ROUTES TO RESOLUTION: IMPROVING DISPUTE RESOLUTION IN BRITAIN

Government Response

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FOREWORD

In the "Routes to Resolution" consultation document, I set out our goal: a high skill, high productivity economy achieved through high performance workplaces, where employers and employees work together in partnership.
It explained the need for change and laid down some ambitious proposals for attaining that goal through the creation of a modern dispute resolution system that was fit to give high quality service to all who needed it.

The responses we received were thorough and constructive. There was considerable support for our intention to resolve disputes by encouraging more productive dialogue in the workplace, although not all the proposals were supported. A number of alternative proposals were suggested and we considered these alongside the proposals set out in the consultation document. The result is a balanced package. It provides a firm foundation for better communication in the workplace, and a faster, more efficient employment tribunal system.

We will include those proposals which require primary legislation in the Employment Bill, which we introduced yesterday. Others will also be taken forward speedily. The creation of the independent Employment Tribunal System Taskforce, announced on 25 October, will, as part of its wider remit, have an interest in the operational issues arising from the other proposals that we are taking forward.

I am grateful to everyone who found the time to give us their views. This paper summarises the comments we received and sets out the programme of reform that is our response.

Alan Johnson MP

Minister of State for Employment Relations and the Regions

8 November 2001

The Government will act to:

Resolving Disputes at Work

- Introduce new minimum procedural standards for handling disputes in the workplace and place obligations on both employers and employees to use these standards (para. 15);
- Incorporate such minimum procedural standards into all contracts of employment as an implied term (para. 15);
- Use the tribunal system to reinforce the importance of these minimum procedural standards through adjusting the amount of awards where parties have not met their obligations (para. 19);
- Provide that tribunals will not admit certain claims where the complaint has not been raised in the workplace, unless it would have been unreasonable to do so (para. 20);
- Extend time limits for lodging a tribunal claim where dispute resolution procedures are underway in the workplace (para. 21);
- Improve compliance with the requirement that employees are given a statement of their employment terms within 2 months of starting work (para. 27)
- Remove exemptions on the smallest businesses so that information about workplace procedures is included in all written statements of employment terms (para. 27);

- Change the way unfair dismissals are judged, so that certain procedural shortcomings can be disregarded, provided the minimum procedural standards are met (para. 32);
- Set a sympathetic implementation timetable for these changes so that employers and employees have enough time to understand them. Support these changes with comprehensive information and guidance (para. 27);

Promoting Conciliation

- Promote amicable and timely settlement of employment tribunal claims by introducing a fixed period of conciliation (para. 37);
- Broaden the scope of compromise agreements (para. 41);
- Promote the use of alternative dispute resolution procedures (para. 43).

Modernising Employment Tribunals

- Introduce a fast track for straightforward claims in tribunals (para. 70);
- Provide for greater consistency in the way tribunals process claims by enabling the Presidents of the employment tribunals to issue practice directions (para. 77);
- Provide clear guidance on the costs regime (para. 55);
- Make changes to the costs regime to allow tribunals to include, in the calculation of cost awards against unreasonable behaviour, a contribution towards the time the applicant or respondent has spent in preparing the case (para. 59); to provide for cost awards to be made against representatives who charge for their services (para. 57);

and to consider further whether to strengthen the presumption that tribunals make cost awards against applicants or respondents who submit a weak case, or otherwise behave unreasonably in bringing or conducting their claim (para. 63);

- Make it easier for tribunals to strike out weak claims or responses at a pre-hearing review (para. 66);
- Bring the Employment Appeal Tribunal (EAT) costs regime into line with employment tribunals (para. 60);
- Introduce mandatory application and response forms for claims and make changes to the system of public registration of applications (para. 75);
- Establish a Taskforce to advise on whether and how the employment tribunal system can be made more efficient, cost effective, and user-focussed, to meet the demands it faces (para. 50);

Some proposals discussed in the consultation paper, including introducing fees for applications and tribunal hearings, and removing ACAS conciliation from fast track claims, will not be taken forward.

