The Royal College of Midwives

Response

Response to The Government Equalities Office consultation on Equality Act 2010 – removing (a) employment tribunals' power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information: A consultation

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The Royal College of Midwives' response to the Government Equalities Office consultation on Equality Act 2010 – employer liability for harassment of employees by third parties: A consultation.

The Royal College of Midwives (RCM) is the trade union and professional organisation that represents the vast majority of practising midwives in the UK. It is the only such organisation run by midwives for midwives. The RCM is the voice of midwifery, providing excellence in representation, professional leadership, education and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services and provide professional leadership for one of the most established clinical disciplines.

The RCM welcomes the opportunity to respond to this consultation and our answers to the consultation topics are set out below.

The Royal College of Midwives
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General Comments

The Royal College of Midwives (RCM) is opposed to the Government's proposals to remove the power of employment tribunals to make wider recommendations and the procedure for obtaining information. We do not agree that either of these place an undue burden on employers, in fact we believe that both can actually benefit employers as well as employees and therefore should remain.

The Government Consultation states that:

"Section 124 of the Equality Act introduced a new provision enabling employment tribunals to make wider recommendations to an employer: for example, introducing an equal opportunities policy; retraining staff; making public the selection criteria use for transfer or promotion of staff. A wider recommendation cannot be enforced, but if the employer fails to comply with it an employment tribunal can take that failure into account, should a similar complaint in a case subsequently occur involving the same employer."[1]

This appears to be an entirely sensible power of employment tribunals; it takes on the principle that preventing discrimination is better which could help employers not make similar mistakes in the future, and avoiding another tribunal. It helps employees as discrimination in the workplace that had previously been a problem can be dealt with, thus creating a fairer and more productive workplace. Good employee relations improve productivity and helps to retain talented and skilled staff. Therefore, if an employer was seen to make positive moves this could make progress in repairing employee relations.

The Government consultation states that:

"The view of this consultation is therefore that the wider recommendations provision is not likely to serve a practical purpose or to be an appropriate or effective legal remedy for employment tribunals. We have no evidence that the pre existing remedies available to a

[1] Government Equalities Office Equality Act 2010 Removing (a) employment tribunals' power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information: A consultation 2012

court or tribunal for discrimination cases are insufficient. If this is so, the Governments case is that this provision is an unnecessary burden on business."[2]

This appears to entirely miss the point; the practical purpose of the power is to prevent future discrimination and therefore future employment tribunals. This is more efficient, saves time and money and there is no evidence presented by the Government as to why they think this is an unnecessary burden on business.

Moreover, the Government consultation document goes on to state:

"Employers remain concerned that the remedy might be unnecessary. For instance, it has been suggested by the British Chamber of Commerce that the power is not required because employers often make changes to their policies and practices, anyway, as a result of a tribunal finding, without the need for a recommendation."[3]

Again, it would be preferable to be presented with evidence to support the Government's case rather than reporting 'concerns'; however, this point shows that if an employment tribunal chooses to make a recommendation to a business this is not burdensome as businesses are already prepared to adapt and make changes.

Most importantly, in the Government's impact assessment it states that:

"It was assumed that wider recommendations would increase compliance and lead to changes in discriminatory policies and practices, potentially preventing future cases. If the provisions are repealed it could lead to continuing instances of workplace discrimination, and other non financial negative effects of disputes to both employers and individuals."[4]

[2] Government Equalities Office Equality Act 2010 Removing (a) employment tribunals' power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information: A consultation 2012

[3] Government Equalities Office Equality Act 2010 Removing (a) employment tribunals' power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information: A consultation 2012

[4] Government Equalities Office Equality Act 2010 Removing (a) employment tribunals' power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information: A consultation 2012

Given that this is the finding of the Government's own impact assessment it is nonsensical that they would suggest repealing the power.

Additionally, the RCM believes that it is illogical to repeal the procedure for obtaining information.

The questionnaire procedure exists because it is sometimes very difficult for an employee to get enough evidence to prove there has been less favourable treatment. The questionnaire procedure gives workers the legal right to ask the employer questions to try and obtain answers that might help them decide whether or not there has been less favourable treatment, usually before a claim has been lodged or within 28 days of this occurring.

Employers will continue to question the employer about suspected discriminatory treatment even without the forms. It is difficult to see how the repeal of the statutory questionnaire procedure will save time or money. Any benefits to employers will be, at best, minimal.

Moreover, it is possible that the questionnaire procedure has resulted in fewer tribunal claims with employees deciding not to go ahead following the response from the employer.

In conclusion, the RCM is opposed to the Government's proposals to remove the power of employment tribunals to make wider recommendations and the procedure for obtaining information. We do not agree that either of these place an undue burden on employers, both only apply in the event of a discrimination case in an employment tribunal so do not apply to all employers. The power to make wider recommendations will help to prevent future cases and improve employee relations and the questionnaire procedure can help to prevent tribunal cases from going ahead. Therefore we believe that both have a benefit to employers and employees; are efficient and cost effective; and do not pose a burden on employers. Ultimately, both help to eliminate discrimination in the workplace which create fair, equal and productive workplaces.