

Response ID ANON-N9WN-TU96-4

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

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About you

What is your name?

Name:

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What is the name of your organisation?

Organisation:

Countrywide PLC

What is your email address?

Email:

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What is your telephone number?

What is your telephone number?:

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

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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. :

Yes. We agree, as it is most appropriate that the types of claims considered, should be kept within the specialist area of the Employment Tribunal.

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.)

No

Please expand on your answer. :

No. We do not believe that the time limit should be extended. Extending the time limit would have the effect of increasing the number of claims that are required to be heard by the Employment Tribunal, which would place an increased burden on an already stretched system. In addition, from the employer/respondent's perspective, an extended time limit is likely to make it more difficult for witnesses to recall the details of the case in most cases, due to the increase lapse of time from between a dismissal and the hearing date. This also links with the increased risk that witnesses may have left the company by such time, which is a particular concern in an industry with a high level of staff turnover. We are also mindful that ACAS Early Conciliation has already extended the time limit by which a Claimant can bring a claim e.g. time can potentially be extended by a proposed Claimant by up to an additional 10 weeks.

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

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. :

No. We do not believe that the time limit for such claims should be extended. Time limits have already been extended with the introduction of ACAS Early Conciliation and we believe the present system allows a claimant adequate time to either resolve the matter informally, or to present their claim to the Employment Tribunal. Making the recommended change would unreasonably lower the threshold required to make extensions of time, which would result in a greater number of claims being heard, again placing an increased burden on the Employment Tribunal and on employers.

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.)

Yes

Please expand on your answer. :

Yes. We agree with this recommendation, as the county court is a more effective and appropriate system for non-employment discrimination claims. We also agree with the recommendation that county court judges receive discrimination law training.

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

No

Please expand on your answer. :

No. We believe that making this change may limit the capacity of the Employment Tribunal to deal with other claims which they already have jurisdiction of, and will again increase the burden on an already stretched system. We recognise that employment judges have more expertise and experience in applying the Equality Act 2010 and therefore there may be some benefit to utilising this expertise, however this would need to be very carefully applied to minimise any detrimental impact on employment related discrimination claims. Our recommendation would be for the County Court judges to receive specific training in discrimination law, which would better enable them to apply the law in non-employment discrimination claims.

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. :

Yes. As stated for question 5 above, we do not believe that employment tribunals should have concurrent jurisdiction over non-employment discrimination claims. However, judges should be given the power to transfer claims as they are the best placed to determine where a case is most appropriately heard.

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

Our recommended criteria would include:

- Case complexity
- Value of the claim
- Number of claimants/respondents

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? :

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.)

Yes

Please expand on your answer. :

Yes. A triage system is, in our view, the best way to allocate the claim as it would enable proper allocation to take place at the earliest opportunity. It is also essential that the Claimant and Respondent are heard and allowed to put forward their view, given the differences between a claim being heard in the county court and a claim being heard in the Employment Tribunal.

If so, what form should this triage take?:

As stated above, we feel that the judge is the best placed to make the decision regarding any transfer of claims. However with regards to triage, our view is that it is crucial that triage does not take up valuable resource which would cause further delays to hearings and negatively impact proceedings.

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. :

No. While we understand that employment judges will have appropriate knowledge and experience of the county court, this could potentially negatively impact on the resource issues already faced.

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. :

Yes. If, which we disagree with, employment judges are deployed to sit in the county court, we consider it appropriate that assessors are deployed to ensure that county court rules and procedures are followed.

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.)

No

Please expand on your answer. :

No. We feel that there is sufficient provision within the current court system to hear breach of contract claims, and that it remains appropriate for those relating to unlawful deductions from wages only, to be dealt within the Employment tribunal. The effect of the change to jurisdiction would increase the number of claims being heard, which would impact on resource. In addition, we feel this would encourage claimants to seek resolution by way of litigation, as opposed to exhausting internal procedures, which would in turn be damaging to an on-going employment relationship between employee and employer.

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.)

No

Please expand on your answer. :

No. We do not agree this is appropriate.

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.)

No

Please expand on your answer.:

No. We do not believe that there is any need to increase the limit to a sum greater than £25,000. In our industry the number of cases that would be awarded amounts greater than this would be minimal, and therefore whilst we appreciate the difficulties outlined in the consultation paper, we feel that the impact is not enough to justify an overall change.

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. :

We feel that the financial limit should remain as it currently stands.

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. :

Yes. We agree with this approach.

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. :

Yes. We agree that the time limits should remain unchanged. If they were to be extended to mirror the time limits applicable in the civil courts, it would make it

extremely difficult and impractical as an employer to defend the claims, given the changes that occur within the business over a period of 6 years.

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

We do not agree with tribunals having jurisdiction over claims that arise during the subsistence of an employee's employment. If however this change is made, we would recommend a time limit of 3 months from the date of the alleged breach.

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. :

Yes. We agree with this recommendation, for all the reasons given in the consultation paper.

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. :

Yes. We agree with this recommendation.

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. :

Yes. We agree with this recommendation for the reasons given in the consultation paper.

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.)

Yes

Please expand on your answer. :

Yes. We agree with this recommendation for the reasons given in the consultation paper.

