EMPLOYMENT TRIBUNALS

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Dear Sirs

This response is written on behalf of the President and Regional Employment Judges of the Employment Tribunals in England & Wales to the consultation arising from the review of the Equalities' legislation. It is noted that this review is under the Red Tape Challenge and that two specific provisions in the Equality Act 2010 are the subject of this consultation.

The Employment Tribunals in England and Wales would not wish to make any comment on the political decisions that are behind the proposals that are being consulted upon.

The Employment Tribunals in England and Wales do not support the proposals that are being consulted upon, not for political reasons, but for the reasons set out below.

Wider Recommendation Power of Employment Tribunals – Section 124(3)(b) Equality Act 2010

This wider recommendation power was included in the Equality Act after much deliberation and with the support of the Employment Tribunal judiciary in England and Wales. Historically there has always been a severe limitation on the power of the Tribunals to make recommendations given that previously

(and now as proposed again) recommendations would be limited to obviating the discrimination found in relation to the individuals bringing the claim. This does not serve the full purpose of making recommendations which is better provided for under the wider power.

It is now becoming more common for Employment Tribunals to consider using the power and other recommendations of a wider nature have been used. Unfortunately, the power was not widened to Equal Pay cases where it is believed that it would have been particularly effective.

We find it difficult to understand how this fits with the Red Tape Challenge in that it does not in our view provide additional bureaucracy as it is not a situation that arises until the particular Respondent in the case has been found to have committed a breach of the Equality legislation (other than Equal Pay) and only then. It is only therefore where the Respondents are "at fault" that his power comes "into play" and is not therefore something that generally applies to all employers on a constant basis. If an employer is found to be at fault then it was perceived when the legislation was first considered, and is still in the Employment Judiciary's view of importance, that the wider "education" of the employer who has been in breach needs to be considered with the wider powers of recommendation. One of the purposes of discrimination remedies has always been to attempt to assist in the adjustment and betterment of the equality policies within employment. The wider power will provide this additional facility to Employment Judges such that it is hoped such recommendations, if followed, would improve equality provisions and reduce the number of claims to the Employment Tribunals in the future from such employers.

It needs to be remembered that in considering these matters the majority of claims before the Employment Tribunal result (other than those against Government departments) from small and medium sized businesses who do not commonly have the general advice and assistance either provided in house or by specialists to the larger employer. It is suggested that the power to make wider recommendations becomes more prevalent in the small and medium sized business environment.

Further, in making such wider powers this will mitigate the money compensation Orders that might be made both in the actual case from which such a recommendation might derive but also for future situations where it is hoped that practice and procedure could be influenced appropriately to improve workplace relationships and practices.

Procedures for obtaining information – Section 138 of Court Act 2010

The Employment Tribunals have always been conscious of the principal purposes, as we have understood them, for these provisions being in discrimination legislation from their inception in the mid 1970s. Of these principal purposes the prevention of the bringing of claims or the focussing of claims to the actual act of discrimination to be tested have been a principal purpose. The raising of such a questionnaire in order to facilitate a potential Claimant in determining these matters has never been capable of measure, so far as we are aware. We are not aware of any research to show the number of such questionnaires that had been raised that have led to claims either not proceeding, or pre claim conciliation being effective with Acas, or the correct and more focussed approach in bringing the appropriate claims.

The provision of the early information facility have always been a sift process. If research does exist to show the effect of that sift process then we would be very interested in seeing it.

We further consider that the questionnaire procedure is very much in line with the pre claim resolution processes that are currently a consideration in primary legislation before Parliament. To remove this assistance to such a facility seems to the Employment Tribunal judiciary to be contrary to the overall policy of early resolution of claims or claims not proceeding where there is little merit.

The proposed amendments to the Equality Act are considered by the Employment Tribunals judiciary to be retrograde steps in the administration of discrimination claims.

Yours faithfully

President