Consultation on enforcement of employment rights recommendations - London boroughs Heads of HR response

Consultation Questions

Basic Details

Your name -

Head of London Regional Employers Organisation, London

Councils

Your E-mail address -

Stakeholder Category

Representing employers' or employees'/workers' interests

Respondent type – Local government

Organisation type – This response is on behalf of several London borough employers in the Public Sector

Employers size – All London boroughs would be classed as large sized businesses with 250+ employees

London councils represents London's 32 boroughs and the City of London. We are a crossparty organisation that works on behalf of all of our member authorities regardless of political persuasion. This response is on behalf of several London boroughs

Section A - State-led enforcement

Consultation questions

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

London boroughs Heads of HR response

Yes. In local government the majority of employed workers are subject to terms and conditions which have been determined by national negotiating bodies and which cover these type of pay arrangements. Typically, these rights are also applied to agency workers or atypical workers who provide services in the local government sector.

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.

London boroughs Heads of HR response

We have insufficient knowledge of other sectors to be able to comment.

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

London boroughs Heads of HR response

A key factor must be fear on the part of the individual that they will lose their job if they complain about a potential breach of their rights. Also, a lack of information about employment rights and entitlements is likely to undermine any potential that an individual will complain about their treatment.

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

London boroughs Heads of HR response

Disadvantage – For the state to lead enforcement effectively they will need to collect information from businesses about their current arrangements and practices. This will increase the administration burden on employers.

Advantage – Enforcement will ensure all employers/ businesses operate on a level playing field in terms of administration and cost.

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

London boroughs Heads of HR response

Publicity of individual rights needs to happen and also publicity of sanctions that are awarded against/ applied to employers.

Section B - Enforcement of employment tribunal awards

Her Majesty's Courts and Tribunals Service (HMCTS) set up an enforcement reform project in January 2018 to oversee the design and delivery of an improved service for the enforcement of all types of monetary award and order. The enforcement project aims to deliver:

□ improved user accessibility and support: Introducing a digital single point of entry for users interested in starting enforcement proceedings. This will provide clear guidance, signposting and support for all users regarding the enforcement options.
□ simplified and digitised requests for enforcement: Users will be able to apply for all methods of enforcement online. HMCTS currently rely on the claimant to initiate additional court proceedings by filling out extra paper forms. The claimant will be able to use a simplified digital system to inform HMCTS that the employer has not paid and that they wish to enforce the award. This will remove the current complex and paper-based system enabling swifter enforcement.
□ improved provision of information: the claimant currently decides which enforcement option to pursue based on their knowledge of the employer's assets or ability to pay and is able to improve the chances of successful enforcement by providing information that HMCTS in many instances does not hold or have access to. The project aims to improve the

collection of financial information of the employer. This will reduce the burden on the claimant and will maximise the chances of successful recovery.

□ **streamlined enforcement action**: the enforcement processes will be digitised and automated where possible, thereby improving efficiency and addressing the largely manual paper-based processes currently in place.

The government believes that the proposed reform of enforcement processes will reduce the burden on the claimant, by making it simpler and more streamlined.

Consultation questions

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

London boroughs Heads of HR response

Yes. Based on the evidence that the Taylor review identified and the recommendations it made, together with the governments response it seems clear that some individuals are not successful in receiving employment tribunal awards. Local government advocates good employment practice and broadly supports any actions that improve employee rights against unscrupulous employers.

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?

London boroughs Heads of HR response

We have insufficient knowledge of the project specifics to be able to comment. However, from general experience of trying to improve customer access to services it is important to provide sufficient readily accessible information via a range of medium (not just online) to enable users to access and use the system successfully.

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?

London boroughs Heads of HR response

We have insufficient knowledge of the project specifics to be able to comment.

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?

London boroughs Heads of HR response

We have insufficient knowledge of the project specifics to be able to comment.

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?

London boroughs Heads of HR response

We have insufficient knowledge of the project specifics to be able to comment.

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

London boroughs Heads of HR response No

Section B - Establishing a Naming Scheme

The premise of the proposed scheme is that employers will be named for failing to act upon a specified stage of the existing penalty scheme. The government's view is that this is best done at the point that a penalty notice is issued and we are inviting views on this.

Proposed naming scheme: impact on business

The policy proposal only affects businesses which have breached legislation, lost their case and might therefore be subject to the penalty scheme. The main cost to non-compliant businesses will be familiarisation costs. The government estimate these to be between £280,000 and £317,000 depending on the assumptions.

Employers will have the option of submitting a representation against being named. The government estimate the representation cost for businesses to be between £10,000 and £12,000 depending on the assumptions. These estimates are based on the labour cost for businesses.

The government has considered the different costs and benefits of these changes and concluded that the policy proposal qualifies for de minimis and requires proportionate light-touch analysis.

Consultation questions

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.

London boroughs Heads of HR response

Within local government we have always accepted responsibility for any tribunal awards that may have been made against us as employers. Therefore, we have no experience of the issues identified and are not sufficiently knowledgeable to be able to comment.

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

London boroughs Heads of HR response

We have no experience of the issues identified and are not sufficiently knowledgeable to be able to comment.

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

London boroughs Heads of HR response

We have no experience of the issues identified and are not sufficiently knowledgeable to be able to comment.

Section C – Additional awards and penalties

Recommendation: Government should allow tribunals to award uplifts in compensation if there are subsequent breaches against workers with the same, or materially the same, working arrangements.

The government accepts strong action should be taken and is seeking views on how existing sanctions should be extended and how to define when they should be applied.

Consultation questions

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?

London boroughs Heads of HR response

It would be helpful if examples of the types of breach that constituted an aggravated breach could be set out. It is questionable if a change to legislation is required. If examples of the type of breach and size of award penalty that has been implemented could be publicised then this maybe sufficient to highlight the issues and also provide tacit guidance as the likelihood and type of award penalty that could be made against employers in the future.

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

London boroughs Heads of HR response

See above comment under question 15.

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

London boroughs Heads of HR response

See above comment under question 15.

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.

London boroughs Heads of HR response No comment.

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.

London boroughs Heads of HR response No comment.

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

London boroughs Heads of HR response No comment.

- 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

London boroughs Heads of HR response

Of the options outlined in the consultation it is deemed that a combination of a) aggravated breach penalty increased to be a maximum of £20,000 per worker in line with National Minimum Wage breaches, and b) a costs order.

It is considered a combination of both penalty elements would give sufficient additional powers to tribunals to make awards against employers. It is not deemed appropriate to give an additional award to an individual claimant since this is deemed unfair to previous applicants who may have lost out. The awards should be against the employer and not to individual claimants.

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

London boroughs Heads of HR response

See above comment in question 21, the proposal to provide a combination of breach penalties as well as costs orders.