

Response ID ANON-N9WN-TUJS-J

Submitted to **Law Commission Consultation on Employment Law Hearing Structures**

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About you

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Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Personal response

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The exclusive jurisdiction of employment tribunals

Consultation Question 1: We provisionally propose that employment tribunals' exclusive jurisdiction over certain types of statutory employment claims should remain. Do consultees agree? (Please see paragraph 2.57 of the consultation paper.)

Yes

Please expand on your answer. :

The Tribunal is a cheaper and more accessible option with litigants in person more able to bring claims than before other courts.

Consultation Question 2: Should there be any extension of the primary time limit for making a complaint to employment tribunals, either generally or in specific types of case? (Please see paragraph 2.61 of the consultation paper.)

Yes, generally

Please expand on your answer. :

Three months is quite difficult for many people to comply with, certainly those with disabilities can struggle to comply with what is comparatively speaking a short period of time.

If so, should the amended time limit be six months or some other period?:

In my view a year would be more appropriate. This would also enable some Claimants to resolve matters with their employer whilst remaining employed and still have time to bring a claim should the matter be unsuccessful.

And again it is repeated that there are those with disabilities (mental and physical) who can find it very difficult to bring a claim (taking advice and so on as well) in what is a restrictive period of time. It is noted here that Tribunals do not readily extend time for Claimants even those who have serious disabilities.

Furthermore many people do not appreciate they have a potential claim for some time, often by which point they are unable to lodge the claim.

Consultation Question 3: In types of claim (such as unfair dismissal) where the time limit can at present only be extended where it was “not reasonably practicable” to bring the complaint in time, should employment tribunals have discretion to extend the time limit where they consider it just and equitable to do so? (Please see paragraph 2.62 of the consultation paper.)

Yes

Please expand on your answer. :

In my experience the not reasonably practicable test is too restrictive - people have a right to access the courts and short time limits inhibit that fundamental access to justice.

Restrictions on the jurisdiction of employment tribunals - discrimination

Consultation Question 4: We provisionally propose that the county court should retain jurisdiction to hear non-employment discrimination claims. Do consultees agree? (Please see paragraph 3.24 of the consultation paper.)

No

Please expand on your answer. :

It seems rather logical to enable such claims to be brought before the Tribunal where the expertise is generally found in judges who frequently hear employment discrimination claims.

Consultation Question 5: Should employment tribunals be given concurrent jurisdiction over non-employment discrimination claims? (Please see paragraph 3.32 of the consultation paper.)

Yes

Please expand on your answer. :

This would enable the current expertise to be relied upon

Consultation Question 6: If employment tribunals are to have concurrent jurisdiction over non-employment discrimination claims, should there be power for judges to transfer claims from one jurisdiction to the other? (Please see paragraph 3.33 of the consultation paper.)

Yes

Please expand on your answer. :

The law should always be flexible to adapt to the needs as required.

If so, what criteria should be used for deciding whether a case should be transferred: (1) from county courts to employment tribunals; :

It would be over simplifying matters to simply say costs and complexity however those would be logical starting points in my view

and/or (2) from employment tribunals to county courts?:

The same as above

Should county courts be given the power to refer questions relating to discrimination cases to employment tribunals? :

It would seem preferable to enable complete transfers (with the consent of the parties perhaps)

Consultation Question 7: If employment tribunals are to have concurrent jurisdiction over non-employment discrimination claims, should a triage system be used to allocate the claim as between the county court or the employment tribunal? (Please see paragraph 3.34 of the consultation paper.)

No

Please expand on your answer. :

If the costs and complexity matters are addressed there would be a reasonably clear division

If so, what form should this triage take?:

Consultation Question 8: Do consultees consider that employment judges should be deployed to sit in the county court to hear non-employment discrimination claims? (Please see paragraphs 3.40 of the consultation paper.)

No

Please expand on your answer. :

With respect to the Tribunal, cases are already suffering from delays and to do so would lead to further delay in the Employment Tribunal (being mindful that there is a drive to recruit and train new ET judges)

Consultation Question 9: If consultees consider that employment judges should be deployed to sit in the county court, should there be provision for them to sit with one or more assessors where appropriate? (Please see paragraph 3.41 of the consultation paper.)

Not Answered

Please expand on your answer. :

See above.

