Discrimination Law Association

Government Equalities Office consultation:
Equality Act 2010 Removing (a) employment tribunals' power to make wider recommendations in discrimination cases

The Discrimination Law Association ('DLA'), a registered charity, is a membership organisation established to promote good community relations by the advancement of education in the field of anti-discrimination law and practice. It achieves this by, among other things, the promotion and dissemination of advice and information; the development and co-ordination of contacts with discrimination law practitioners and similar people and organisations in the UK and internationally. The DLA is concerned with achieving an understanding of the needs of victims of discrimination amongst lawyers, law-makers and others and of the necessity for a complainant-centred approach to anti-discrimination law and practice. With this in mind the DLA seeks to secure improvements in discrimination law and practice in the United Kingdom, Europe and at an international level.

The DLA is a national association with a wide and diverse membership. The membership currently consists of some 300 members. Membership is open to any lawyer, legal or advice worker or other person substantially engaged or interested in discrimination law and any organisation, firm, company or other body engaged or interested in discrimination law. The membership comprises, in the main, persons concerned with discrimination law from a complainant perspective.

We have responded separately about the two suggested reforms to the Equality Act 2010. This response deals with the wider recommendation provisions.

Wider recommendation powers were a key part of the Equality Act, due to these powers shifting the emphasis towards changing the overall practices of organisations, rather than just responding to individual claims. This change in focus could actually help to reduce the numbers of claims in the future.

Three broad justifications were given for removal of the power to make wider recommendations. (This power is currently found in section 124(3)(b). Previous discrimination legislation[1] contained recommendation powers relating to claimants, but not extending to third parties.) These justifications are that wider recommendations:

(1) adds little to the tribunals' existing powers;
(2) may be of no direct benefit to the claimant; and,
(3) are merely discretionary on the employer.

[1] SDA 1975 s 65(1)(c); RRA 1976 s 56(1)(c); DDA 1995 s 17A(2)(c); EE(RB)R 2003, SI 2003/1660 reg 30(1)(c); EE(SO)R 2003, SI 2003/1661 reg 30(1)(c); and EE(Age)R 2006, SI 2006/1031 reg 38(1)(c).

As for the first justification, the real question should be whether the powers are effective, not whether they mark a significant increase of the tribunals' power to make a declaration, award compensation and recommendations in relation to the claimant. In looking at the effectiveness of recommendations, one important consideration is that many tribunal cases are brought after the breakdown of the employment relationship. If the employee no longer works for the respondent, then there would be no basis to make a recommendation in relation to the claimant since it would be totally meaningless..

All of the remedy provisions in the Equality Act are designed to respond to a different need, and so should be complementary in nature. The fact that one remedy is different in scope to the others is not reason alone for it to be repealed; the question should be whether that particular remedy is, or could be, effective.

The second justification relates to the beneficiary of a wider recommendation. The DLA believes that claimants do benefit from wider recommendations being made, as it enables them to see that the community at large is responding to the discrimination claim that has been upheld. Part of the catharsis and sense of satisfaction that should accompany a successful claim will involve knowing that such treatment will not be repeated. Such future conduct may or may not involve the claimant, but without this sense of resolution, bringing a discrimination claim may feel futile.

In addition, the law can properly seek to benefit people other than the claimant. This could be purely pragmatic, in that a recommendation, successfully implemented, could result in fewer claims being brought as a whole. If a wider recommendation is aimed at trying to prevent the causes of discrimination, then it serves the same purpose as the other remedy provisions of the Equality Act 2010; namely, trying to prevent discrimination from taking place. The power to make wider recommendations also helps meet the UK's obligation under EU law to ensure that sanctions for discrimination are "effective, proportionate and dissuasive".[2] This is because wider recommendations heighten dissuasive nature of the available remedies.

Also, the law does not give the tribunals free reign – section 124(3) is clear that the recommendation would have to the purpose of obviating or reducing the adverse effect "any other person". This means that the recommendation has to be targeted towards one or more identifiable individuals, in most cases current and future employees of the respondent, rather than the world at large. It is likely that most wider recommendations would be aimed at current and future employees of the respondent.

The consultation refers to the tribunal "in effect, taking on the role of an equality consultant". This is must be seen in the context of a recommendation being made: the discrimination claim will have been upheld, and the

[2] Article 17 Employment Framework Directive 2000/78/EC and article 15 Race Equality Directive 2000/43/EC

recommendation must relate to that claim. This is not a power for tribunals to interfere with employers' ability to run their businesses, as it only allows them to intervene when a discrimination complaint has been found to be justified.

