the existing rules for unfair dismissal and discrimination claims are well established and work effectively,” and the University of Nottingham “do not see the current position as being problematic.”

4.22 There was no consensus on what the harmonised grounds for extension should be. Of those expressing a view, 39% supported harmonising at “just and equitable”, 19% at “reasonably practicable”, and 42% favoured some other formulation. The novel grounds suggested were themselves diverse. In several cases they reflected a view that extensions should be allowed only in exceptional circumstances, for example where complete incapacitation had prevented the lodging of a claim. Others were concerned that time limits should not curtail the operation of internal or alternative mechanisms of settlement. The Scottish Executive for example suggested that there should be a three month extension to time limits either to facilitate the proper operation of disciplinary and grievance procedures, or to allow the use of alternative dispute resolution.

4.23 The “just and equitable” grounds for extension are contained in discrimination legislation. The Commission for Racial Equality noted that changing the grounds in these statutes to “reasonably practicable” could infringe European Directives which are implemented by the relevant UK laws. The Disability Rights Commission argued that the just and equitable formulation should be retained in relation to disability discrimination cases given that discrimination claims involve matters of social policy and principle. The Law Society said “we consider that the rules concerning extensions of time in discrimination cases cannot and should not be tightened so as to make it harder for claimants to obtain an extension.”

Government response

4.24 The Government does not intend to harmonise time limits or the grounds for extension. It believes that the benefits of harmonisation would be relatively modest. The time limits and grounds for extension are not difficult for advisers to explain to clients, or for self-guided potential claimants or respondents to understand, and they are well-understood among the adviser and representative communities. The advantage of harmonising from two time limits to one would be marginal and there would be costs and dislocation associated with change.

4.25 The Government also notes that views were sharply divided over what the harmonised time should be, and that the time limits in existing legislation were set following parliamentary scrutiny of the relevant legislation. As explained above, the proposed repeal of the statutory dispute provisions through the Employment Bill would simplify time limits considerably by removing a complex set of extensions and delays.

4.26 The consultation has shown that similar divisions of opinion exist in relation to the grounds for extension of the time limit for making an

employment tribunal claim. There is weak support for harmonising these, and divided views on what should be the common grounds for extension.

Question 22: Employment tribunal procedures and case management

4.27 The consultation asked for views on specific ways in which employment tribunal procedures and case management could be improved.

Views of consultees on consistency and tribunal practice

4.28 Most respondents thought the powers of employment tribunals to manage cases were largely adequate. However, many said they were being applied inconsistently. As a result the effectiveness of the system was undermined, imposing unnecessary and costly burdens on users. Many respondents said the tribunal presidents could make more use of discretionary powers to issue practice directions and believed this would eliminate inconsistencies in approach.

4.29 The CBI commented that the Tribunals Service should: "ensure greater consistency in the ways employment tribunals process claims through the use of practice directions". The TUC was also concerned: "tribunals do not always take a consistent approach to case management or to the application of tribunal procedures." The TUC commented on existing powers and suggested: "Presidents could be encouraged to issue additional directions to ensure consistency of approach."

4.30 British Retail Consortium members reported instances of good practice and proposed that these "could be copied by all tribunal regions to increase consistency and best practice." Reed Smith Richards Butler LLP said: "the practice of holding Case Management Discussions via telephone conference calls has been successful", and commented that they "would like to see this become standard practice nationwide wherever the parties are represented". Other suggested measures to improve the system included changes to the listing procedure. For instance BUPA commented that it would be helpful to: "seek dates to avoid from both parties." Differences in approach to witness statements were an issue for a number of respondents. The Newspaper Society said its members would: "prefer if witnesses could only be present after they have given their evidence". Citizens Advice also commented on there being considerable regional variation in practice in relation to: "the making of witness statements at the hearing".

Views of consultees on legal officers

4.31 A number of respondents considered that the introduction of legal officers to deal with specific delegated tasks would help to create more uniform and consistent case management. Business in Sport and Leisure Ltd suggested that "the use of legal officers to undertake routine and administrative tasks might well free up time in the system". Dependent on the level of training, organisations such as Unite Amicus Section agreed and said: "employment of Legal Officers in Tribunal offices to deal with routine tasks could assist". Other respondents such as Committee members of the Law Society of Scotland had "no objection to legal officers being able to deal with

administrative issues (such as postponement and witness citation applications) so long as there is a right to have their decision referred to a Chairman for review".

4.32 Others did not support the introduction of legal officers. The President and Regional Chairmen of Employment Tribunals in England and Wales, for instance, considered the way forward was through training, education and the adoption of best practice and did not believe that case management included "routine and administrative tasks". They commented that: "the introduction of legal officers would be an unnecessary and expensive additional level of bureaucracy in the system. There would have to be provision for reference, or appeal, from decisions of legal officers to chairmen, and it is highly unlikely that ultimately there would be a saving of resources". Business consultancy firm Peninsula supported this view and said: "It seems implausible and impracticable to try to separate the administrative functions from the judicial functions carried out by a Chairman of Employment Tribunals as the two functions are inextricably linked and correlate very closely to one another."

