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**Reforming the Employment Tribunal System**

Department of Business, Energy & Industrial Strategy

Ministry of Justice

Consultation

December 2016

**January 2017**

**REFORMING THE EMPLOYMENT TRIBUNAL SYSTEM**

1. **Do you agree that with the right system in place the specific needs of users of Employment Tribunals and the Employment Appeal Tribunal can be accommodated in a more digitally based system?**

We agree that with a robust digital system the needs of users can be accommodated digitally, especially if it leads to a more efficient timetable. ET3s are already filed on line. Effective use is made of telephone hearings when both parties are represented. There is effective communication via email. The parties having the ability to access a digital file for the proceedings would assist. We agree appropriate safeguards would need to be built into the process to ensure access to justice is not impacted for those who, for whatever reason, are not able to make use of the digital system.

1. **What issues do you think need to be considered when deciding whether a claim would be suitable for online consideration? Please give reasons.**

The obvious issue in deciding whether a case is suitable for online consideration is in identifying the complexity and importance of the case. Whilst it is true that straightforward cases may be suitable for online determination, eg, deduction from wages, this cannot be a generic rule. Often what appears to be a simple case may have complex issues of fact or legal interpretation behind it. For instance, the Lock case may have appeared to be a simple unlawful deduction from wages claim at first sight. There should, therefore, always be an option for the parties to apply for the matter to be dealt with in person rather than simply online. If possible, online submissions of bundles may be helpful. There shall be a presumption that complex cases, eg, involving discrimination, should be dealt with in person. If a case is dealt with online with the parties' agreement, consideration should be given to a smaller fee.

1. **What factors do you think should be taken into consideration when creating the scope to allow increased flexibility to delegate judicial functions to caseworkers in Employment Tribunals and the Employment Appeal Tribunal? Please give reasons.**

In principle there is no objection to the delegation of administration of judicial functions to Tribunal caseworkers. We agree that there needs to be an appropriate safeguard allowing the ability to refer any decisions taken to the Judge for review. We would not expect delegation of any decisions that may impact on the claim other than at a procedural level. Decisions relating to the issues in dispute should be reserved for the Judge. Appropriate training and guidance will need to be provided to the caseworkers. The parties again should have the ability to ask for judicial consideration if a case warrants it if what appears to be an administrative point is complex or will have a significant impact on the outcome of the case.

1. **Are there any specialist skills that a caseworker dealing with Employment Tribunals and the Employment Appeal Tribunal would need, distinct and different from those required for carrying our casework in other tribunals? Please give reasons.**

A caseworker would need an understanding of the jurisdictions in the Employment Tribunal. They would also need understanding of the process and the roles of various parties, eg, ACAS. The involvement of Judges in case management should not be underestimated. Often their steer and guidance to the parties can lead to early resolution of proceedings or the steering of the parties to settlement.

1. **Are there any specific issues relating to Employment Tribunals and the Employment Appeal Tribunal that need to be taken into consideration in relation to making changes to the law regarding panel composition? Please give reasons.**

The profession feels that the use of the panel should not be underestimated and is often very valuable in bringing experience of the workplace/industry that the Judge may not have. This is particularly valuable in complex cases with factual disputes and cases involving discrimination.

1. **What criteria should be used to determine the appointment of the new employment practitioner member of the Tribunal Procedure Committee? Please give reasons.**

An individual well‑versed in the day to day use of the Tribunal system. It will require somebody with well‑balanced experience or, alternatively, two people to reflect the interests of both claimants and respondents. They will often have differing views of the Tribunal experience/procedure. We would suggest a minimum of 10 years' experience.

1. **Do you agree that the proposed legislative changes will provide sufficient flexibility to make sure that the specific features of Employment Tribunals and the Employment Appeal Tribunal can be appropriately recognised in the reformed justice system? Please give reasons.**

Agreed.

1. **Do you anticipate the impacts of the proposed reform to be disproportionately large for small or micro sized businesses? Please explain your answer, referring to evidence as necessary.**

Digital litigation and improvements in the system should make the process more accessible for small and micro sized businesses.

20 January 2017


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**John Hughes**

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