The example given by the consultation of the recommendation under the Equality Act[3] did not impact on the running of the business at all, but instead related to training for managers and members of the human resources team. It is difficult to see the evidential basis for the fears of employers that wider recommendations will be inappropriate or excessive when there is such limited evidence.

The third justification states that the remedy is not enforceable; this is in recognition that the tribunal's powers stop short of being able to compel an employer to act in a certain way. This is demonstrated by some powers being supported by the ability to award compensation if they are not complied with (such as the power to award re-engagement or re-instatement in an unfair dismissal claim, or making a recommendation in relation to an individual). This discretionary nature does not mean that such remedies are not valuable – they still send a strong message about what behaviour is condoned, and can result in financial penalties if the respondent chooses to exercise their discretion not to follow the recommendation.

The lack of enforcement provisions is not a justification for removing the remedy itself; the enforceability of the remedy should be adjusted to mirror the suitability of the tribunal enforcing a particular remedy. It is also possible to have sanctions for non-compliance that would stop short of compensation (such as a tribunal being able to take into account compliance with recommendations in future cases involving the respondent), rather than wider recommendations having an equivalent power to section 124(7).

The consultation also refers to the feasibility and affordability of recommendations. This is already dealt with in case law surrounding the previous legislative provisions, likely to be applied to section 124(3)(b):

> "23 The requirement of practicability is met when the Tribunal focuses upon what is practicable in terms of its effect on the complainant (see Fasuyi v London Borough of Greenwich UKEAT/1078/99 at paragraph 24).
> 24 The practicability of a recommendation has to be also seen from the perspective of an employer. Only one which is completely impracticable would constitute an error of law (see Leeds Rhinos Rugby Club v SterlingUKEAT/0267/01 at 6.1)"[4]

As for the employer being on notice, it is the practice of many tribunals to ask that any statement of loss deals with all remedies, so that from an early point in the case the respondent will know what the claimant is requesting for the tribunal in relation to remedy.

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[3] *Stone v Ramsay Health Care UK Operations Limited* ET/1400762/11
[4] *Lycée Français Charles De Gaulle v Delambre* UKEAT/0563/10 at [23-24]

It is also interesting that the consultation states that removal of the wider recommendations power will not affect the essential rights of employees. An effective remedy is as much a right as the claim itself; without an effective remedy, then the value in having the right to bring a claim can be severely diminished.

The specific questions posed by the consultation have been addressed below.

Question 1: Do you know of any other discrimination-related case in which the wider recommendations power under section 124(3)(b) of the Equality Act 2010 has been used since October 2010?

Response: Yes:

Crisp v Iceland Foods – ET/1604478/11 & ET/1600000/12
The employment tribunal upheld a claim of direct disability discrimination and made a recommendation that the HR managers should receive training 'relating specifically to the issue of mental health disability'.

Why v Enfield Grammar School - 3303944/2011
The employment tribunal upheld a claim for discrimination on grounds of pregnancy and made a recommendation that the senior management team and all heads of department have training on equal opportunities employment law within 6 months, including the position on women on and returning from maternity leave. The head teacher was invited to write to the tribunal and claimant when the training had taken place.

Austin v Samuel Grant (North East) Ltd [2012] EqLR 617
The Tribunal also made a wider recommendation, pursuant to s.124(2)(c) of the Equality Act 2010, that the Respondent updates its policies on discrimination taking account of the Equality Act 2010 and that the directors and managers of the Samuel Grant Group receive diversity training from a reputable provider, both recommendations to be complied with no later than six months from the date of the judgment.

As the Equality Act only came into force in October 2010, cases are only recently reaching the tribunals, so it is too early to assess the value of having wider recommendations. The time lag from the act complained about to judgment is 1-2 years for 50% of race and sex discrimination cases.

Also, in section 124(3), the Equality Act 2010 provisions replaced previous legislation, under which many recommendations were made. Although these were not wider recommendations, they show that there is a wide variety of situations in which the employment tribunal considered that to reduce the adverse effect on the complainant a recommendation which would also protect other persons was appropriate – some involve very specific individual circumstances, but many relate to training or policies and could potentially be considered wider recommendations in any event. So far as the DLA is aware, there has been no objection by business to such recommendations.

These cases under the previous legislation can give us an insight into the types of scenario in which a wider recommendation may be thought an important remedy.