Other reforms to tribunal rules suggested by consultees

4.33 A number of additional suggestions were received which proposed amendments to the employment tribunal rules to improve clarity and fairness to claimants and respondents.

Government response

4.34 The Government accepts that there is a perception of inconsistency of approach within the tribunal system which should be addressed. It believes this can largely be achieved through a more rigorous and proactive application of existing mechanisms, including the Rules of Procedure. The Government is committed to ensuring this happens and is working closely with the judiciary and other key stakeholders to bring it about. The Government will give further consideration to the possible introduction of legal officers and will explore the potential scope with stakeholders.

4.35 The Government has also noted the various recommendations for amendments to the tribunal rules of procedure and will be consulting interested parties including the Presidents of Tribunals (England and Wales and Scotland) before conducting a wider public consultation.

Questions 23-24: Handling multiple-claimant claims

4.36 The number of multiple-claimant claims, which arise when two or more claimants present a claim arising out of the same set of facts, involving the same respondent, has increased in recent years. In 2006, over 60% of tribunal claims were multiple-claimant claims, many in relation to Equal Pay/Equal Value (EP/EV), where mostly female workers have argued that their work is equally valuable to that of men employed in other functions by the same organisation.

4.37 Tribunal rules of procedure already contain some mechanisms for dealing with claims which arise out of the same set of facts. The consultation sought to establish whether these were sufficient or indeed whether employment tribunals provided the most appropriate means for resolving multiple-claimant claims and asked whether it would be helpful to change the case management powers available to employment tribunals in respect of multiple-claimant claims.

Views of consultees

4.38 Most respondents commented that employment tribunals provide the most appropriate means of resolving multiple-claimant claims where the parties cannot resolve their dispute in some other way. Debate therefore centred around question 23 and whether the current case management powers should be changed. 32% of respondents indicated that a change was necessary, 13% thought existing mechanisms were sufficient and 55% did not express a direct view.

4.39 Two main options for change to the way tribunals manage cases emerged from the consultation:

- Tribunals to apply a more effective and consistent approach to case management using existing powers, working with parties to resolve cases;
- Extend the power of tribunals to identify formal test cases / test issues.

4.40 The consultation did not address the issue of 'representative actions', where a single claim could be lodged on behalf of a large number of individuals with the same complaint. However, a number of consultees expressed views in favour of or opposing such a legal mechanism.

More effective case management using existing powers

4.41 Respondents supporting this approach considered that existing tribunal powers were adequate but needed to be used more consistently and effectively. Typical responses supporting this view included one from the British Airline Pilots Association (BALPA) who said that: "Tribunals should make better use of their existing powers to manage multiple-claimant cases".

An example of powers being used to good effect was provided by law firm Beechcroft LLP, who said their “experience of part time pensions cases is that the tribunals already have adequate case management powers and are a suitable forum for such claims provided that national protocols are drawn up and observed.”

4.42 Consultees supporting this option also voiced concern that there should be any change to current legislation, with CBI saying it: “opposes the introduction of entirely new legislative provisions”, and in particular that it: “would not support giving tribunal powers to identify and hear formal test cases”. On this last point, law firm Anderson Strathern suggested that: “the imposition of ‘test case’ rules might limit the advancement of arguments that were not advanced in a ‘lead case’ in a way that would restrict access to justice for an individual seeking to advance that argument.”

4.43 Of the 55% of respondents who did not provide a direct yes or no answer to question 23, many made comments reflecting their wish to see improvements in the management of claims rather than changes to tribunal powers. For example IBM UK Ltd said: ”forms should be simplified for multi-claimant cases which currently need a separate claim and response form for each. Continuity of chair throughout would also be helpful as well as a more robust management of timetable in such claims”.

New powers for tribunals to identify formal test cases/test issues

4.44 Those stakeholders who favoured this option included the President and Regional Chairmen of Employment Tribunals in England and Wales. They suggested that: “existing rules of procedure are largely adequate, but a much-needed improvement is a power for the tribunal to identify test cases and test issues, and to impose that solution rather than be dependent upon the agreement of the parties. In particular, the tribunal must be empowered to impose, where it is just to do so, the outcome of a test case on the other cases in the multiple.” The Law Society of Scotland saw advantage in extending powers to identify formal test cases but its Committee pointed out that a binding judgment: “would have automatic effect for all other similar fact cases.” It suggested that “(in) circumstances where other cases will be affected by a single tribunal decision then the Chairman should flag up any risks to the parties involved and check that they have been made aware of these risks.”

4.45 Other stakeholders opposed any extension to tribunal powers to identify formal test cases. The TUC argued: “case management powers of tribunals should not be changed to mirror those that exist in the High Court where the court has wide-ranging powers, including determining which claims should be litigated as a group, what the common issues to be heard are, which future claims should be directed to join the group, and which should go forward as a test case.” GMB agreed, saying formal test cases “might restrict the ability of individuals to have their cases heard. In practice there are usually agreed lead cases, but this depends on identification and agreement between the parties.”

