

policy response

Resolving disputes in the workplace

The Advice Services Alliance's response to the
Department of Trade and Industry's
consultation paper





ASA values the opportunity to respond to the DTI consultation on resolving employment disputes.

We have not responded to all the consultation questions: it is not normally our policy to comment on proposed changes to substantive law, and many of our member networks (see below) are better placed to respond to detailed procedural questions. However, we do have some comments on matters of principle and policy.

About ASA

The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice networks in the UK. Full membership of ASA is open to national networks of independent advice services in the UK. Current full members are:

- Advice UK (formerly Federation of Information and Advice Centres)
- Age Concern England
- Citizens Advice (National Association of Citizens Advice Bureaux)
- DIAL UK (the disability information and advice service)
- Law Centres Federation
- Shelter
- Shelter Cymru
- Youth Access

Our members represent over 2,000 organisations that provide a range of advice, legal and other services to members of the public. Most of these organisations offer services within a local area, but some of them are regional or national. They are largely funded through public sector grants and contracts, and charitable fundraising. With some limited exceptions, services are offered to users free of charge and are focused on areas of law which mainly affect poorer people e.g. welfare benefits, debt, housing, employment, immigration, education and community care (now commonly referred to as 'social welfare law').

This response has been drafted following consultation with our full members. However, it may not reflect our members' views in their entirety and we are aware that some members will submit their own response.



Please cross one box from the following list of options that best describes you.

- Individual
- Small to Medium Enterprise
- Large Enterprise
- HR professional
- Legal representative
- Trade Union
- Interest Group
- Regional Organisation
- Devolved Administration
- Local Government
- Central Government
- Other (please specify) *Representative organisation for the UK advice sector*

Please feel free to answer as many or as few questions as you wish. It is helpful if you can explain your views as fully as possible in the comments boxes, continuing on a separate sheet if necessary, especially where you disagree with the measures set out in the consultation paper.

Question 1

Should the statutory dispute resolution procedures be repealed?

Yes No No view ✓

Comments

Question 2

Would repealing the procedures have unintended consequences that the Government should address, in legislation or otherwise?

Yes No No view ✓

Comments

Question 3

Should the Government offer new guidelines on resolving disputes?

Yes ✓ No No view

Comments

Clearly the assumption behind this question is that existing procedures are likely to be repealed. If this is the case, clear guidelines on resolving employment disputes would be helpful for employers and employees, and also for advisers. We suggest that Acas should be responsible for producing these guidelines, building on their existing work. Acas has a good reputation in this area, and is seen as independent.

Question 4

Should there be a mechanism to encourage parties to follow such guidelines?

Yes No No view

Comments

This depends on the 'mechanism' (see response to Q 5). We suggest that the guidelines should not be placed on a statutory basis. Tribunals should be able to refer to the guidelines when deciding on the merits of the case, but it should be discretionary.

Question 5

Should the mechanism take the form of a power for employment tribunals to impose penalties on those who have made wholly inadequate attempts to resolve their dispute?

Yes No No view

Comments

ASA welcomes the provision of information about ADR options, and supports encouraging both employers and employees to consider early resolution of disputes. However, there should be no blanket assumptions that mediation or other forms of ADR are necessarily 'better' than a tribunal hearing. The most appropriate process for resolving a dispute will depend on a range of factors including the personal circumstances of the parties, the urgency of the dispute, and the wider public interest. The interpretation of what 'wholly inadequate' means in different circumstances may well be rather subjective.

Question 6

What form should such penalties take?

Comments

Question 7

If the statutory dispute resolution procedures were repealed, should the law relating to procedural fairness in unfair dismissal:

- revert to the pre-2004 position, or
- be reviewed in order to assess whether it should be restated entirely?

Revert Review Other No view

Comments

Question 8

Should the Government invite the CBI, TUC and other representative organisations to produce guidelines aimed at encouraging and promoting early resolution?

Yes No No view

Comments

Question 9

Should the Government develop a new advice service with the structure and functions suggested?

Yes No No view

Comments

ASA does not believe there is any advantage in duplicating the work of existing advice networks: in fact, this may well involve an overall increase in costs. We suggest that any available additional funding should be directed towards building on existing services.