These cases include:

- *Orok v Shepherd's Bush Housing Association Ltd* (Case No 3306338/05) (17 May 2006, unreported - The claimant be permitted to work 2 days a week from home from 31 May 2006 until the end of 2007 when a review take place.)
- *Gregory v Royal Air Force* (Case No 2702885/2008) (1 June 2010, unreported - (1) An individual risk assessment be carried out for each woman who is pregnant, irrespective of the nature of her current posting, and consideration be given to adjusting her role to enable her to remain in post should she wish to. (2) The Ministry of Defence establish a monitoring process in respect of any removal of a pregnant woman from post. (3) An Officers Joint Appraisal Report (ie an assessment of an officer for promotion) be provided in respect of each pregnant woman commencing maternity leave irrespective of the length of time she has been in post prior to commencing maternity leave.)
- *St Andrews Catholic School v Blundell* (UKEAT/0330/09/JOJ - The school should send a letter to all the parents and teachers at the school in which the school apologises unreservedly for the anguish they have caused the claimant since September 2006 and the head teacher confirms that the claimant at the school was a capable and hard working teacher.)
- *Alam v Police Federation of England and Wales* (Case No 2504307/05) (3 January 2007, unreported The respondent shall, within 10 days, offer to assume responsibility for the future costs of the claimant's appeal against his conviction and to liaise with the claimant's solicitors regarding the conduct of the appeal (but on the basis that the respondent may make any offer conditional on seeing the legal advice obtained by the claimant's solicitors but not conditional on seeing any evidence))
- *Taylor v Benham (General Engineering) Ltd and others*(Case No 3202951/06) (26 July 2007, unreported - The company pay for discrimination training for directors and managers and that general diversity awareness training be arranged for the whole workforce with the EHRC involved and claimant informed.)
- *Simpson v BAA Airports Limited* (Case No 2703460/2009) (24 May 2010, unreported - (1) The work colleagues who made racist comments each send a letter of apology to the claimant, within one month of the judgment, apologising for them. (2) The Chief Executive of the respondent send a letter to the claimant, within one month of the judgment, apologising for allowing the racism to continue and for the manner in which they dealt with her grievances. (3) The work colleagues who harassed the claimant each send a letter of apology to her, within one month of the judgment, apologising for harassing her. (4) The work colleague who made an untrue statement about the claimant on 5 April 2009 send a letter of apology to her, within one

month of the judgment. (5) The Chief Executive of the respondent write to all staff, within one month of the judgment, stating that they are adopting a zero tolerance to racism in the workplace and racist jokes and banter will lead to disciplinary action being taken against staff including dismissal. (6) All managers and supervisors responsible for staff be sent on racial diversity relations courses within 12 months from the judgment. (7) All HR Officers receive training on how to deal with discrimination complaints both in terms of investigating them and appropriate time scales within 12 months from the judgment. (8) The claimant, when she returns to work, be returned to the same level of overtime she enjoyed before she raised her grievances.)

- *Maklaj v Sofra International Ltd* (Case No 2200447/07) (2 October 2007, unreported - The respondents provide the claimant with a P45 and P60 and a reference stating the claimant's period of employment.)
- *Aziz v Crown Prosecution Service* (Case No 1808550/01) (1 September 2008; The respondent shall, within 42 days: (a) provide the claimant with a full and unqualified apology in writing for the discrimination; (b) provide the claimant with proposals in writing to address the conduct of its employees including the provision of guidance, training and measures to prevent further discrimination (which should be implemented and completed within 180 days); and (c) provide the claimant with proposals in writing to enable the claimant to return to work and with assistance to help her build new working relationships and restore her career momentum.)
- *Ghali v Transperfect Translations Ltd* (Case No 3201752/08) (5 August 2008, Within six months of the promulgation of the judgment the employees of the respondent who provide advice on discrimination issues undergo training and instruction in respect of the law related to discrimination as applied in this jurisdiction.)
- *Johnson v MacLellan International Ltd* (Case No 2202980/2005) (25 August 2006, The respondent institute specific disability discrimination training for its Human Resources and Operations Managers and put in place a formal procedure to ensure compliance with its duties under the DDA 1995, in particular in relation to the duty to make reasonable adjustments for disabled employees.)
- *Hextall v Tesco Stores Ltd* (Case No 1900214/2007) (10 July 2007, The respondent should expunge the written warning from the claimant's record.)
- *Lazell v Isle of Wight Fire and Rescue Service* (Case No 3101518/06) (28 March 2007, Upon application by the claimant and there being vacancies, the respondent permit the claimant to take part in any physical, practical and/or psychometric test used in the assessment process to become a firefighter, so long as the claimant meets the appropriate criteria to get to that stage.)
- *Sarwar v West Midlands Fire and Rescue Service* (Case No 1304552/06 - The respondent remove three absence related warnings from the claimant's personnel file within 42 days and carry out training for station level managers on the DDA 1995 and its relationship with the absence management policy at stations where the claimant was based or was likely to be based.)