Regulatory Impact Assessment

The impact of each of these proposals on business, applicants and the employment tribunal system is included in the relevant section of the document**.** Overall, these proposals will lead to a reduction in the number of employment tribunal applications as a result of more effective workplace procedures and greater use of conciliation. The combined effect of all the proposals is an estimated reduction of between 30,000 and 40,000 applications compared to current levels, which results primarily from the introduction of the minimum procedural standards. Such a reduction would lead to **benefits** for employers of between £66 and £90 million and to savings for the taxpayer of between £13 and £19 million after the first two years. There are one-off **costs** to employers of between £46 and £86 million initially as the minimum procedural standards are introduced. On-going costs to employers, largely to operate the procedures, amount to between £44 million and £95 million each year.

An overarching regulatory impact assessment (RIA) summarising the costs and benefits of each proposal and how they contribute to the overall impact is at Annex A. Full RIAs for each proposal requiring primary legislation can be found as part of the RIA for the employment Bill as a whole, which is available on the DTI website.

CHAPTER ONE - INTRODUCTION

Consultation process

1. In July we issued a consultation paper "Routes to Resolution: Improving dispute resolution in Britain". The paper explained that claims to tribunals have trebled since 1990, and that recourse to litigation is costly and stressful for both the employers and individuals involved. It proposed a number of progressive reforms to encourage better dispute handling in the workplace, a greater focus on conciliation and the modernisation of the employment tribunal system. These reforms are designed to make employment tribunals the last resort in dispute resolution, not the first.

2. Just over a thousand copies of the paper were distributed. It was also published on the Internet.

3. The consultation period ended on 8 October. It lasted just a few days short of the preferred 12-week period to allow for the early introduction of legislation after due consideration of the responses. There has been a full and thorough dialogue with a wide range of organisations with an interest in the employment tribunal system. Focus groups were established to obtain the views of small businesses and their representatives.

Responses to consultation

4. Almost two hundred responses have been received and comments have been thoughtful and considered. Comments have been received from CBI, TUC, Small Business Council, British Chambers of Commerce, the National Association of Citizen Advice Bureaux, the Advisory Conciliation and Arbitration Service (ACAS), Council of Employment Tribunal Chairmen and the Law Society amongst many others. Written responses came from a wide range of organisations and individuals; trade unions, advisory services and employment law practitioners each account for around 10 % of responses while employers and their representatives account for about 25%. An alphabetical list of those who responded is attached at Annex B. A full set of responses, (except from those who requested confidentiality) can be seen on request at DTI's Information and Library Services.

5. We are grateful to everyone who has taken the time and trouble to comment. Overall the replies confirm the need for change and that the emphasis on resolving disputes in the workplace is right, although not all proposals received support. Some responses, including the TUC, sought a "comprehensive review" of workplace dispute resolution.

"*We wholeheartedly support the Government's will to change the employment tribunal system" British Chambers of Commerce*

Summary of Responses

6. The detailed analysis of these and other comments and the Government's response to them is set out in the following chapters of this document. The analysis considers the responses according to the three main chapters in the consultation document:

- Resolving disputes at work
- Promoting conciliation
- Modernising employment tribunals

7. The analysis aims to give an overview of the balance of opinions expressed and the direction of the responses as a whole. It cannot cover every single point made by respondents, though certain views are attributed when this is helpful to illustrate the points being made.

Further issues raised in the responses

8. A major theme in the responses was the need to effect change in the management of the tribunal system. Many offered useful suggestions on procedural issues and there was a consistent thread that there was a need for more resources for both ACAS and the employment tribunals service.

9. These suggestions will be passed to the Employment Tribunal System Taskforce which the Government has set up under the chairmanship of Janet Gaymer

(para. 50). The taskforce may also want to consider operational aspects of the programme of reform set out in the following chapters.

10. Some respondents asked about the relationship between these proposals and the report of the Review of Tribunals by Sir Andrew Leggatt. These proposals, which are concerned with good practice, conciliation and a faster and more efficient service for employment tribunal users, are being taken forward in parallel with the Government consultation on the Leggatt Review report which looks at the system of tribunals as a whole.

