



# THE ASSOCIATION OF RECRUITMENT CONSULTANCIES

## THE ARC COMMENTS IN RESPONSE TO– GOOD WORK (Enforcement of Employment Rights) CONSULTATION

MAY 2018

### About ARC

The Association of Recruitment Consultancies (ARC) is a membership organisation for recruitment businesses. Our members are employers as well as providers of introduction and supply services to other employers and hirers.

### ARC Response to Questions

HMRC should take responsibility for enforcing the basic set of core pay rights that apply to all workers – National Minimum Wage, sick pay and holiday pay for the lowest paid workers;

*We are concerned that this would potentially lead to increased intrusion into business, where there is a good standard of complying with legal obligation, leading to increased bureaucracy and costs associated in dealing with HMRC enquiries, even for businesses who comply. We would also be concerned that in order to carry out this function successfully significant resources would be required and an under resourced department is likely to be ineffective, whilst at the same time incurring more time and resources by business. Existing services provided by ACAS and the Employment Tribunal Service are effective in enforcing employment rights.*

Government should make the enforcement process simpler for employees and workers by taking enforcement action against employers/engagers who do not pay employment tribunal awards, without the employee/worker having to fill in extra forms or pay an extra fee and having to initiate additional court proceedings;

*We would agree with this. There is no reason why Employment Tribunal awards should not be directly enforceable and this would reduce bureaucracy of having to go through the county court system. However, there should be safeguards to ensure that employers can challenge e.g. where payment has been made*

### **Questions**

**1) Do you think workers typically receive pay during periods of annual leave or when they are off sick? Please give reasons.**

We believe that in most circumstances, where applicable, workers receive holiday and sick pay. However, in terms of annual leave, rolled up holiday pay is still widespread. This is because in terms of Agency work it is by far the easiest way of ensuring that holiday pay is paid correctly and is not designed to deprive workers of their rights to holiday. Many workers also prefer to be paid holiday in this manner

**2) Do you think problems are concentrated in any sector of the economy, or are suffered by any particular groups of workers? Please give reasons.**

By their very nature, most problems will occur in the lower paid sectors or where there is a high turnover of staff

**3) What barriers do you think are faced by individuals seeking to ensure they receive these payments?**

The biggest problem will be circumstances where employment status is unclear or misunderstood for example where employment is wrongly labelled self-employment by either the payer or payee

**4) What would be the advantages and disadvantages for businesses of state enforcement in these areas?**

The main disadvantage would be the massive resources that would be required and the extra cost and administrative burden it is likely to place on businesses. Businesses who do comply with their obligations are likely to still face investigation and will have to comply with HMRC requests for information etc.

The knowledge that these rights may be enforced by the State, may serve as an incentive for bad employers to comply with their legal obligations, but this is only likely to happen if there are sufficient resources allocated and the enforcement can be seen to be effective

**5) What other measures, if any, could government take to encourage workers to raise concerns over these rights with their employer or the state?**

None, we do not consider this to be a major concern

**6) Do you agree there is a need to simplify the process for enforcement of employment tribunals? (yes/no /please give reasons)**

Generally, more cases should be fast tracked. Claims should be sifted and those that are regarded as having no reasonable prospects, should be rejected claimants could challenge

this but would be required to persuade a judge that the case had prospects. This should be done prior to a response having to be completed

Specifically related to enforcement, none other than giving Employment Tribunal judgements the same status as County Court Judgments

**7) The HMCTS enforcement reform project will improve user accessibility and support by introducing a digital point of entry for users interested in starting enforcement proceedings. How best do you think HMCTS can do this and is there anything further we can do to improve users' accessibility and provide support to users?**

No opinion

**8) The HMCTS enforcement reform project will simplify and digitise requests for enforcement through the introduction of a simplified digital system. How do you think HMCTS can simplify the enforcement process further for users?**

No opinion

**9) The HMCTS enforcement reform project will streamline enforcement action by digitising and automating processes where appropriate. What parts of the civil enforcement process do you think would benefit from automation and what processes do you feel should remain as they currently are?**

No opinion

**10) Do you think HMCTS should make the enforcement of employment tribunals swifter by defaulting all judgments to the High Court for enforcement or should the option for each user to select High Court or County Court enforcement remain?**

This should depend on value of award.

**11) Do you have any further views on how the enforcement process can be simplified to make it more effective for users?**

Employment Tribunal awards should be directly enforceable in the same way as County Court Judgments

**12) When do you think it is most appropriate to name an employer for non-payment (issued with a penalty notice / issued with a warning notice/ unpaid penalty/ other)? Please give reasons.**

Do not believe that naming is appropriate, there may be many reasons for non-payment, including financial difficulty, so is likely to affect smaller employers who may have financial problems, disproportionately

**13)What other, if any, representations should be accepted for employers to not be named? Please give reasons.**

None

**14)What other ways could government incentivise prompt payment of employment tribunal awards?**

None

**15)Do you think that the power to impose a financial penalty for aggravated breach could be used more effectively if the legislation set out what types of breaches of employment law would be considered as an aggravated breach?**

Yes , this would allow for a degree of certainty

**16)In what constitutes aggravated breach best left to judicial discretion or should we make changes to the circumstances that these powers can be applied?**

This should be remain a judicial decision

**17)Can you provide any categories that you think should be included as examples of aggravated breach?**

No

**18)When considering the grounds for a second offence breach of rights who should be responsible for providing evidence (or absence) of a first offence? Please give reasons for your answer.**

The Claimant, as this seems the obvious person as it will be to their benefit. However, the employer should be required to provide details if requested to disclose.

**19)What factors should be considered in determining whether a subsequent claim is a 'second offence'? e.g. time period between claim and previous judgment, type of claim (different or the same), different claimants or same claimants, size of workforce etc.**

The cases would have to be materially the same, based on same type of claim and occur within a specified timescale

**20)How should a subsequent claim be deemed a "second offence"? e.g. broadly comparable facts, same or materially same working arrangements, other etc.**

As above

**21)Of the options outlined which do you believe would be the strongest deterrent to repeated non-compliance? Please give reasons a. Aggravated breach penalty b. Costs order c. Uplift in compensation**

Costs order and uplift to compensation It would clearly depend on the level of penalties and award uplift. Direct personal director liability would also act as a strong deterrence.

**22) Are there any alternative powers that could be used to achieve the aim of taking action against repeated non-compliance?**

None

Questions about points made or to arrange any follow up meeting should be addressed to

**The Association of Recruitment Consultancies**

**May 2018**

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