- *Sahni v Poundland Ltd* (Case Nos 3301296/2009, 3303033/2009 - The possible solutions contained within the AME report should be implemented or, given the passage of time, if so advised and with the agreement of the claimant, a further expert report should be obtained, the recommendations of which should be implemented within as short a time as possible, such time to be no later than three months from 1 September 2010. The respondent should also carry out a review within three months of 1 September 2010 of any need there might be amongst staff for disability awareness training, such training to take place within a further six months.)
- *McIntyre v Driving Standards Agency Ltd* (Case No 3200462/2010
  (1) Within three months the respondents will put in place a written instruction to management which is to last for the remainder of the employment of the claimant that for any training course: (a) his management take responsibility for informing those in charge of the training course of his disability and the adjustments required for it, having consulted him on what should be communicated; and (b) his own ergonomic chair or its identical equivalent must be provided for his use at any such course.
  (2) Within three months the parties are to discuss the provision at Cardington (a training centre belonging to the respondent) for the use by the claimant of a mattress and chair suitable to his needs arising out of his disability. Until the mattress and chair are available for his use, and are such that he has agreed to their specification as suitable to his needs, he is to receive training locally. He is not to be deprived of training that would normally be offered to him. If he is required to attend Cardington once a suitable mattress and chair are in place, he is to be allowed to attend and leave at times which enable him to take breaks while travelling to and from Cardington which are suitable for his needs.
  (3) Within four weeks the three days annual leave which the respondents required him to use for attendance at the hearing are to be reinstated to him.
  (4) Within two months the dragon software is to be installed for his use.
  (5) Within fourteen days he is to be informed of his disability champion and their contact details; and he is to be given a written assurance that any change in the identity of that disability champion will be notified to him as soon as it occurs.
- *Wynn v Multipulse Electronics Ltd* (Case No 2301416/07 - an informal suggestion for a senior member of staff with responsibility for personnel matters to take equal opportunities awareness training.)
- *Lycee Francais Charles de Gaulle v Delambre* - (a) Both the Tribunal's Full Merits Hearing and Remedy Judgments be circulated to each member of the Respondent's Governing Board and to each member of the senior management team of the Respondent, to be read and digested by them, by the end of March 2010 (b) The Respondent secure the services of an appropriately qualified HR professional who will conduct a review of their existing equality, disciplinary, grievance and recruitment policies and procedures and

amend or redraft the same as necessary, so as to ensure compliance with United Kingdom Employment Law. This HR adviser will have had the opportunity of studying the Tribunal's Full Merits and Remedies Judgments before going about their task, which should be completed by the end of June 2010 (c) The Respondent undertake a programme of formal equality and diversity training, including on recruitment and selection procedures, beginning at Board of Governors and highest management levels and cascading down through the entire organisation; this training programme to begin at the start of the academic year in September 2010 and to be completed within six months of that date. The respondent institute specific disability discrimination training for its Human Resources and Operations Managers and put in place a formal procedure to ensure compliance with its duties under the DDA 1995, in particular in relation to the duty to make reasonable adjustments for disabled employees.