Legislative change enabling representative actions

4.46 The TUC argued strongly for representative actions led by trade unions: “where litigation involves a collective workplace practice or pay system and thus gives rise to multiple claims, trade unions should be able to bring a representative action on behalf of a group of members, rather than having to lodge, and the tribunals having to administer, multiple individual claims.” A number of other unions supported this view. The GMB supported the idea that the President of the Tribunal should have a greater role in ensuring consistency across (multiple) claims, but also identified “the need for a procedure for representative cases to be taken by trade unions on behalf of claimants.” Others, including the CBI, expressed strong opposition to the introduction of representative actions

Government response

4.47 The responses to this consultation do not support the case for legislative change, for new powers to make binding upon others in similar circumstances a “test case” judgement. Consultees themselves largely agreed that tribunals, working with the agreement of the parties, have sufficient powers to manage multiple-claimant claims. The Government is committed to working closely with the judiciary and its administration to ensure a modern, proactive and consistent level of service is delivered from within the existing framework and by working in cooperation with the parties to resolve these cases. The Civil Justice Council of England and Wales is currently considering the reform of collective redress in England and Wales and the Government will consider their recommendations in due course.

Question 25: Weak and/or vexatious claims

4.48 The consultation sought views on whether tribunals' powers to deal effectively with weak or vexatious tribunal cases are sufficient.

Consultees' views

4.49 53% of respondents felt that existing powers were sufficient. 36% considered they should be changed and 11% expressed no view.

4.50 The question generated diverse responses. Some consultees argued that the extent of weak and / or vexatious claims has been exaggerated and is unsupported by statistical evidence. The point was also made that very few cases appear unarguable from the outset, and given the financial, administrative and emotional costs to claimants of making a claim it is most unlikely that claimants would embark on such a course frivolously. A number of business respondents believed that weak and / or vexatious claims represent a very small proportion of tribunal claims but urged better action to eliminate such cases at an early stage to ensure that they did not bring the tribunal system generally into disrepute.

Consultees believing existing powers are sufficient

4.51 Of the respondents who argued that the powers of tribunals were sufficient the Free Representation Unit summed up the issues as follows: "The tribunal has effective powers to strike out claims, to order costs against those who improperly bring claims and to require a deposit at an early stage before a claim can continue. These are strong powers and equivalent to anything provided to the civil courts by the Civil Procedure Rules. While weak and vexatious claims do exist, in FRU's experience they form only a small percentage of tribunal litigation. In our experience respondents tend to view any unsuccessful claim (and many successful ones) as both weak and vexatious. The fact that a claim has not succeeded does not mean that it should not have been brought".

4.52 Other respondents were keen to ensure access to justice for vulnerable claimants. The National Union of Teachers said it: "believes that the existing powers are sufficient. Since a large number of claimants are unrepresented in tribunals, the NUT would not support increased powers to deal with weak or vexatious claims."

Suggested changes in rules or administration

4.53 Another group of responses saw a need for change and provided a variety of suggestions on approaches which might be taken. Generally, respondents thought tribunals needed to apply a more proactive and consistent approach at an early stage. Law firm Clifford Chance LLP commented that: "tribunal chairmen have sufficient powers to strike out weak and vexatious claims, but that there is often a reluctance to use those

powers….. We would welcome the greater use of existing powers to require a deposit and would suggest that the limit on deposits be increased to £5,000. This will provide a significant degree of additional discretion to a tribunal chairman when dealing with cases which appear to have little reasonable prospect of success".

4.54 Another law firm, Freshfields Bruckhaus Deringer, commented that: "the powers of an employment tribunal to order a deposit are limited and, in our experience, infrequently exercised. In our view, paying a small fee to lodge an employment tribunal claim would be a better way of discouraging weak claims than the existing procedures. Alternatively, a refundable deposit could be a pre-condition of lodging a claim. The deposit would be forfeited if the claim were deemed to have no reasonable prospect of success or if the claimant behaved frivolously or vexatiously in his pursuit of his claim".

4.55 Other suggestions to deter weak and vexatious claims included several put forward by ASDA. These included an obligation for "the claimant to update its schedule of loss regularly and provide reports on their attempts to mitigate losses." ASDA also commented that "publication of guidance on average awards for various different case types might reduce vexatious or unrealistic claims."

Weak defences

4.56 A number of respondents felt it was important that tribunals should deal robustly with weak defences to claims. Typical of these responses included one from Thompson's Solicitors who were disappointed that: "DTI refers only to "claims" and ignores the many instances of respondents who advance defences that are wholly without merit. The procedural rules apply in both circumstances". Likewise the Police Federation said: "The existing powers of employment tribunals are sufficient to deal with weak and vexatious claims. However, this is a loaded question, because it overlooks the powers of tribunals to deal with weak and vexatious ET3 responses. Our experience is that tribunals frequently list cases of their own initiative to determine whether claims are weak, but not whether responses are weak. Any reform on this point should emphasise that the power works against both parties."