11. The TUC and a number of trade unions considered that the dispute resolution review should take place after or alongside a review of current employment legislation, including unfair dismissal. The Government is committed to reviewing the Employment Relations Act within this Parliament but considers it important that enough time is given for experience to demonstrate what effect the changes in that Act have had. Should that review show that legislation is needed, then the Government will legislate within the lifetime of this Parliament.

CHAPTER TWO – RESOLVING DISPUTES AT WORK

The Government will act to:

- Introduce new minimum procedural standards for handling disputes in the workplace and place obligations on both employers and employees to use these standards (para. 15);
- Incorporate such minimum procedural standards into all contracts of employment as an implied term (para. 15);
- Use the tribunal system to reinforce the importance of these minimum procedural standards through adjusting the amount of awards where parties have not met their obligations (para. 19);
- Provide that tribunals will not admit certain claims where the complaint has not been raised in the workplace, where it is reasonable to have done so (para. 20);
- Act to improve compliance with the requirement that employees are given a statement of their employment terms within two months of starting work (para. 27);
- Remove exemptions for the smallest businesses so that information about workplace procedures is included in all written statements of employment terms (para. 27);
- Extend time limits for lodging a tribunal claim where dispute resolution procedures are underway in the workplace (para. 21);
- Change the way unfair dismissals are judged, so that certain procedural shortcomings can be disregarded, provided the minimum procedural standards are met (para. 32);
- Set a sympathetic implementation timetable for these changes so that employers and employees have enough time to understand and implement them (para. 27);
- Support changes through comprehensive information and guidance (para. 27).

Internal grievance and disciplinary measures

12. The consultation document proposed that employers and employees should adopt and use minimum procedural standards in the workplace as a means of raising the standard of dispute management in the workplace.

13. About 40% of respondents commented on these proposals. There was widespread recognition of the value of setting standards of dispute management in the workplace, in order to improve the handling of disputes and to reduce the need for litigation. The CBI said that its members fully accept that employers and employees should be encouraged to resolve disputes at the earliest possible opportunity and that recourse to litigation should be seen as the last resort. Many stressed the need to publicise the minimum procedural standards widely and some concerns were expressed that there is scope for confusion between the minimum standards, as set out in the consultation paper, and the good practice enshrined in the Advisory Conciliation and Advisory Service (ACAS) Code of Practice on Grievance and Disciplinary Procedures. CBI and other employer organisations welcomed the draft procedures laid down in the consultation paper which they considered straightforward in their approach and urged the Government not to go beyond them. A member of the judiciary pointed out that small employers often lose unfair dismissal cases because they have no procedures; or because those that they have are wholly inadequate. The Small Business Council (SBC) welcomed the proposed minimum procedural standards but stressed the need to make clear that following the standards would not in itself protect employers from losing unfair dismissal claims.

14. Most trade unions and respondents from advisory services were also concerned that defining minimum procedural standards should not undermine the wider good practice in the ACAS Code of Practice on Disciplinary and Grievance Procedures. The TUC considered that employers should be obliged by law to have and observe disciplinary and grievance procedures which comply with the ACAS Code of Practice, which could be simplified for businesses employing less than 20 employees. The Small Business Council also saw room for confusion with the ACAS Code, and sought a simplified Code based on the minimum procedural standards.

15. **The Government wants to encourage the resolution of disputes where they arise - in the workplace. It therefore proposes to legislate to introduce minimum disciplinary and grievance procedural standards, as shown in the box below, and that such minimum procedural standards should be incorporated into all contracts of employment as an implied term. The implementation timetable for new legislation in this area will be set to ensure that employers and employees have sufficient time to come to terms with these changes before they are introduced.**

Minimum Dismissal and Disciplinary Procedural Standard

Step 1 – The employer must set out in writing the employee’s alleged conduct or characteristics, or other circumstances, which led him to contemplate dismissing or taking disciplinary action against the employee. The employer must send a copy to the employee and invite the employee to attend a meeting to discuss the matter.