- Kerr v Northampton General Hospital NHS Trust [2010] EqLR 400 “It is evident to the tribunal that the staff of the Opthamology department of the respondent hospital trust has little accurate comprehension of the meaning of discrimination in the workplace and relies on inaccurate clichés (for example, a presumption that black people do not discriminate against black people albeit of different ethnic origin). Our recommendation is that all staff, nurses, consultants, managers and human resources receive competent training relating to discrimination in the workplace at the earliest possible opportunity."
- *Furlong v BMC Software Ltd [2010] EqLR 252* The tribunal also made an action recommendation that the employer review its management training on equal opportunities and that "following the review the respondent is to take steps to ensure that its employees in a management role are provided appropriate training to equip them to understand their own responsibilities and the respondent's legal obligations in respect of equality of opportunity in the workplace and the implementation of the respondent's equal opportunities policies and compliance with anti-discrimination legislation."
- *Fairbank v Royal Mail Group Ltd [2011] EqLR 1107* At the remedies hearing, the Employment Tribunal made an action recommendation that "a senior person from the Respondent's human resources department interviews the named employees of the Respondent who perpetrated acts of discrimination against the Claimant as set out in the judgment of this Tribunal and to discuss with each of them the Tribunal's decision on liability, by 9 March 2011." The Respondent was instructed "to inform the Tribunal by 6 April 2011 whether or not they have complied with this recommendation."
- *Richards v Menzies Aviation (UK) Ltd [2011] EqLR 661* The Tribunal made a recommendation that "the Respondent as a matter of urgency undertakes to provide regular training on equal opportunities and dignity at work for its managers and its staff.

Question 2: If yes, please provide details of the case(s) concerned, such as nature of the claim, type of organisation involved in the case, whether the organisation is a large, small or medium sized enterprise or other.

Response:

Ms Crisp worked on the tills for Iceland Foods Ltd. She suffered from panic attacks and it was common ground that she is disabled for the purposes of the Equality Act 2010. She left an Iceland store in Essex after suffering from panic attacks, but got another position with the company in a store in South Wales. She informed the company of her disability at the interview stage. About 18 months into her new position, Ms Crisp became seriously ill and had to take time off work. She required support from her husband and mother to manage her medication and deal with the panic attacks. Although Ms Crisp sent sick notes to her employer via her husband and mother, they did not all reach the appropriate manager. It also appears that the company did not have Ms Crisp's up-to-date address in its personnel files, which meant that she could not be contacted and management assumed that she was absent without leave.

The employer initiated its procedure for dealing with unauthorised absences, resulting in the decision to dismiss Ms Crisp. She was unaware of this decision until her husband contacted the company to enquire why she had not been paid. Ms Crisp was subsequently sent a letter outlining the reason for her dismissal.

Ms Crisp appealed against her dismissal on the basis that she had:

- been genuinely ill;
- provided sick notes; and
- not received any correspondence relating to the disciplinary process.

A dispute arose prior to Ms Crisp's disciplinary appeal hearing about whether or not her husband could accompany her at the hearing. Mr Evans, the claimant's area manager, told her that her husband could not accompany her because the employer's policy allowed only work colleagues or union representatives as companions at disciplinary hearings.
Mr Evans and Ms Newbery, the area HR manager, accidentally left a recording of a conversation that they had about the appeal hearing on Ms Crisp's home answer phone. The tribunal noted that, while they had meant to leave a message, they had left a recorded conversation that appeared to make light of Ms Crisp's disability and express amusement at how she might react in the appeal hearing. The tribunal said that the exchange included:

- a statement from Mr Evans that Ms Crisp's husband could not attend the appeal hearing;
- a dismissive reaction from Ms Newbery after Mr Evans' statement;
- Mr Evans saying that Ms Crisp "will spring a fucking fuse and have a panic attack and that will be the end of that"; and
- laughter from Ms Newbery in response to what Mr Evans had said about Ms Crisp having a panic attack.

The employment tribunal noted that Mr Evans had undergone no equality training. The tribunal said that it would have expected Ms Newbery, as an HR professional, to have shown a better understanding of disability issues, and that her awareness of mental health issues was "no less than woeful". The tribunal concluded that Mr Evans and Ms Newbery had used inappropriate humour to disguise the difficulty that they were having in dealing with the claimant's condition.

Ms Crisp was very upset after hearing the recording and, according to her mother, there was a marked deterioration in her condition. Ms Crisp formed the view that she was seen in the workplace as "a crazy mental person". The appeal meeting with Mr Evans went ahead, with Ms Crisp's mother required to wait outside. In the appeal meeting, Ms Crisp said that she was not sure that she wanted to continue to work for the employer. Ms Crisp attempted to raise the issue of the recorded conversation, but the company made no further enquiries about this, despite the distress that this had clearly caused to her. The only explanation that Mr Evans could give to the tribunal for not dealing with the recording was that he did not want to upset Ms Crisp further.

The appeal was upheld and, despite being given the opportunity to move to another store, Ms Crisp told the HR department that she did not want to return to work and would be pursuing an employment tribunal claim.