Other restrictions on the jurisdiction of employment tribunals

Consultation Question 10: Should employment tribunals have jurisdiction to hear a claim by an employee for damages for breach of contract where the claim arises during the subsistence of the employee's employment? (Please see paragraph 4.14 of the consultation paper.)

Yes

Please expand on your answer. :

It seems quite logical to do so however there may also be a requirement from Tribunals to accept that the values may be quite significant.

Consultation Question 11: Should employment tribunals have jurisdiction to hear a claim for damages for breach of contract where the alleged liability arises after employment has terminated? (Please see paragraph 4.16 of the consultation paper.)

Yes

Please expand on your answer. :

In the event the matter fell within the extended claim period suggested above, otherwise the matter would in any event be required to be lodged in the Court not Tribunal.

Consultation Question 12: We provisionally propose that the current £25,000 limit on employment tribunals' contractual jurisdiction should be increased. Do consultees agree? (Please see paragraph 4.28 of the consultation paper.)

Yes

Please expand on your answer.:

See above. This would enable claims to be more readily dealt with and the Tribunal can then accept and dispose of higher value claims.

Consultation Question 13: What (if any) should the financial limit on employment tribunals' contractual jurisdiction be, and why? (Please see paragraph 4.30 of the consultation paper.)

Please provide your answer below. :

None. It is a dichotomy to impose a limit on a claim value - the Tribunal should be empowered to provide a suitable remedy.

Consultation Question 14: If the financial limit on employment tribunals' contractual jurisdiction is increased, should the same limit apply to counterclaims by the employer as to the original breach of contract claim brought by the employee? (Please see paragraph 4.31 of the consultation paper.)

Yes

Please expand on your answer. :

It would be difficult to suggest equality otherwise.

Consultation Question 15: Do consultees agree that the time limit for an employee's claim for breach of contract under the Extension of Jurisdiction Order should remain aligned with the time limit for unfair dismissal claims? (Please see paragraph 4.39 of the consultation paper.)

Yes

Please expand on your answer. :

in the event that the time limit is extended.

Should a different time limit apply if tribunals are given jurisdiction over claims that arise during the subsistence of an employee's employment? :

Consultation Question 16: We provisionally propose that employment tribunals' contractual jurisdiction should not be extended to include claims for damages, or sums due, relating to personal injuries. Do consultees agree? (Please see paragraph 4.44 of the consultation paper.)

No

Please expand on your answer. :

Tribunals are quite used to dealing with such matters. However once more the Tribunal would need to be mindful of the increase in sums which may be awarded and encouraged to do so where appropriate.

Consultation Question 17: We provisionally propose that the prohibition against employment tribunals hearing claims for contractual breaches relating to living accommodation should be retained. Do consultees agree? (Please see paragraph 4.46 of the consultation paper.)

Yes

Please expand on your answer. :

This is a matter more generally outside the expertise of the ET judiciary.

Consultation Question 18:We provisionally propose that the prohibition against employment tribunals hearing breach of contract claims relating to intellectual property rights should be retained. Do consultees agree? (Please see paragraph 4.49 of the consultation paper.)

Yes

Please expand on your answer. :

As above

Consultation Question 19:We provisionally propose that the prohibition against employment tribunals hearing claims relating to terms imposing obligations of confidence (or confidentiality) should be retained. Do consultees agree? (Please see paragraph 4.59 of the consultation paper.)

No

Please expand on your answer. :

To be clear, in this I refer only to clauses in Employment Contracts.

Consultation Question 20:We provisionally propose that the prohibition against employment tribunals hearing claims relating to terms which are covenants in restraint of trade should be retained. Do consultees agree? (Please see paragraph 4.60 of the consultation paper.)

No

Please expand on your answer. :

This is a matter which falls appropriately into the Employment Tribunal sphere.

Consultation Question 21:We provisionally propose that employment tribunals expressly be given jurisdiction to determine breach of contract claims relating to workers, where such jurisdiction is currently given to tribunals in respect of employees by the Extension or Jurisdiction Order. Do consultees agree? (Please see paragraph 4.64 of the consultation paper.)

Yes

Please expand on your answer. :

It once more seems logical

Consultation Question 22:If employment tribunals' jurisdiction to determine breach of contract claims relating to employees is extended in any of the ways we have canvassed in consultation questions 10 to 20, should tribunals also have such jurisdiction in relation to workers? (Please see paragraph 4.65 of the consultation paper.)