Step 2 – The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension. The employee must take all reasonable steps to attend the hearing. After the meeting, the employer must inform the employee of his decision and notify him of the right to appeal against the decision if he is not satisfied with it.

Step 3 – If the employee does wish to appeal, he must inform the employer. If he does so, the employer must invite him to attend a further meeting. The employee must take all reasonable steps to attend the meeting. The appeal meeting need not take place before the dismissal or disciplinary action takes effect. After the appeal meeting, the employer must inform the employee of his final decision.

Modified standard in cases of gross misconduct justifying summary dismissal without notice

Step 1 – The employer must set out in writing the former employee’s alleged misconduct which has led to the dismissal and the former employee’s right to appeal against dismissal, and send a copy of the statement to the former employee.

Step 2 – If the former employee does wish to appeal, he must inform the employer. If he does so, the employer must invite him to attend a meeting. The employee must take all reasonable steps to attend the meeting. After the appeal meeting, the employer must inform the employee of his final decision.

Minimum Formal Grievance Procedural Standard

Step 1 – The employee must set out the grievance in writing and send a copy of the grievance to the employer.

Step 2 – The employer must invite the employee to at least one meeting to discuss the grievance. The employee must take all reasonable steps to attend the meeting. After the meeting, the employer must inform the employee of his decision as to his response to the grievance, and notify him of the right to appeal against the decision if he is not satisfied with it.

Step 3 – If the employee does wish to appeal, he must inform the employer. If he does so, the employer must invite him to attend a further meeting. The employee must take all reasonable steps to attend the meeting. After the appeal meeting, the employer must inform the employee of his final decision.

Modified grievance standard (where person raising grievance is a former employee)

Step 1 – The employee must set out the grievance in writing and send a copy of the grievance to the employer;

Step 2 – The employer must set out the response in writing and send a copy to the employee.

General requirements for minimum disciplinary and grievance procedural standards

Timetable: each step and action under the procedures must be taken without unreasonable delay.

Meetings: the timing and location of meetings must be reasonable, and the employer and the employee must both have an opportunity to put their sides of the case at the meeting. At appeal meetings, a more senior manager than attended the first meeting should as far as is reasonably practicable, represent the employer. This last requirement does not apply where the most senior manager attended the first hearing, for example in certain cases involving small and medium sized enterprises.

Role of internal procedures in tribunal

16. The consultation document outlined two possible measures to underpin the adoption and use of workplace procedures. The first was that applications to tribunals would, in most cases, only be accepted when workplace disciplinary or grievance procedures have been completed. The second was that awards should be adjusted to take account of an unreasonable failure of the employer or the employee to use the minimum procedural standards. It is recognised that there will be situations where failure to follow some or all of the procedural standards will be reasonable, for example in cases of bullying or violence or a refusal of one or other party to co-operate.

17. Respondents consistently supported the principle that parties should seek to resolve disputes in the workplace before an application is made to the tribunal. The majority of business representatives who expressed a view on this, including the Small Business Council, strongly supported the proposal to require internal dispute resolution procedures to be completed before an employment tribunal may admit a claim. It considered this as the key to improving dispute management. CBI members considered that only sending out the strongest possible signal to individuals of the importance of internal procedures would ensure their use. However many who responded said that requiring these procedures to be completed before an application was admissible by the tribunal posed practical difficulties. Some examples given: queried how to decide when procedures were complete in the case of a disputed claim; whether either party could use the requirement to prolong procedures; whether it would encourage lengthy legal arguments. The TUC and others with experience of

assisting applicants expressed serious reservations about how this proposal would work in practice.

