

FELLOWS'
ASSOCIATES

Resolving workplace disputes

A response by Fellows' Associates

Introduction

1. We welcome the opportunity to respond to the government's consultation on resolving workplace disputes. This comes at a time when the Tribunal Service and Acas are facing an increased demand on their services and there is a clear need to provide satisfactory resolutions to disputes in a timely and cost-effective manner.
2. Our brief response builds on our experience of working with organisations to promote strong relationships between employers and employees.
3. In the response we focus on the need to ensure equity and fairness at all stages of dispute resolution. However, we also go further to suggest that the process should be seen as a learning exercise and used as a preventative tool.

General Comment

4. We recognise that there is currently a high demand for dispute resolution services and that action needs to be taken to reduce both time and cost for the benefit of employers, employees, Acas and the Tribunal Service. However, it is essential that the action taken to reduce time and cost is weighed against the need for a fair and effective system.
5. While we support many aspects of the government's approach to changing the dispute resolution process, there are some areas which are of particular concern for us, these are mentioned in more detail later on the document.
6. We welcome the government's emphasis on doing more to support and encourage the earlier resolution of responses and, particularly, trying to preserve the working relationship between employer and employee. This will be key to diverting cases

away from tribunals and maintaining good employer/employee relationships.

7. However, the approach needs to go further. At the moment we believe the system is unduly formalistic and creates an adversarial process for dispute resolution. We would support a shift towards a more inquisitorial system which focuses on fact-finding, resolving the issue, and ultimately improving employer/employee relationships for the future. This would involve an altered role for members whose focus would be
8. In some instances there will be a need for cases to come to an employment tribunal. In these instances we agree that a swift conclusion is in the best interests of all parties. However, it is essential that, in seeking to speed up the process, the effectiveness of the system is not compromised

Resolving disputes in the workplace

9. The government is considering how it might be possible to make greater use of alternative dispute resolution tools such as mediation to divert cases away from tribunal hearings, we wholeheartedly support this approach.
10. Strong employer/employee relationships are the basis upon which good business is built. Taking action at the earliest possible opportunity through mediation not only provides significant cost and time savings for both parties, but also helps to preserve the employment relationship.
11. In our view, the process of dispute resolution should move from being an adversarial experience towards a more inquisitorial approach throughout the system. Embracing a process of fact-finding will help to maintain staff morale and could inform best practice; ultimately leading to more positive and productive

work environments with less need for dispute resolution in the future.

12. When an employee begins thinking about going to a tribunal, the government is proposing to make it mandatory for all claims to be lodged with Acas beforehand. We believe Acas have a key role to play in guiding employers and employees to a successful resolution. However, our concern in this instance is that this may increase the burden of work on Acas within such a tight timeframe.

Modernising our tribunals

13. It is inevitable that some disputes will be referred to and determined by the judicial system. We believe that the measures outlined above will help to tackle some of the weaker cases which, it is argued, can clog up the tribunal system.
14. The government has also outlined a number of other measures to tackle weak or “vexatious” claims including making the power to strike out more flexible.
15. Of particular concern to us is the proposed increase to the deposit limits which can be set for tribunal cases. While we recognise that deposit orders can act as a disincentive for bringing weak campaigns to employment tribunals, if the tools outlined above operate correctly and effectively there should be little need for this kind of approach.

Encouraging settlements

16. The government proposes that, in order to encourage early settlements, more information about the nature of the claim should be provided, including a statement of loss. We believe that this approach would place an additional burden on claimants and could be dealt with more effectively at the Acas stage.

Shortening tribunal hearings

17. The government also proposes a number of measures to shorten the time taken to complete tribunal hearings. We believe that measures to reduce the duration of cases should only be taken if they will not have a detrimental impact on the case.
18. As an example, taking witness statements as read will only be effective if these are distributed with enough time to allow members to consider each statement.
19. An issue of more concern for us is around the withdrawal of expenses for witnesses. Whilst this seems an obvious area to tackle to reduce costs, the impact on cases could be significant. We would caution against a cost-cutting exercise such as this.

Increased qualification period

20. The government proposes to increase of the qualification period from one year to two years, this, it says, would result in some 3,700-4,700 fewer claims being made to tribunal. We believe that this is the wrong approach and would be inequitable for employees.
21. As we have mentioned throughout this response, the need to reduce time and costs must be weighed against the need to ensure a fair system for resolving workplace disputes.

Conclusion

22. There is currently a huge demand for resolution services and a clear need to reduce the time and cost of dealing with workplace disputes. It is important that this is balanced against the need to ensure a fair and inclusive system which gives appropriate consideration to all cases.

23. We believe that, in order to reduce costs in both the short and long term, two actions must be taken. Firstly, there should be an emphasis on resolving disputes in the workplace. This will require more use of alternative dispute resolution tools. We welcome the government's approach to encourage this, however we believe it is necessary to make information more readily available to advise both employees and employers about this course of action.

24. Secondly, it is important to move from an adversarial to an inquisitorial approach. Focusing on the facts will help to inform best practice and, if used as a preventative tool, would help to reduce the need for workplace dispute resolution in the future.