Government response

4.57 The Government acknowledges that claims considered to be weak and / or vexatious form a very small proportion of tribunal claims. Whilst it recognises the importance of establishing at an early stage the claims which fall into this category, to avoid unnecessary burden and costs to respondents, the Tribunals Service and indeed claimants, it is mindful to ensure that access to justice is preserved, particularly for unrepresented claimants. Against this background, the Government believes the powers of tribunals to deal with weak and/or vexatious claims and defences lacking merit are sufficient and that it would be inappropriate to extend the powers or raise the thresholds for deposits.

4.58 As with other areas of tribunal procedure there is a need for the Government and the judiciary to work together to ensure the existing powers are applied consistently and effectively to ensure best practice is the norm throughout the service. The Government will also be exploring whether revised guidance to claimants and respondents would be appropriate.

Questions 26-27: Circumstances in which a chair can sit alone and the use of lay members in a way which adds most value

4.59 A tribunal is generally comprised of a legally qualified chair and two lay members – one from a trade union or employee background and one from an employer background. There are already some circumstances in which a hearing does or may proceed without the full panel. In addition to cases in the jurisdictions listed in s.4(3) of the Employment Tribunals Act 1996 (which must be heard by an Employment Judge alone unless the Judge decides there are reasons that a full tribunal is desirable), cases can be determined by an Employment Judge alone where the parties have given their written consent and in proceedings where the respondent no longer contests the case. Additionally, if a lay member is absent for any reason, the chair may sit with the remaining member, if both the claimant and respondent agree. Chairs also hold case management discussions and conduct pre hearing reviews alone. They also make procedural orders with or without hearing the parties or obtaining written or oral representations.

4.60 The Government consultation therefore set out to establish whether current tribunal arrangements work effectively or whether they could be better structured. The consultation asked for views on when chairs should sit alone to hear cases, and how best to structure employment tribunal panels and use lay members efficiently.

Consultees' views: Chairs sitting alone

4.61 Just over 50% of respondents considered chairs should sit alone in cases which involve issues of a purely legal nature, in straightforward monetary cases or where the parties agree. Typical of these was a comment from Royal Bank of Scotland Mentor Services who said: "chairs should sit alone to decide cases that primarily involve questions of law. Chairs could also sit alone in straightforward breach of contract, holiday pay, unpaid redundancy and Wages Act cases." Members of the Employment Lawyers Association also saw merit in chairs sitting alone to hear certain types of case e.g. contractual claims but ELA pointed out that: "some members did express concern that this would be seen as a cost cutting exercise… it was paramount that justice did not suffer".

4.62 Other respondents felt that the existing split of jurisdictions in which a chair could sit alone and those to be heard before a full tribunal reflected an appropriate balance and that there should be no further extension of the powers. Small firm Nautilus UK said: "Employment tribunals were specifically set up as tripartite bodies. Extensions to the current and specified areas where chairs can sit alone, cannot be supported".

Structure of employment tribunal panels

4.63 Many responses supported the tripartite panel involving members from both sides of industry. The Law Society commented that the role of lay

members “is very important, as their practical experience provides a balance to the legal expertise of the Chairs”. The Law Society also made reference to case law in which the tribunals’ character was often referred to as the “industrial jury”; they felt it was appropriate for lay members to “sit at all hearings which involve contested evidence and finding of fact”. Some respondents such as the CBI observed that “securing lay members’ attendance can be difficult and sometime delays proceeding significantly”. CBI also acknowledged lay members’ “key contribution in assessing reasonableness of actions and responses”, and commented on the: “important role to play in cases involving dismissal ….and where discretionary adjustments to compensation have to be considered to allow for just and equitable awards”.

4.64 The Council of Employment Tribunal Members’ Association (CETMA) commented in detail in response to these questions. They said: “Recruitment of non-legal members is through a rigorous process, and non-legal members have wide and recent experience of industry. …. the structure of the Employment Tribunal generally has the confidence of both sides of industry and has stood the test of time. It is also considered to be accessible to unrepresented parties… the tripartite principle ensures appropriate expertise to dispense industrial justice and the usual arguments of modernisation do not apply. It is essential therefore that any contentious case which requires a testing of the evidence, or the law, in a hearing should have a full tribunal”.

4.65 A small number of respondents suggested that the added value of lay members was less clear. For instance law firm, Freshfields Bruckhaus Deringer suggested: “consideration should be given to whether lay members are still required in the majority of employment cases, although accept the importance of balanced tribunals with specialist knowledge when hearing discrimination claims”. The Institute of Directors argued that the “presumption should be that a legally qualified, appropriately and adequately trained person should sit alone in employment tribunal cases, and the law should be amended to achieve this”.

Government response

4.66 The Government recognises the valuable and important contribution which lay members make to the tribunal system. Most respondents affirmed that the tripartite structure of the tribunal was a real strength which aided decision-making in cases where considerations of context and reasonableness were important. There was however, support for Employment Judges to sit alone in determining cases involving issues in straightforward monetary cases, where the practical experience of the workplace that lay members bring to the tribunal’s deliberations is of less relevance. Additionally over 70% of respondents to the consultation supported the introduction of a new approach to dealing with straightforward claims, where cases could be determined by an Employment Judge, with the consent of the parties, on the basis of papers.