"In terms of the proposal there are several practical difficulties. Not least that it is not always clear when the procedure is complete and, in addition, the procedure may be delayed and in some cases deferred almost indefinitely." ASLEF

18. There was strong support for extending the deadline for making an application to an employment tribunal to allow procedures to take place, but some concern that this could lead to unwarranted delay before claims were determined. There was strong support from all groups including CBI and TUC for the proposal that the level of tribunal awards should be increased or reduced to take account of unreasonable failure of the employer or employee to use the minimum procedural standards. All respondents who commented saw this proposal as signalling the importance of procedures. It was thought that the ability to adjust awards when an employer or employee did not meet the minimum procedural standards would encourage more people to observe the minimum standards. CBI stressed that this measure must be introduced with the needs of small business in mind. Many employer representatives were concerned that minor transgressions from the minimum procedural standard would result in an increased award under current case law.

19. The Government intends to underline the importance of minimum grievance and disciplinary procedural standards in the workplace through the operation of

the tribunal system. It will, therefore, require a tribunal to normally increase an award by 10-50%, if the employer unreasonably fails to provide or follow the standards shown in the box above, and conversely require a tribunal to decrease an award by 10-50% to an employee who has unreasonably failed to use them. However, in exceptional circumstances where a variation on that scale would be unjust or inequitable, tribunals will have the discretion to vary the award by a lower percentage or not to vary the award at all.

20. **The Government will also act to support dialogue in the workplace by requiring employees to raise their concerns with their employers before their claim is admitted by a tribunal. Grievances which have not been raised at all in the workplace will not be admissible as tribunal claims, unless the employee has reasonable grounds for not doing so, for example in cases of serious bullying or intimidation.**

21. **Time limits for applying to tribunal will be extended by three months where a claim has been submitted, or where procedures have started but not been completed, within the existing time limits for filing claims. There can be further extensions of up to two months if both parties want this. Extending time limits in this way will allow time for a dialogue in the workplace to take place, without prolonging the determination of claims unduly.**

22. **In all cases it is expected that <u>either</u> the minimum disciplinary <u>or</u> the minimum grievance procedural standard will be followed (not both). The requirement to follow these standards will not normally apply where the dispute has been handled as a collective grievance. Applicants making a claim for constructive unfair dismissal will be expected to use the minimum grievance procedural standard before resigning (or the modified standard afterwards), unless disciplinary action taken against them by the employer is the reason for their resigning and claiming that they have been constructively dismissed.**

<u>Written Statements</u>

23. The consultation document stressed the value of a written statement of employment terms (an existing statutory requirement on all employers) in providing clarity on the terms and conditions of appointment. It proposed the introduction of new sanctions to strengthen compliance. It also proposed to remove the existing exemption for employers with less than 20 employees from the requirement to include details of disciplinary or grievance procedures in the written statement. It also sought views on whether there is a need for further guidance or good practice material to ensure that employers are aware of, and can meet, their obligations to issue these statements.

24. Small firm respondents stressed that any legislative changes would need to be backed up by extensive information and guidance, particularly for small firms. Respondents recognised the value of the written statement in good employment practice.

"*If the procedure is effective and easily manageable then there should be no exception.*" Small Business Council

25. The majority of respondents who commented agreed with the proposal to award additional compensation to an employee to reflect the absence of a written statement, although CBI and EEF considered that it would not encourage better practice. CBI members considered that employers rarely deliberately avoid their obligation and that there is instead a need for greater guidance. A few employers thought that a sanction should only be applied where detriment had been proved. The proposal to remove the small firms threshold was supported by the majority of respondents, including the CBI who considered that a requirement for all firms to include this information in their employment terms and conditions would provide the ideal mechanism to ensure that procedures are properly communicated to employees. Some employers and their organisations thought a written statement might place a burden on very small firms. Some of these thought the threshold of twenty employees (which only applies to including details of procedures within the written statement, not to the requirement for a statement at all) should be retained but lowered. Other respondents including the TUC and the Law Society supported these proposals but considered that employers who do not provide employees with a written statement should be penalised, regardless of whether an award is made on another matter.

26. In commenting on these proposals about a third of respondents specifically drew attention to the need for more information and guidance, particularly to small and

micro businesses. They considered it an essential part of the implementation of these proposals that guidance and good practice methods are produced and published.

