

Response ID ANON-N9WN-TUJF-5

Submitted to Law Commission Consultation on Employment Law Hearing Structures

Submitted on 2018-10-22 15:27:35

About you

What is your name?

Name:

Holly Cudbill

What is the name of your organisation?

Organisation:

Blake Morgan LLP

What is your email address?

Email:

[REDACTED]

What is your telephone number?

What is your telephone number?:

[REDACTED]

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

Personal response

If you want the information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

If you want the information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances. :

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. :

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, in specific types of cases

Please expand on your answer. :

The existing time limits may disadvantage claimants in cases involving long term sickness absence and maternity leave; however, generally respondents need the finality of the existing time limits.

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

6 months

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.)

No

Please expand on your answer. :

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.)

Other

Please expand on your answer. :

Determining allegations of discrimination in the provision of goods and services relies on many of the same principles as are dealt with by the employment tribunals. Further, for public policy reasons the prohibition on discrimination should be enforceable in a no-costs jurisdiction.

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. :

Determining allegations of discrimination in the provision of goods and services relies on many of the same principles as are dealt with by the employment tribunals. Further, for public policy reasons the prohibition on discrimination should be enforceable in a no-costs jurisdiction.

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.)

Other

Please expand on your answer. :

If employment tribunals were to have jurisdiction in such claims, there would be no need for the county court to retain jurisdiction.

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

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

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

Yes, if the county courts retain jurisdiction.

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.)

Other

Please expand on your answer. :

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.)

Yes

Please expand on your answer. :

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.)

Yes

Please expand on your answer. :

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. :

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. :

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.:

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. :

The equivalent of 12 months' salary.

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. :

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. :

Should a different time limit apply if tribunals are given jurisdiction over claims that arise during the subsistence of an employee's employment? :
No.

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.)

Yes

Please expand on your answer. :

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. :

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. :

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. :

Employment tribunals are regularly called upon to determine issues of construction of contract.

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. :

Employment tribunals are regularly called upon to determine issues of construction of contract.

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. :

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.)

Yes

Please expand on your answer. :

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. :

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.)

No

Please expand on your answer. :

The distinction appears to be arbitrary.

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.)

No

Please expand on your answer. :

The distinction appears to be arbitrary.

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. :

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. :

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. :

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.)

Yes

Please expand on your answer. :

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

Yes

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

Yes

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. :

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.)

Yes

Please expand on your answer. :

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. :

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. :

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.)

Yes

Please expand on your answer. :

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.)

Yes

Please expand on your answer. :

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. :

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.)

Yes

Please expand on your answer. :

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.)

Yes

Please expand on your answer. :

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.)

Yes

Please expand on your answer. :

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.)

Yes

Please expand on your answer. :

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.)

Yes

Please expand on your answer. :

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

No.

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. :

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

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. :

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.)

No

Please expand on your answer. :

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.)

Yes

Please expand on your answer. :

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. :

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

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. :

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

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?:

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. :

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 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.)

Yes

Please expand on your answer. :

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

Yes

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.)

Yes

Please expand on your answer. :

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.)

Employment and Equalities List

Please expand on your answer. :