Employment advice is already available by phone, face-to-face, and through websites, all of which are provided by advice agencies which are members of networks such as Advice^{UK}, Citizens Advice, Law Centres Federation and Youth Access. A funding scheme based on a successful model such as the Financial Inclusion Fund would make impartial employment advice available to a wider range of people, through independent, trusted agencies.

Question 10

Should the Government redesign the employment tribunal application process, so that potential claimants access the system through a new advice service, and receive advice on alternatives when doing so?

Yes

No

No view

Comments

ASA has concerns about the proposal in the consultation that tribunal applications should be made through a new advice service with a brief to provide:

1. 'impartial' advice
2. advice 'as to the realities of tribunal claims and the potential benefits of alternative dispute resolution to achieve more satisfactory and speedier outcomes' (1.8 (6))

Advice which is predetermined to promote one particular form of dispute resolution is not impartial. As discussed in our answer to question 5, the most appropriate process for resolving a dispute will depend on a range of factors, and it is important that parties have access to truly independent advice, so that they can make an informed decision about how best to proceed.

Question 11

Should there be a new, swift approach for dealing with straightforward claims without the need for employment tribunal hearings?

Yes

No

No view

Comments

It is difficult to respond to the consultation question when so little detail is provided. The consultation suggests a 'settlement' process (3.4) by telephone and mail, with power to enforce 'decisions' (3.5). It is unclear from this terminology whether this is a form of negotiation, or a form of adjudication.

A new, swift approach for dealing with straightforward claims may well be helpful in some cases, but it should only be used with the consent of all the parties actively involved in the case. No party should be denied the right to an oral hearing if that is what they want.

Question 12

Should additional Acas dispute resolution services be made available to the parties in potential tribunal claims, in the period before a claim is made?

Yes No No view

Comments
It is essential that such dispute resolution services are optional rather than compulsory.

Question 13

If it is necessary to target these new services, should the Government set criteria to guide Acas to prioritise particular types of dispute?

Yes No No view

Comments

Question 14

If the new services are to be targeted, then in the current circumstances, would it be appropriate for the Government to guide Acas to prioritise the following types of dispute:

- those likely to occupy the most tribunal time and resources if they proceed to a hearing, e.g. discrimination and unfair dismissal cases;
- those where the potential claimant is still employed; and
- those where the employer is a small business with fewer than 250 employees.

Yes No No view

Comments
It is essential to pilot any new services and evaluate their impact and outcomes before making such decisions.

Question 15

Should the fixed conciliation periods which place time limits on Acas' duty to conciliate employment tribunal claims be removed?

Yes No No view

Comments

Question 16

Should the Government simplify employment tribunal forms?

Yes No No view

Comments

Question 17

Should claimants be asked to provide an estimate or statement of loss when making a claim?

Yes No No view

Comments

Question 18

Would simplifying the current time limits regime through harmonisation be a helpful additional reform, whether or not the statutory dispute resolution procedures are repealed?

Yes No No view

Comments

Question 19

If so, should the harmonised limit be three months, six months or another time period?

3 months

6 months

Other

No view ✓

Comments

Question 20

Would total or partial harmonisation of the grounds for extension to the extent possible subject to legal constraints, be a helpful additional reform?

Yes

No

No view ✓

Comments

Question 21

If so, what should the grounds for extension be in respect of the relevant jurisdictions?

Comments

Question 22

Do you have views on specific ways in which employment tribunal procedures and case management could be improved?

Comments

Question 23

Would it be helpful to change the case management powers available to employment tribunals in respect of multiple-claimant claims?

Yes No No view ✓

Comments

Question 24

Do employment tribunals provide the most appropriate way of resolving multiple-claimant claims, or could other mechanisms better serve the interests of all the parties involved?

Comments

Question 25

Are the existing powers of employment tribunals sufficient to deal with weak and vexatious claims?

Yes No No view ✓

Comments

Question 26

Do you have views on when chairs should sit alone to hear cases?

Yes No ✓

Comments

Question 27

Do you have views on how best to structure employment tribunal panels and use lay members more efficiently?

Yes No

Comments

Question 28

Should the Government aim to promote employers' compliance with discrimination law through better advice and guidance, rather than by widening the powers of employment tribunals to make recommendations in discrimination cases?

Yes No No view

Comments

Thank you for taking the time to let us have your views.

We do not intend to acknowledge receipt of individual responses unless you tick the box below.

We would like to keep you informed of the progress of this consultation, including further consultations. If you wish to join the mailing list, tick the box below.