27. **The Government considers that the written statement of the terms and conditions of employment is the basis of the employment relationship and the first point of reference when disputes arise. To ensure that employees are aware of their rights and obligations, it will require all employers to include in the written statement details of their disciplinary and grievance procedures, which must, as a minimum, meet the standard laid out in the box above. The Government wishes to improve compliance with the obligation to notify employees of the terms and conditions of their employment. It will, therefore, provide for employment tribunals to increase the amount of an award to an employee to reflect the absence of a written statement. The Government also recognises the need to raise the awareness of the value of written statements in the smallest firms. Guidance will be provided on these provisions – as on the minimum procedural standards - in good time before they are implemented. This guidance will be supported by the proposed expansion of ACAS' advisory services (see paragraph 29).**

Advisory Services

28. Responses showed a clear endorsement of the important role played by ACAS and the value of its advisory work. Many called for ACAS to strengthen its advisory role.

Respondents considered that ACAS, the Small Business Service, trade associations and other advisory services should all work closely together.

29. The Government fully supports ACAS' advisory role in providing more support to small businesses and that ACAS should work more closely with the Small Business Service and other advisory services in this area. It recognises the value of this work and welcomes ACAS' proposal to expand its programme of training services and the electronic delivery of its services such as the development of e-learning alternatives.

Regulatory Impact Assessment

30. The objective of the proposals in this chapter is to improve dispute resolution at the workplace. Their main effect is therefore a reduction in the number of applications to employment tribunals by between 30,000 and 40,000 cases per year. We assume a one-year time lag for the benefits to begin to show through. **Employers** will **save** between **£60 and £80 million** in year 2 and every following year after the introduction of the proposal due to the earlier resolution of disputes. **Savings** for the **taxpayer** will be between **£11 and £15 million** from year 2 onwards. The introduction of the minimum procedural standard leads to **costs** to employers of **between £46 and £86 million** in year one. These are one-off implementation costs. The use of procedures costs business annually between **£42 and £90 million**. The proposal has non-quantifiable benefits in the form of improved employment relations.

This reduces levels of stress for employees and may improve workplace performance to the benefit of employers.

Unfair dismissal legislation

31. The consultation document also proposed that, provided the minimum procedural standards set out above are met, tribunals should disregard a procedural mistake by an employer in making a dismissal, if this made no difference to the outcome. Responses were mixed on the merits of this proposal. Employers and their representatives including the CBI strongly supported it. They considered that the emphasis should be on the merits of the case. They noted that breaches of the minimum procedural standards would be subject to increased awards. Others including the TUC opposed the proposal, which they thought sent the wrong messages about the correct use of procedures. Members of the Council of Employment Tribunal Chairmen were evenly divided on the issues. Those in favour of these proposals think decisions which turn on such mistakes, rarely satisfy either party. Instead they often result in both parties being confused as to whether they have truly won or lost.

> *"It would seem good sense to allow tribunals to disregard procedural mistakes if there would be no difference to the outcome of the case. From experience, managers become side-tracked into rigidly following procedure rather than concentrating on getting to the facts and considering them fully."*
>
> Northumberland County Council

32. The Government recognises the concerns expressed by some respondents but also recognises that it is unfair to penalise an employer for a shortcoming which made no difference to the outcome of a dismissal. It has therefore has decided to act to ensure that tribunals disregard procedural mistakes, beyond the minimum procedural standards if following full procedures would have made no difference to the outcome.

Regulatory Impact Assessment

33. The proposal is expected to bring about a small reduction in the number of applications. The **benefits** to employers are between £6 and £8.5 million. The **benefits** to the taxpayer are between £0.9 and £1.5 million. There are **costs** to applicants in terms of lost awards (£1.4 – £3.5 million) and to employers where applicants who might have been likely to settle their claim no longer do so (£4 to £6.1 million). There are additional costs to the taxpayer of between £1.8 and £5.4 million.

CHAPTER THREE – PROMOTING CONCILIATION

The Government will act to:

- Promote amicable and timely settlement of employment tribunal claims by introducing a fixed period of conciliation (para. 37);
- Broaden the scope of compromise agreements (para. 41);
- Promote the use of alternative dispute resolution procedures (para. 43).