Other

Please expand on your answer. :

This would depend on the circumstances.

If consultees consider that there should be any differences between employment tribunals' contractual jurisdiction in relation to employees and workers, please provide details.:

Consultation Question 23:We provisionally propose that employment tribunals should not be given jurisdiction to determine breach of contract disputes relating to genuinely self-employed independent contractors. Do consultees agree? (Please see paragraph 4.67 of the consultation paper.)

Yes

Please expand on your answer. :

Self employed are by definition not Employees and their remedy should be elsewhere.

Consultation Question 24:We provisionally propose that employment tribunals should continue not to have jurisdiction to hear claims originated by employers against employees and workers. Do consultees agree? (Please see paragraph 4.70 of the consultation paper.)

Other

Please expand on your answer. :

This depends on the circumstances of the claim, for example a breach of restrictive covenant in my view should be capable of being disposed of by a Tribunal (though this would require an increase in the powers and remedies available i.e. injunctive)

Consultation Question 25:We provisionally propose that employers should continue not to be able to counterclaim in employment tribunals against employees and workers who have brought purely statutory claims against them. Do consultees agree? (Please see paragraph 4.73 of the consultation paper.)

Other

Please expand on your answer. :

in many respects it seems sensible to me to enable an Employment Tribunal to resolve any dispute between an employer and employee.

Consultation Question 26:Should employment tribunals have jurisdiction to interpret or construe terms in contracts of employment in order to exercise their jurisdiction under Part I of the ERA 1996? (Please see paragraph 4.78 of the consultation paper.)

Yes

Please expand on your answer. :

Again as above, it appears manifestly simplistic but allowing an Employment Tribunal to resolve disputes between an employee and employer seems logical.

Consultation Question 27:Should employment tribunals be given the power to hear unauthorised deductions from wages claims which relate to unquantified sums? (Please see paragraph 4.99 of the consultation paper.)

Yes

Please expand on your answer. :

Again as above

Consultation Question 28:Where an employment tribunal finds that one or more of the “excepted deductions” listed by section 14(1) to 14(6) of the Employment Rights Act 1996 applies, should the tribunal also have the power to determine whether the employer deducted the correct amount of money from an employee’s or worker’s wages? (Please see paragraph 4.105 of the consultation paper.)

Yes

Please expand on your answer. :

Again whilst not wishing to be repetitive, the above stands

Consultation Question 29: Should employment tribunals be given the power to apply setting off principles in the context of unauthorised deductions claims? (Please see paragraph 4.108 of the consultation paper.)

Other

Please expand on your answer. :

This would depend upon the previous issues and what powers the Tribunal might have such as enforcement of judgments

If so: (1) should the jurisdiction to allow a set off be limited to liquidated claims (ie claims for specific sums of money due)? :

See above, subject to enforcement powers

(2) should the amount of the set off be limited to extinguishing the employee’s claim?:

No. Limiting remedy is not in my view appropriate.

Consultation Question 30:We provisionally propose that employment tribunals should continue not to have jurisdiction in relation to employers’ statutory health and safety obligations. Do consultees agree? (Please see paragraph 4.116 of the consultation paper.)

Yes

Please expand on your answer. :

Health and Safety is a separate issue

Consultation Question 31:We provisionally propose that employment tribunals should continue not to have jurisdiction over workplace personal injury negligence claims. Do consultees agree? (Please see paragraph 4.118 of the consultation paper.)

Other

Please expand on your answer. :

This would again depend on value of remedy which would need to be uncapped. Of course with PI claims there may be expert evidence though Tribunals are used to that with Discrimination claims and this may also enable employees to bring claims with lower costs and being less concerned of a costs risk

Consultation Question 32:We provisionally propose that employment tribunals should retain exclusive jurisdiction over Equality Act discrimination claims which relate to references given or requested in respect of employees and workers and former employees and workers. Do consultees agree? (Please see paragraph 4.124 of the consultation paper.)

Yes

Please expand on your answer. :

Again as above, matters relating to Employment disputes could readily be dealt with

Consultation Question 33: Do consultees consider that employment tribunals should have any jurisdiction over common law claims (whether in tort or contract) which relate to references given or requested in respect of employees and workers (and former employees and workers)? (Please see paragraph 4.125 of the consultation paper.)