4.67 As discussed in paras 3.22 to 3.25 the Government proposes to establish procedures to enable determination without the need for tribunal hearing in some cases in suitable jurisdictions which raise straightforward issues. This could only happen with the express consent of the parties and where the Employment Judge considers it appropriate. The jurisdictions which the Government considers suitable are: unlawful deductions from wages; breach of contract; redundancy pay; national minimum wage and holiday pay. Four of these jurisdictions are already areas of the law where Employment Judges may sit alone. However, the Government believes holiday pay may also be suitable for adding to these jurisdictions. The Government is therefore proposing to add section 30 of the Working Time Regulations (holiday pay) to the list of jurisdictions routinely heard by a Judge sitting alone and will consult stakeholders on this proposal later on this year. This will require secondary legislation and will be the subject of further public consultation.

4.68 The Government has separately initiated a broader review, taking place within the Ministry of Justice, which will consider how lay members are deployed across the Tribunals Service as a whole. The results of this consultation will feed into that review and, without prejudice to the outcome of those deliberations, the Government believes the current balance and structure of employment tribunals is appropriate.

Question 28: The powers of employment tribunals to make recommendations in discrimination cases

4.69 The consultation referred to proposals advanced during the Discrimination Law Review that employment tribunal powers to make recommendations on discriminatory policies and practices should be extended. The suggestion was that tribunals should have wider powers to make recommendations in discrimination cases for ways in which the respondent could change their practice to eliminate unfairness found by the tribunal. It was suggested that this might help employers eliminate discriminatory practice and other employees who might potentially be affected by acts of unlawful discrimination proven in the case. The consultation asked whether the Government should aim to promote employers' compliance with discrimination law through better advice and guidance, rather than by widening the powers of employment tribunals to make recommendations in discrimination cases.

Views of consultees

4.70 63% of respondents considered that it would be inappropriate for employment tribunal powers to be widened and that employers' understanding and compliance with discrimination law would be best served through better advice and guidance. 24% believed tribunal powers should be widened; the remaining 13% had no view.

Views opposing an extension of tribunal powers

4.71 Many stakeholders welcomed better advice and guidance as an opportunity to avoid cases reaching employment tribunals such as John Nike Leisuresport Ltd which ventured that: "prevention is better than cure". The Engineering Employers Federation observed: "the tribunal will simply not have an adequate knowledge and understanding of the whole of an employers' business to make a properly informed recommendation."

4.72 Several respondents referred to the role which the new Equality and Human Rights Commission (EHRC) (renamed from CEHR in October 2007) will play in promoting compliance with discrimination law amongst employers. On the issue of promoting better advice and guidance, a lay member of an employment tribunal observed that "the new CEHR will do this, ET currently have recommendation powers and they suit the individual and this is sufficient."

Views favouring an extension of tribunal powers

4.73 Respondents who favoured widening tribunal powers included the three former equality commissions. The Commission for Racial Equality (CRE) considered that: "promotional work is important but it does not necessarily have much impact on recalcitrant employers." The Disability

Rights Commission (DRC) argued that a power for tribunals to recommend employers change their practices would: “provide an important bridge between individual and systemic enforcement” and the Equal Opportunities Commission (EOC) saw benefit in a dual approach by promoting better advice and guidance and the use of tribunal power. The EOC commented that: “extending the power to make general recommendations would limit or reduce the number of future cases by ensuring that the employer puts systemic problems right.” The Institute of Employment Rights suggested that tribunals “should have more powers to make recommendations in discrimination cases and such powers should include identifying problems and referring workplaces to the CEHR for investigation, monitoring and enforcement of improved practices”.

4.74 Other respondents commented that both better information and guidance and broader powers for tribunals to make recommendations could have a role in enabling employers to improve their employment practices to tackle discrimination.

Government response

4.75 While the Government recognises the concerns of business, it believes that strong arguments were put forward in favour of a wider recommendation power by bodies representing the interests of those who potentially suffer from discrimination. It believes there is a case for considering a role for both better information and advice and for wider tribunal recommendation powers. It will consider the possibility of extending tribunal recommendation powers as part of the proposed Equality Bill.

Annex A

Consultation questions

1. Should the statutory dispute resolution procedures be repealed?

2. Would repealing the procedures have unintended consequences that the Government should address, in legislation or otherwise?

3. Should the Government offer new guidelines on resolving disputes?

4. Should there be a mechanism to encourage parties to follow such guidelines?

5. Should the mechanism take the form of discretion for employment tribunals to impose penalties on those who have made wholly inadequate attempts to resolve their dispute?

6. What form should such penalties take?

7. If the statutory dispute resolution procedures were repealed, should the law relating to procedural fairness in unfair dismissal:
   - revert to the pre-2004 position; or
   - be reviewed in order to assess whether it should be restated entirely?