The employment tribunal upheld Ms Crisp's claims for:

- constructive dismissal, on the basis that she had resigned in response to management's indication that it did not take her disability seriously, which had damaged the implied term of trust and confidence;
- disability harassment and direct disability discrimination, as a result of the recorded conversation that had been left on her answer phone; and
- failure to make reasonable adjustments when she was not allowed to be accompanied at the appeal meeting by her husband or mother.

The employment tribunal recommended that, by 23 May 2013, the employer:

- require all members of the HR function who provide guidance to managers on disciplinary and grievance procedures to undergo training in disability discrimination matters, specifically issues related to mental health; and
- require all managers at Mr Evans' level of management to undergo training in disability discrimination matters.

Question 3: Please say whether you consider the use of the power in this case or cases has been effective (closely linked to the act of discrimination to which complaint relates) and/or proportionate (tribunal took account of employer’s capacity to implement the recommendation). Please provide further details.

Response:

The DLA considers the wider recommendation in *Crisp v Iceland Foods* to be both effective and proportionate. Training is a key element in ensuring that discriminatory situations are not repeated. Iceland is a large company, and so clearly has the resources for such training, and also the recommendation was limited to managers and those with a HR function.

The DLA does consider the power to give wider recommendations effective, for the reasons set out above. The cases cited only involve recommendations, but the tribunal's intervention in a level beyond compensation and a declaration shows that there is a real need for recommendations. The DLA believes that where recommendations are appropriate, they should extend to include wider recommendations.

All of the rationales behind recommendations in general support the existence of wider recommendations. In particular, the British Chamber of Commerce's remark that voluntary compliance is undertaken in some cases does not meet the requirements of the scope of the legislation; voluntary changes to practices and policies show that employers cannot believe that recommendations are unfeasible and impractical. In any event, the law should be looking to alter the behaviour of those employers who do not comply with the law, a necessary condition to any type of recommendation being made at all. Many employers only make changes once the tribunal has made negative findings, and not before.

Question 4: Whatever your answer to Question 1, do you agree or disagree that the wider recommendations power should be repealed? Please explain your answer.

Response: The DLA disagrees that the wider recommendations power should be repealed, for the reasons set out above.

Question 13: Do you think that there are further benefits and/or costs to repealing the wider recommendations provision which have not already been included in the impact assessment? If so, please give details.

Response: The costs in repealing the wider recommendations provision not included in the impact assessment are as follows:

- the number of potential discrimination claims that will not be brought. A wider recommendation is aimed at stopping the repetition of the circumstances that led to the original claim, and so will hopefully pre-empt any future claims that may have been brought if a wider recommendation was not made. These costs are both to the businesses that receive wider recommendations, and the tribunal service
- any inefficiencies in the business continuing to act in a discriminatory manner (for example, reduced market base, unsatisfied customers). This includes damage to reputation and loss of custom.

Question 14: Do you have any comments on the assumptions, approach or estimates we have used in the wider recommendations provision impact assessment?

Response: The impact assessment assumes that the wider recommendation powers have not been used, which is contradicted in the body of the consultation. (It has been used once, in the *Stone* case cited above.)

Also, the impact assessment takes a very quantitive view, comparing the number of claims where recommendations are made to the number where there are no recommendations. A number of the recommendations made under the predecessor legislation to the Equality Act 2010 were against public bodies though, who as large employers, and potential beacons of good practice, have a far broader impact than micro or small businesses.

The impact assessment also only uses the number of claims being brought in tribunal as the appropriate metric. The number for complaints and grievances should also be considered, as it cannot be assumed that all situations where a claim would be successful are brought to tribunal (it may be that they are settled before litigation commences, it may be that the individual chooses not to complain at all). Although remedies only come into play when a claim is brought to the tribunal, the powers of the tribunal to award particular types of remedy will also affect whether claims are brought at all, and whether they settle.

Also, under the heading “problem under consideration and rationale for intervention”, one of the proposed changes made by employers is “take out insurance against further claims”. This cannot be seen as evidence of steps taken to obviate or reduce discrimination.

Question 15: Does the impact assessment for the wider recommendations provision properly assess the implications for equality? Please give details.

Response: No, as it based on the incorrect assumption that no wider recommendations have been made. Also, it only considers the equality impact in terms of people who are bringing claims. The real comparison should be between people who are more likely to bring a claim because of their protected characteristic, compared to the population at large. This is the true impact of the legislation, and it is wrong to think that because all discrimination claims will be equally impoverished by the lack of wider recommendations power, that there will be no equality impact.