Yes

Please expand on your answer. :

Often Tribunal matters are resolved with agreed references but again, relatively simplistic view standing once more, this is an employment dispute thus an Employment Tribunal could dispose of the same

Concurrent jurisdiction

Consultation Question 34: Should employment tribunals and civil courts retain concurrent jurisdiction over equal pay claims? (Please see paragraph 5.36 of the consultation paper.)

No

Please expand on your answer. :

The matter can be helpfully moved to Employment Tr bunals

Consultation Question 35: Should the time limit for bringing an equal pay claim in employment tribunals be extended so that it achieves parity with the time limit for bringing a claim in the civil courts? (Please see paragraph 5.38 of the consultation paper.)

Other

Please expand on your answer. :

As noted above I would see an increase in the time limit for all claims.

Consultation Question 36: What other practical changes, if any, are desirable to improve the operation of employment tribunals' and civil courts' concurrent equal pay jurisdiction? (Please see paragraph 5.39 of the consultation paper.)

Please provide your views below. :

It seems helpful to move to the Tr bunal thereby negating any jurisdictional disputes

Consultation Question 37: Should the current allocation of jurisdictions across employment tribunals and the civil courts regarding the non-discrimination rule applying to occupational pension schemes remain unchanged? (Please see paragraph 5.49 of the consultation paper.)

Yes

Please expand on your answer. :

Consultation Question 38: The present demarcation of employment tribunals' and civil courts' jurisdictions over the TUPE Regulations 2006 should not be changed. Do consultees agree? (Please see paragraph 5.58 of the consultation paper.)

Other

Please expand on your answer. :

This depends on whether the other aspects such as Restrictive Covenants are moved to the ET

Consultation Question 39: The present demarcation of employment tribunals', civil courts' and criminal courts' jurisdictions over the Working Time Regulations should not be changed. Do consultees agree? (Please see paragraph 5.67 of the consultation paper.)

Other

Please expand on your answer. :

Again as above, should contractual claims be moved to the ET, then it would follow that the ET could take jurisdiction here

Consultation Question 40: Do consultees agree that the present demarcation of employment tribunals', civil courts' and criminal courts' jurisdictions over the NMW should not be changed? (Please see paragraph 5.79 of the consultation paper.)

Other

Please expand on your answer. :

Certainly any criminal matter should not be put before the ET to my mind however again as above the remit of the ET, if expanded to comprise all issues arising out of Employment, could then have full jurisdiction

Consultation Question 41: We provisionally propose that the present demarcation of employment tribunals' and civil courts' jurisdictions over the Blacklists Regulations should not be changed. Do consultees agree? (Please see paragraph 5.87 of the consultation paper.)

Other

Please expand on your answer. :

Again as above the matter arises in relation to an employment dispute thus it could reasonably be argued that the Employment Tribunal is best placed to dispose of the issue.

Consultation Question 42: Should the £65,300 cap applying to employment tribunal claims brought under the Blacklists Regulations be increased so that it is the same as the cap on compensatory awards for ordinary unfair dismissal claims, as amended from time to time? (Please see paragraph 5.88 of the consultation paper.)

Other

Please expand on your answer. :

To my mind capping claims limits justice and the Tribunal should be enabled to impose such an award as it is just and equitable to do so. This also brings into play the other matters set out above

Are consultees aware of any cases affected by the £65,300 cap on compensation which have had to be brought in the civil courts?:

Not personally aware

Consultation Question 43: Should members of trades or professions who are aggrieved by the decisions of their qualifications bodies be able to challenge such decisions on public law grounds in the High Court and separately be able to claim unlawful discrimination in the employment tribunal? (Please see paragraph 5.94 of the consultation paper.)

No

Please expand on your answer. :

The matter should be exclusively that of the High Court in my view. The qualification body is not an employer (if the matter was a decision of for example the hospital or university then this can be taken to the Employment Tribunal as it does now)

If not, please would consultees explain why and what changes they would make.:

I would remove the ability to bring a claim in the Employment Tribunal as there is an adequate remedy in the High Court for this specific aspect

Consultation Question 44: Should any other changes be made to the jurisdiction of employment tribunals or of the civil courts in respect of alleged discrimination by qualifications bodies? (Please see paragraph 5.95 of the consultation paper.)