Fixed period of conciliation

34. Most respondents who commented were in favour of the proposal to establish a fixed period for voluntary conciliation of tribunal claims by ACAS. Currently, three quarters of tribunal claims are settled or withdrawn before a tribunal hearing takes place. In many of these cases the tribunal will have wasted time and effort on these claims, which would be better spent on claims which do require a determination. This proposal aims to encourage parties who are willing to settle their claim amicably to do so early on in the tribunal process. One firm of solicitors commented that the proposal "could be a major benefit to resolution". Most respondents felt that the ability to extend the time period where the conciliator saw fit would be an essential part of this proposal. Some including the TUC called for disclosure of all relevant documents by both parties to be compulsory at the earliest possible time. CBI members saw merit in the proposal but were concerned that conciliation should be possible outside the fixed period if circumstances changed to make conciliation a sensible option.

35. ACAS considered that the proposa l had merit but that more evaluation of the impact of a fixed conciliation period was needed. They considered it could help to encourage timely settlement, especially in those jurisdictions where early contact with the parties has a positive effect.

36. Of those with reservations about this proposal, some felt that the hearing date alone concentrates the parties' minds on settlement; and that limiting the conciliation period means that valuable conciliation time could potentially be lost. The Government consi ders it is inevitable that some parties will not reach agreement until the last possible minute. However restricting access to ACAS services should go a good deal of the way to encouraging parties to focus on resolving the dispute before the claim is listed for a hearing. It will be possible for ACAS to extend the conciliation period if conciliators believe that settlement can quickly be concluded.

37. The Government proposes to introduce a fixed period for conciliation by ACAS, and to provide for carefully controlled extensions to this period where the conciliator considers that there is a strong likelihood of a settlement within a short timeframe. It will ensure that the effect of this proposal is studied and evaluated.

Regulatory Impact Assessment

38. The proposal is expected to lead to a reduction in the number of hearings with more cases being conciliated. It will also free up tribunal time to concentrate on cases

which do not settle. This leads to **benefits** for **employers** of **£3.2 and £6.5 million** and to the **taxpayer** of between **£1.5 and £3 million**. The increase in the number of conciliated cases also benefits **individuals** by between **£0.7 and £2.4 million**. **Costs** to employers are between **£0.7 and £2.4 million**. Some **individuals** may settle for smaller amounts of com pensation **(£0.4 - £1.4 million)**. There may be an operational impact on ACAS. In total the proposal is expected to have net benefits. Improving the rate of conciliation may also have a positive effect on the employment relationship as a whole. These benefit s cannot be quantified.

Broadening the scope of compromise agreements

39. The consultation document proposed that the scope of compromise agreements should be widened so that they equal the ACAS COT3 in terms of their ability to allow individuals to contract out of their employment rights. This was well received. CBI welcomed this proposal which, they considered, could also relieve pressure on ACAS. Most other respondents who commented on this proposal considered that it would offer greater choice in tackling a dispute. One firm of solicitors commented that it was a "useful step forward". However the TUC considered the proposal unnecessary. Others suggested that ACAS should get involved in cases before the application to a tribunal is submitted or that trade unions and/or trade associations should offer conciliation or mediation services to help resolve cases in the workplace.

40. One respondent favoured the use of a standard compromise agreement form, as a means of preventing the scope of these agreements from ranging too widely.

41. The Government will amend the legislation to widen the scope of compromise agreements.

Other organisations to conciliate

42. There were mixed reactions to the proposal that the law should be changed to allow other organisations to provi de conciliation services on the same basis as ACAS. There was a strong desire to avoid any change that might prejudice ACAS's impartiality and credibility. Some respondents felt that the idea was unlikely to work in practice; others including CBI felt th at the idea was good in principle subject to these impartiality and consistency questions. There was also a strong feeling that resources should not be diverted from ACAS's advisory and conciliation role to deal with accreditation. ACAS agreed with those w ho considered that if other organisations were to be involved they would need to be closely vetted. ACAS expressed concern about any change that risked the integrity of the conciliation process.