8. Should the Government invite the CBI, TUC and other representative organisations to produce guidelines aimed at encouraging and promoting early resolution?

9. Should the Government develop a new advice service with the structure and functions suggested?

10. Should the Government redesign the employment tribunal application process, so that potential claimants access the system through a new advice service, and receive advice on alternatives when doing so?

11. Should there be a new, swift approach for dealing with straightforward claims without the need for employment tribunal hearings?

12. Should additional Acas dispute resolution services be made available to the parties in potential tribunal claims, in the period before a claim is made?

13. If it is necessary to target these new services, should the Government set criteria to guide Acas to prioritise particular types of dispute?

14. If these new services are to be targeted then, in the current circumstances, would it be appropriate for the Government to guide Acas to prioritise the following types of dispute:
    - those likely to occupy the most tribunal time and resources if they proceed to a hearing, e.g. discrimination and unfair dismissal cases;
    - those where the potential claimant is still employed; and
    - those where the employer is a small business with fewer than 250 employees.

15. Should the fixed conciliation periods which place time limits on Acas' duty to conciliate employment tribunal claims be removed?

16. Should the Government simplify employment tribunal forms?

17. Should claimants be asked to provide an estimate or statement of loss when making a claim?

18. Would simplifying the current time limits regime through harmonisation be a helpful additional reform, whether or not the statutory dispute resolution procedures are repealed?

19. If so, should the harmonised limit be three months, six months or another time period?

20. Would total or partial harmonisation of the grounds for extension to the extent possible subject to legal constraints, be a helpful additional reform?

21. If so, what should the grounds for extension be in respect of the relevant jurisdictions?

22. Do you have views on specific ways in which employment tribunal procedures and case management could be improved?

23. Would it be helpful to change the case management powers available to employment tribunals in respect of multiple-claimant claims?

24. Do employment tribunals provide the most appropriate way of resolving multiple-claimant claims, or could other mechanisms better serve the interests of all the parties involved?

25. Are the existing powers of employment tribunals sufficient to deal with weak and vexatious claims?

26. Do you have views on when employment tribunal chairs should sit alone to hear cases?

27. Do you have views on how best to structure employment tribunal panels and use lay members more efficiently?

28. Should the Government aim to promote employers' compliance with discrimination law through better advice and guidance, rather than by widening the powers of employment tribunals to make recommendations in discrimination cases?

Annex B

List of all responding to consultation

- Abbey Quilting Ltd
- Aberdeen Citizens Advice Bureau
- Acas
- Access Matrix Ltd
- ACM
- ADR Group
- Advice Services Alliance
- Airedale International Air Conditioning
- Alamo Security Services Ltd
- Allen & Overy LLP
- Alliance Mediation Management Ltd
- Allied Mfg Co (London) Ltd
- Amicus
- Amicus Legal Ltd
- Anderson Strathern
- Anthony Williams Consultancy
- Antur Waunfawr
- Arcadia Group Ltd
- Arriva plc
- Asda Stores Ltd
- Ashden Personnel & Training
- Association of Colleges (AoC)
- Association of Convenience Stores
- Association of School and College Leaders
- Avolites Ltd
- Avon & Wiltshire Mental Health Partnership NHS Trust
- Axis Management Systems Ltd
- Barhale Construction plc
- Barnardo's
- Barnet Law Service
- Barrett, Nick
- Bartlett Group Ltd
- Batchelors Solicitors
- Beachcroft LLP
- Beachcroft LLP (Clients of the Employment Group)
- Beedell, James William
- Beiersdorf UK Ltd
- Berkeley Leisure Group Ltd
- Bernard Matthews Foods Ltd
- Biochemical Society
- Birmingham Hippodrome
- Birmingham Law Society Employment Committee
- Bishop Fleming
- Blackburn and District Trades Council
- Blackpool Council
- Blue Sky Solutions

- Boyce, Georgina S
- Boyes Turner
- BP International
- Bradbury, Matt
- Bright Finance Ltd
- Bristol City Council
- Bristol Employment Tribunal Members
- British Airline Pilots Association (BALPA)
- British Airways
- British Chambers of Commerce (BCC)
- British Furniture Manufacturers
- British Holiday & Home Parks Association
- British Retail Consortium (BRC)
- BRM Solicitors
- Broadcasting Entertainment Cinematograph and Theatre Union (BECTU)
- Broadcom
- Broadridge Financial Solutions
- Bromfield, Lucinda
- Brown, Marion
- Bruce, VMS
- BUPA
- Burges Salmon LLP
- Bushell, Jeremy
- Business In Sport and Leisure Ltd
- Business Services Association
- Buzzacott Chartered Accountant
- Café on the Hill Ltd
- Camden Tribunal Unit
- Camp, Christopher
- Cancer Research UK
- Carol H Scott HR and Business Consulting
- Cavill Robinson Financial Recruitment
- Central Scotland Police
- Centre for Effective Dispute Resolution (CEDR)
- Cereal Partners UK
- Chamber of Shipping
- Charles Russell LLP
- Chartered Institute of Personnel and Development (CIPD)
- Chartered institute of Personnel and Development (CIPD) (Central London Branch)
- Chesterfield Royal Hospital NHS Foundation Trust
- Citizens Advice
- Citizens Advice & Rights, Fife
- Citizens Advice Bureau, Crawley
- Citizens Advice Bureau, Dalkeith
- Citizens Advice Bureau, Haddington
- Citizens Advice Bureau, Ipswich & District
- Citizens Advice Bureaux, Salford
- City of Edinburgh Council
- Clarke, Michael
- Clifford Chance LLP
- Climax Group
- COA Solutions Ltd
- Commission for Racial Equality (CRE)
- Community Links
- Confederation of British Industry (CBI)
- Confederation of British Wool Textiles
- Confederation of Passenger Transport