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.)

Yes

Please expand on your answer. :

Yes. We agree with this recommendation for the reasons given in the consultation paper.

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. :

Yes.

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. :

In principle, we agree as it would make it simpler to have one streamlined approach consistent for both employees and workers.

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. :

Yes. We agree with this recommendation for the reasons given in the consultation paper.

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.)

Yes

Please expand on your answer. :

Yes. We agree with this recommendation for the reasons given in the consultation paper.

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.)

Yes

Please expand on your answer. :

Yes. We agree with the recommendation for the reasons given in the consultation paper.

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. :

Yes. In principle, we agree that Employment Tribunals should have such jurisdiction.

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.)

No

Please expand on your answer. :

No. We believe that the current jurisdiction is correct and that it is appropriate that only quantified sums are able to be heard by the Employment Tribunal. Defending claims where it is extremely difficult or impossible to quantify the sum potentially owed, would be very complex and time consuming for employers.

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. :

Yes. We feel that the tribunal should also have the power to determine whether the correct amount of money has been deducted. It makes sense that a tribunal is able to fully conclude the matter, without it having to be dealt with separately in the civil courts.

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. :

Yes. We think that employment tribunals should be given the power to apply setting off principles in the context of unauthorised deductions claims. This would make sense to resolve the situation in a more simple manner.

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?:

No, this should not be limited to extinguishing the employee's claim, but to also include costs and awards e.g. any costs awards made against the Claimant – i.e. costs incurred by the Respondent to defend the claim, as well any costs Orders made against the Claimant.

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. :

Yes. Due to the specialist nature of these claims, we agree that the jurisdiction should remain outside of the Employment Tribunal.

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. :

Yes. We agree with this recommendation.

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. :

Yes. Due to the discrimination aspect of this type of claim, we agree that jurisdiction should remain with the Employment Tribunal.

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.)

No

Please expand on your answer. :

No. We don't believe there is any need to extend the jurisdiction over these claims to also include the Employment Tribunal, and we believe that by doing so, this may increase the number of claims which would in turn impact on the resource available.

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. :

Yes. We believe it is appropriate for concurrent jurisdiction to remain in place for the reasons discussed in the consultation paper. We believe that it is worth considering a move in jurisdiction so that the employment Tribunal takes sole jurisdiction, in order to remove the litigation tactics and additional costs incurred by going between systems. Further, as it appears that the majority of equal pay claims are heard by the Employment Tribunal, we believe that the impact of any such move in jurisdiction would be minimal.

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.)

No

Please expand on your answer. :

No. It appears that the 6 month time limit does not prevent many claimants from making claims, therefore we see no reason why this would need to be extended. As with the issue of extending the time limits for other types of claims, this would have the potential to not only increase the caseload of the Employment Tribunal, but also make it difficult as an employer to defend the claim(s), given the turnover of employees and changes within the business over a period of time.

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. :

None.

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. :

Yes. We see no need to change the current jurisdiction.

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. :

Yes. We see no need to change the current jurisdiction.

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. :

Yes. We see no need to change the current jurisdiction.

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. :

Yes. We see no need to change the current 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.)

Yes

Please expand on your answer. :

Yes. We see no need to change the current jurisdiction.

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.)

No

Please expand on your answer. :

No. We see no need to increase the cap although our industry is not ordinarily affected by this.

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. :

No. We feel that there is adequate provision for members of trades or professions to challenge decisions made by qualifications bodies and that having the ability to make separate claims would cause unnecessary complexity.

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.)

Other

Please expand on your answer. :

None.

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. :

Yes. As the employment tribunal has specialist discrimination knowledge we feel that it is appropriate for police officers to be able to make discrimination claims at the Employment Tribunal in addition to the statutory appeal process.

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. :

Yes. We see no reason why Employment Tribunals should be given the power to grant injunctions.

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.)

No

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. :

Yes. We believe this is a fair change to make, as it is most frequently individual respondents whose actions make the employer liable for a claim. It is therefore only fair that the Employment Tribunal can order contributions between respondents, in accordance with liability.

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?:

Yes. We believe that 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. :

Yes. We believe that it would be reasonable for Employment tribunals to be given the power to enforce their own orders for the payment of money, as opposed to further action being taken in civil courts. However, it is essential that resources are considered carefully to ensure that it does not impact on the ability to handle other claims.

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? :

We feel the same powers should be given to Employment Tribunals, as those in the civil courts.

Advantages of this would include consistency and saving on resource e.g. time for the matter to be processed via the civil courts as a fresh/new matter.

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. :

No. We agree with the findings presented within the consultation paper that the CAC was designed as a specialist area and not for the intervention of the courts. It would therefore confuse the boundaries if jurisdiction was granted to the EAT.

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

Yes. We agree that, if such an appellate jurisdiction were created, that it should be limited to appeal 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. :

Yes. We agree with the relevant findings presented in the consultation paper.

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. :

No. We disagree with this, as we feel that this would blur the boundaries between the different court systems, and create another layer of appeal which in our view is unnecessary. Whilst there are some benefits to having an Employment law specialist on certain claims in the High Court, we would not want to open this up to other claims.

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. :

We have no view on the name.