No

Please expand on your answer. :

I would increase the power of the High Court to remedy any defects

Consultation Question 45: Should a police officer who is aggrieved by the decision of a police misconduct panel be able to challenge that decision by way of statutory appeal to the Police Appeals Tribunal and separately to complain that the decision is discriminatory in an employment tribunal? (Please see paragraph 5.97 of the consultation paper.)

Yes

Please expand on your answer. :

This is in effect the equivalent of a Tribunal hearing a claim by an employee who had an Appeal against a Grievance dismissed. Therefore if we accept that the ET can hear claims by police officers (as they have to date) then it follows that this too ought to remain.

If consultees take the view that the answer is "no", what changes do they suggest?:

Restrictions on orders which may be made in employment tribunals

Consultation Question 46: Our provisional view is that employment tribunals should not be given the power to grant injunctions. Do consultees agree? (Please see paragraph 6.7 of the consultation paper.)

No

Please expand on your answer. :

This follows from my view that the ET is the appropriate forum to dispose of restrictive covenants (as they arise out of a contract of employment thus form an "employment dispute") therefore the same remedy must be enabled

Consultation Question 47: Should employment tribunals have the power to apportion liability between co-respondents in discrimination cases, so that each is separately liable to the claimant for part of the compensation? (Please see paragraph 6.13 of the consultation paper.)

Yes

Please expand on your answer. :

The ET should have the power to award that which is just and equitable

If so, on what basis should tribunals apportion liability? :

This would be a matter for evidence - including the paying party having insurance, or resources, meet claims.

Consultation Question 48:We provisionally propose that employment tribunals should be given the power to make orders for contribution between respondents in appropriate circumstances and subject to appropriate criteria. Do consultees agree? (please see paragraph 6.20 of the consultation paper.)

Yes

Please expand on your answer. :

Again that which is just and equitable

If so, we welcome consultees' views as to appropriate circumstances and criteria.:

This would again be a matter of evidence and for the Tribunal to determine the respective liability for the damage caused. And again subject to the power to meet the costs awarded.

Consultation Question 49:If respondents are given the right to claim contribution from one another in employment tribunals, do consultees consider that... (Please see paragraph 6.21 of the consultation paper.)

this right should precisely mirror the position as regards common law claims brought in the civil courts?:

Yes

or be modified to suit the employment context? If the latter, we would be grateful to hear consultees' views on appropriate modifications.:

Consultation Question 50:Should employment tribunals be given the jurisdiction to enforce their own orders for the payment of money? (Please see paragraph 6.28 of the consultation paper.)

Yes

Please expand on your answer. :

And have appropriate powers to do so.

For completeness however I do not suggest that a separate "ET Bailiff" system should be engaged but that the County Court and High Court Bailiffs be engaged.

If so, what powers should be available to employment tribunals and what would be the advantages of giving those powers to tribunals instead of leaving enforcement to the civil courts? :

The same powers which are now available in the civil courts.

The same Tribunal can then take the relevant action to enforce its own orders. Currently the ET has few "teeth" but allowing the ET to continue to act to obtain the remedy, once more keeping costs and the litigation issues down benefits the parties

The employment appeal tribunal's jurisdiction

Consultation Question 51:Should the EAT be given appellate jurisdiction over the CAC's decisions in respect of trade union recognition and derecognition disputes? (Please see paragraph 7.18 of the consultation paper.)

No

Please expand on your answer. :

I am mindful that JR exists and is suitable in my view

If such an appellate jurisdiction were created, do consultees agree that it should be limited to appeals on questions of law?:

Consultation Question 52:We provisionally propose that there is no need to alter or remove the EAT's current jurisdiction to hear original applications in certain limited areas. Do consultees agree? (Please see paragraph 7.22 of the consultation paper.)

Yes

Please expand on your answer. :

An employment and equalities list?

Consultation Question 53:We provisionally propose that an informal specialist list to deal with employment-related claims and appeals should be established within the Queen's Bench Division of the High Court. Do consultees agree? (Please see paragraph 8.8 of the consultation paper.)

No

Please expand on your answer. :

My preference is the Employment Tribunal dispose of matters relating to employment disputes

If so, what subject matter should come within its remit?:

Consultation Question 54:What name should it be given: Employment List, Employment and Equalities List or some other name? (Please see paragraph 8.9 of the consultation paper.)

Other

Please expand on your answer. :