- Connect
- Conquest Business Media
- Construction Confederation
- Cook, SR
- Core Solutions Group
- Cornel (UK) Ltd
- Cosmur Construction Ltd (London)
- Council of Employment Tribunal Chairmen
- Council of Employment Tribunal Members' Associations (CETMA)
- Council on Tribunals
- Countrywide plc
- Cowan, Keith MBE
- Creative Max Imports Ltd
- CWU Colchester and District Branch
- Darren Newman Training Ltd
- David J Miller Insurance Brokers Ltd
- David Jeffreys Accountants
- Design Initiative Ltd
- Disability Rights Commission (DRC)
- Discrimination Law Association (DLA)
- Doncaster Chamber of Commerce
- Dowson, J
- DSGi Business
- Dudley District Citizens Advice Bureaux
- E.ON UK
- EAD Solicitors
- Ealing, Hammersmith and West London College
- East End Foods plc
- East Kent Hospitals
- Easy, Claire ML
- Ecocleen
- Edinburgh University Students' Association
- Emplex Employment Law Consultants
- Employer Solutions Ltd
- Employers Federation for Housing Associations and other Voluntary Sector Organisations
- Employment Law Consultants Ltd
- Employment Law Practice
- Employment Law Research Unit
- Employment Lawyers Association (ELA)
- Employment Tribunal (Scotland)
- Engineering Employers Federation (EEF)
- EOS Solutions UK plc
- Equal Opportunities Commission
- ETAS Direct North
- European Study Group
- Evans, Professor GR
- Eversheds LLP
- Exeter Enterprises Ltd
- Fadero, Olusola
- Fairway Surgery, Birmingham
- Faiveley Transport
- Fanshawe, Mike
- Fay Watters HR Consultancy
- Federation of Small Businesses (FSB)
- Field Fisher Waterhouse
- Fife Council
- First Business Support
- Fisher Meredith Solicitors
- Fluor Ltd
- Foot Anstey
- Ford Motor Company Ltd

- Foreign and Commonwealth Office (FCO)
- Forth Ports plc
- Forum of Private Business (FPB)
- Foudy, Denise
- Free Representation Unit
- Freshfields Bruckhaus Deringer
- Friends Provident plc
- Garden Court Chambers
- Gardner, Sarah
- Gilbert, Dawn
- Gilder Group Ltd
- Gillanders Solicitors
- GMB
- Greater Manchester Pay and Employment Rights Advice Service
- Greenwich Community College
- H M Revenue & Customs
- Haine and Smith Opticians
- Hammonds Solicitors
- Hanks, Phil
- Happening UK
- Harrow Council
- Hertfordshire Partnership NHS Trust
- Holden, Carol
- Home Counties Business Advisors (HCBA)
- Howells, Kayan
- Howes Percival LLP
- Hughes, Simon MP
- IBM UK Ltd
- Immigration Service Union
- Independent Mediators Ltd
- Independent Police Complaints Commission
- INEOS
- Ingoldale Park
- In-House Employment Lawyers Association
- Institute of Directors (IoD)
- Institute of Employment Rights
- InterChange Legal Advisory Service
- Isaac, David
- JB Consultants
- Jennings, Anthony
- John Henderson & Sons
- John Nike Leisuresport Ltd
- John Stamford & Associates Ltd
- John Tillisch Ltd
- Just Care
- Kennedy, Calum Murdo
- King, Derek
- Kirklees Law Centre
- Kitchen, Tina
- Knowles Benning Solicitors
- Korn, Anthony
- Ladbrokes plc
- Lankelma Ltd
- Law Centres Federation
- Law Society
- Law Society of Scotland
- Law Society, City of London
- Law Society, City of Westminster & Holborn
- LawWorks
- Le Monde Restaurant
- Leeds Teaching Hospitals NHS Trust

