

STUC Response to the DTI Consultation on Employment Tribunals: Consultation on Draft Revised Regulations and Rules

Introduction

The STUC is Scotland's Trade Union Centre. Its purpose is to coordinate, develop and articulate the views and policies of the Trade Union Movement in Scotland and, through the creation of real social partnership, to promote trade unionism, equality and social justice; the creation and maintenance of high quality jobs and the public sector delivery of services.

The STUC represents around 630,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy. Our representative structures are constructed to take account of the specific views of women members, young members, black/minority ethnic members, LGBT members, and members with a disability, as well as retired and unemployed workers.

Overview

Whilst being in general support of the original policy objective of encouraging the resolution of disputes in the workplace, the STUC is concerned that there may be some degree of over-reaction to the recent rise in tribunal cases. It is clear that a significant proportion of the rise in cases has occurred as a consequence of various improvements in employment relations legislation since 1997, combined with the incidence of a number of mass claims. Consequently it is extremely doubtful whether a continuing rise will be observed even under existing regulations.

The STUC believes that a number of the proposals contained within the consultation paper could in fact act to undermine the objective of encouraging the resolution of disputes in the workplace through the over-emphasis on measures to restrict the numbers of claims going to Employment Tribunal.

It is the STUC's belief that any reforms to our employment tribunal system should have at their heart the aim of making access to justice in the workplace a reality for more, not less employees, whether that be through dialogue and resolution internally or ultimately by pursuing compensation through the tribunal system. The latter is not the preferred route for any party concerned, however it is vital that this route remains viable and accessible for people who have been unlawfully treated at work.

Pre-acceptance procedure (Questions 3 and 4)

The STUC opposes the proposals relating to a pre-acceptance stage in tribunal claims. The proposals differ significantly from the current practice where tribunal officials may advise applicants that a claim is unlikely to be unsuccessful but in which the individual concerned has their right to a hearing protected.

The STUC is concerned that under the proposals, the right of an employee to a fair hearing will be compromised if the power to throw out a claim is increasingly vested with the tribunal Chair alone. Of particular concern is that failure to provide the very detailed information required in the proposed new forms [*How to bring a claim*] is cited as one of the grounds for the striking out of an application by the Chair alone.

The Fixed Period for ACAS Conciliation (Questions 5 and 6)

The STUC does not object to the definition of the categories outlined in this section.

The STUC is concerned that through attempting to limit the number of cases which run close to the tribunal date before settlement, the consultation has necessitated a proposal from ACAS [*Public Consultation Paper - Employment Act Proposals on Limiting Conciliation*] which allows conciliation services to the parties after the fixed 7 and 13 week durations only in the most

exceptional of circumstances. ACAS themselves describe this as a “fundamental change in conciliation practices”.

Whilst understanding the ACAS rationale for the proposal, the STUC believes that a significant number of cases will continue to run far closer to the tribunal date than is laid out in the consultation document. STUC affiliates fear that this will remove the ability of union officials to settle cases in a straightforward fashion through the COT3 from procedure with the assistance of ACAS.

Employment Tribunal forms (Questions 7 & 8)

There is a clear disparity between the level of detail required from employees and employers respectively.

Although the benefits to the system of eliciting detailed information at the earliest possible stage are accepted, this must not act as a deterrent for applicants. When taken in combination with the proposal to allow tribunal Chairs to rule out claims based upon incomplete forms, this proposal carries the potential to prevent justified claims being successful. It also appears to contradict the stated principle that it is not essential for applicants to seek advice prior to lodging a claim.

By contrast the requirement of employers is a relatively simple form. It is suggested that better practice would be to require employers to provide a detailed account of the internal disciplinary proceedings through reference to the interviews and notes taken during the progress of the case.

Costs and preparation time awards (Question 15)

Whilst it is clear that unpaid trade union representatives would not be subject to “wasted costs” awards, there is less clarity with regard to their status regarding preparation time awards.

The STUC seeks a clear statement that assurances given in this regard by the government prior to the consultation will be honoured.

Conclusion

We have set out above a number of areas where we feel the proposals within the consultation need to be revisited, with a view towards ensuring that taking cases to an Employment Tribunal does not become too onerous for the individual employee, and avoiding cases becomes too easy for the employer.