

Ending the employment relationship: consultation - response form

A copy of the consultation on **Ending the employment relationship: consultation** can be found at:

<http://www.bis.gov.uk/Consultations/ending-the-employment-relationship?cat=open>

You can complete your response online through Survey Monkey :
(<https://www.surveymonkey.com/s/TZNJXGV>)

Alternatively, you can email, post or fax this completed response form to:

Email:

employmentrelationship@bis.gsi.gov.uk

Postal address:

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The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **23 November 2012**

Your details

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Please tick the boxes below that best describe you as a respondent to this:

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you agree that these are the correct principles to underpin the use of a settlement agreement which is inadmissible in unfair dismissal cases?

Yes No Not sure

Comments:

The principles need to be more succinct. Also "principles" are always open to interpretation for example "reasonable period" "fair process" "undue pressure" which could open these up to legal challenge. The Code is unfortunately not available for comment and this makes it difficult to comment on principles in isolation.

There is also a contradiction within these principles. They provide for "no undue pressure". However they also state that there should be "no particular procedure" whilst at the same time stating that there needs to be a "fair process". None of this makes sense when read together

Question 2: Do you agree that model letters proposing settlement and a template for producing a settlement agreement should be included in a Statutory Code?

Yes No Not sure

Comments:

The model letters leave no room for negotiation and although Question 7 asks whether they should be compulsory, if they are enhanced for example, this could cause difficulties as precedents could be set. The letters seem to be geared towards employers whilst reducing the rights of employees. If the settlement agreement is not admissible - does this mean that the letter would not be admissible? How could that be enforced?

Question 3: If you currently use settlement or compromise agreements, what impact would these templates have on the costs to your organisation of using agreements?

Comments:

None as we already have a template which works well for this organisation

Question 4: Would model letters proposing settlement and a template for producing a settlement agreement be likely to change your use?

Increase Decrease Stay the same

Comments:

We only use compromise agreements currently for limited purposes and settlement agreements would be used for the same limited purposes

Question 5: Do you have comments on the content of the model letter?

Yes No Not sure

Comments:

We would want to know where current conduct and capability procedures would fit into this process. It would appear from the consultation document that these letters would replace such procedures and this would appear to be most unfair on employees. Equally how is independence incorporated by appeals as this is not mentioned? If this is not the intention then the status and timing of this letter needs to be made clear vis a vis the procedures referred to above

If the letter is to replace the procedures then how would an employer defend itself in an Employment Tribunal ?

Question 6: Do you have comments on the content of the model settlement agreement and guidance?

Yes No Not sure

Comments:

Please see above in our answer to Question 5. There is no reference to conduct/capability or appeal procedures. It is not clear what else apart from the settlement agreement itself, is admissible. We are also concerned that this guidance gives an opportunity to unscrupulous employers to bully their staff into leaving without providing any opportunity to employees to defend themselves.

Question 7: Do you agree that the use of templates should not be compulsory?

Yes No Not sure

Comments:

Please refer to our response to Question 2 above

Question 8: Do you think it would be helpful if the Government set a guideline tariff for settlement agreements?

Yes No Not sure

Comments:

This would depend on the status of such a tariff and and who was consulted about its use. A tariff could be either a positive or negative process depending upon these issues

Question 9: What would you expect to be the impact of having a guideline tariff?

Comments:

It would be a negative impact unless it was flexible and could be enhanced or reduced by an organisation if the organisation considered this to be necessary in the individual circumstances of each case

Question 10: If you do favour a guideline tariff for settlement agreements, do you have a view on the approach or formula that should be used?

Comments:

N/A

Question 11: Do you have a view on what level of tariff would be appropriate?

Comments:

No

Question 12: Do you have ideas for other ways to help effectively disseminate the guidance and materials?

Comments:

No

Question 13: Would the introduction of cap of 12 months' pay lead to more realistic perceptions of tribunal awards for both employers and employees?

Yes No Not sure

Comments:

We do not consider this to be about realism. It does not give any scope for Tribunals to apply mitigation tests and would also favour higher earners

Question 14: Would the introduction of cap of 12 months' pay encourage earlier resolution of disputes?

Yes No Not sure

Comments:

Possibly however it is likely to be discriminatory as it would affect more low paid workers and part time workers - who statistically are mainly women

Question 15: Would the introduction of cap of 12 months' pay provide greater certainty to employers of the costs of a dispute?

Yes No Not sure

Comments:

However please refer to our comments above. MFRA is a reasonable employer

Question 16: Do you support the introduction of a cap on compensation of 12 months' pay?

Yes No Not sure

Comments:

Please see our comments to Questions 13 to 15 above

Question 17: Do you have any comments on the impact of this proposal on claimants?

Comments:

Reasonable employers such as MFRA would not be comfortable with a potentially discriminatory approach such as this

Question 18: Do you have any comments about the impact of this proposal on employers?

Comments:

Tribunals should be left with the jurisdiction around this issue as they have the expertise to consider each matter individually and on its own merits. Employees

need to be protected against unscrupulous employers and disincentives to make applications to tribunals in such cases

Question 19: Do you have any other comments on the proposal?

Comments:

No

Question 20: Do you consider that the overall cap on compensation for unfair dismissal is currently set at an appropriate level (£72,300)?

Comments:

Yes if this is managed by Employment Tribunals. It is slightly immaterial as few tribunals ever award a full "capped" amount

Question 21: What do you consider an appropriate level for the overall cap, within the constraints of full time annual median earnings (c£26,000) and three times full time annual median earnings (c£78,000)?

Comments:

We do not agree that this should be based on any earnings threshold. Wages have been and continue to be frozen or are reducing for some workers whilst some top earners are increasing their so to marry this with median earnings is to create imbalances.

Question 22: Do you have any other comments on the level of the overall cap?

Comments:

As we have said previously in this consultation response, Employment Tribunals should maintain the jurisdiction to deal with these matters based on the merits of each individual case

Question 23: 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.

Please acknowledge this reply

Question 24: At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes No

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