- Legal Action Group
- Leonard Cheshire Disability
- Lewis Silkin LLP
- Lewisham Hospital
- Lighthouse Group plc
- Linklaters LLP
- Liverpool Law Society
- Liz Law Mediation
- Local Government Employers
- London Borough of Camden
- Long, Allison
- Lowdham Leisureworld
- Lucking, Roger
- Maintel Europe Ltd
- Manchester City Council
- Marshall-James Human Resources
- Mary Ward Legal Centre
- Mayor of London
- McKenzie Myers Ltd
- Mediation and Community Support Ltd
- Mediation at Work
- Mediation Room
- Medway Council
- Mencap
- Metropolitan Police
- Mettam, Val
- MFG Solicitors LLP
- Middleton Estates
- Morrish and Co Solicitors
- Morton Fraser LLP, Solicitors
- MRS Distribution Ltd
- National Association of Schoolmasters Union of Women Teachers (NASUWT)
- National Children's Homes (NCH)
- National Group on Homeworking
- National Hairdressers' Federation
- National Maritime Museum
- National Pharmacy Association
- National Specialist Contractors Council
- National Trust
- National Union of Rail, Maritime and Transport Workers (NURMT)
- National Union of Teachers (NUT)
- Nationwide Group Staff Union (NGSU)
- Nautilus UK
- Network Partnership
- Network Rail
- Newcastle upon Tyne Employment Tribunal Users Group
- Newspaper Society
- NHS Scotland Central Legal Office
- North West Institute of Further and Higher Education
- Northern Bank
- Northgate HR
- Northumberland County Council
- Norwich Cathedral
- Nuffield Hospitals
- Oakridge Law Solicitors
- Oldroyd Publishing Group Ltd
- Olympic
- OpenContact
- Organ, William
- Osborne Clarke
- Pannone LLP
- Pantoro, Puseletso
- PECC Consultants Ltd
- Peninsula Business Services Ltd

- People Logic
- Personnel Solutions
- Perspectives Coaching and Mediation Ltd
- Pinsent Masons
- Places for People
- Plymouth Citybus Ltd
- Police Federation
- Policy Company Ltd
- Polley, Norman
- President and Regional Chairmen of Employment Tribunals in England and Wales
- PricewaterhouseCoopers LLP
- Prospect
- Public and Commercial Services Union (PCS)
- Public and Commercial Services Union (PCS) Acas Branch
- Purnell, Chris
- Queen's University, Belfast
- Rank Group
- Rathbone, Barrie J
- Reed Smith Richards Butler LLP
- Reliance Security Services
- Rentokil Initial Facilities Services (UK)
- Retained Firefighters' Union (RFU)
- Riniker, Ursula
- RNID
- Road Haulage Association
- Robertson, John
- Rolls-Royce plc
- Rothera Dowson Solicitors
- Rowbottom, David
- Royal Bank of Scotland Mentor Services
- Royal Bournemouth Hospital
- Royal College of Nursing
- Royal Mail Group Ltd
- Scottish Agricultural College (SAC)
- Scottish and Newcastle UK Ltd
- Scottish Borders Community Development Company
- Scottish Employment Rights Network
- Scottish Employment Rights Network
- Scottish Executive
- Scottish Low Pay Unit
- Scottish Mediation Network
- ScS Upholstery plc
- Shield Guarding Co Ltd
- Simmons and Simmons
- Simpkins, Nicholas
- Simple Way
- SITA UK Ltd
- Smith, Jon; Stowe, Mick; Arkwright, Yvonne and Mann, Nigel
- Society For Mucopolysaccharide Diseases
- Software AG
- St Luke's School, Hertfordshire County Council
- St Regis Paper Ltd
- Standard Life
- Staniford Wallace Solicitors
- Stead, Irene
- Steffian Bradley
- Steve Derby & Associates
- Stewardson, Elizabeth
- Stewart Fletcher and Barrett

- Sunderland City Council
- Surrey Police Federation
- System C Healthcare plc
- T.A. Anders & Co Ltd
- T/U Employment Law Course (Sheffield College)
- Targetfollow Ltd
- Taylor, Kim
- Temenos
- Tenon
- Tesco Stores Ltd
- Thomas Cook Group UK Legal Department
- Thompsons Solicitors
- Total Conflict Management
- TQC Management Consultancy
- TransLinc Ltd
- Travers Smith
- Tribunal Representation Services Ltd
- Tribunal Service Leeds
- TUC
- Union of Construction, Allied Trades and Technicians (UCATT)
- Union of Finance Staff
- Union of Shop, Distributive and Allied Workers (USDAW)
- Unison
- Unite Amicus Section
- United Church Schools Trust (UCST)
- University and College Union
- University of Central Lancashire
- University of Glamorgan
- University of Kent
- University of Northampton University College Union
- University of Nottingham
- University of the Arts London
- University of Warwick
- Voluntary Action Sheffield (VAS)
- VT Land
- Wakefield College
- Walsh, John
- Walsingham
- Warwickshire County Council
- Water Industry Commission for Scotland
- Welwyn Hatfield Citizens' Advice Bureau
- Willerby Holiday Homes
- Wills, Richard
- Worcester Sixth Form College
- Working in Partnership
- Working Men's Club and Institute Union Ltd
- WS Atkins
- Wyggeston's Hospital
- Yorkshire and Humberside Employment Rights Network
- Zurich Employment

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