> "*Members also reported that they have particular faith in the quality of ACAS services and do not wish this proposal to be used by the Government to reduce the funding or status of ACAS"* CBI

43. Given the lack of interest from users in the adoption of this change and the risk of distracting ACAS from its primary roles, the Government does not intend to take this proposal forward.

<u>Promoting alternative dispute resolution</u>

44. Few respondents commented on these proposals. Of those that did the majority were in favour, seeing scope for greater use of mediation services and more help from business advisory services. The consultation document discussed a possible expansion of the Partnership Fund and the possibility of providing additional funding to projects which develop good practice in alternative dispute resolution and mediation.

45. The Government announced a fourth call for applications to the Partnership Fund on 22 October. Projects to address alternative dispute resolution will be encouraged. The Partnership Fund has already been used to develop better workplace dispute resolution. For further details of the Partnership Fund visit the website at: www.dti.gov.uk/partnershipfund.

Making the most of Partnership

AMEC Rail Limited is a medium subsidiary of a major engineering and construction company. It was successful in i ts bid to the DTI Partnership Fund for a project to improve dispute resolution in partnership with the National Union of Rail, Maritime and Transport Workers Union.

The funding it received from the DTI initiative enabled a number of joint workshops to be held with elected trade union representatives on the Company Council and managers from various levels within the company.

These workshops provided joint training on the company's procedures and also dealt with various issues, which were causing concerns and difficulties. They have enabled networks to be established between the management and Trade Union representatives outwith the company's formal machinery. As a result, many staff problems are raised and resolved at the correct level, without recourse to the company's grievance procedure. This provides benefits to all concerned, with a speedy resolution of problems, avoidance of possible ill feelings, together with a resultant saving in management time.

These relationships have lead to the establishm ent of regular meetings where the company outline their ideas for change and seek input from the Trade union representatives prior to any firm proposals being formulated. Adopting this arrangement has provided many benefits in terms of reaching agreement faster, productive and not abortive meetings and improved procedures. It has also meant that unnecessary disputes do not arise.

CHAPTER FOUR – MODERNISING EMPLOYMENT TRIBUNALS

The Government will act to:

- Introduce a fast track for straightforward claims in tribunals (para. 70);
- Provide for greater consistency in the way tribunals process claims by enabling the Presidents of the employment tribunals to issue practice directions (para. 77);
- Provide clear guidance on the costs regime (para. 55);
- Make changes to the costs regime to allow tribunals to include, in the calculation of cost awards against unreasonable behaviour, a contribution for the time the applicant or respondent has spent in preparing the case (para. 59); to provide for such awards to be made against representatives who charge for their services (para. 57); and to consider further whether to strengthen the presumption that tribunals make cost awards against applicants or respondents who submit a weak case, or otherwise behave unreasonably in bringing or conducting their claim (para. 63);
- Make it easier for tribunals to strike out weak cases or responses at a pre-hearing review (para. 66);
- Bring the Employment Appeal Tribunal costs regime into line with employment tribunals (para. 60);
- Introduce mandatory application and response forms for claims and make changes to the system of registration of applications (para. 75);
- Establish a Taskforce to advise on whether and how the employment tribunal system can be made more efficient, cost effective, and user-focussed, to meet the demands it faces (para. 80).

Proposals to introduce fees for applications and tribunal hearings, and to include further details of claims on the public register will not be taken forward.

46. The proposals in the consultation document set out a programme of change for the tribunal system. Respondents overwhelmingly supported the need for change. Some regretted what they saw as an increasingly legalistic approach of the system, and many called for a more wide-ranging look at the way the system works.

Charging for applications to tribunals and tribunal hearings

47. There was a substantial opposition to the proposal to introduce a charging regime (two-thirds of those who commented). This proposal was intended to raise funds to improve tribunal and conciliation services by seeking a contribution to the cost of determining their claim from those users who could afford to contribute.

48. The CBI supported the proposal which it considered would provide a valuable source of funding to a currently overstretched system and bring the tribunal service into line with court systems. It, and some other respondents, thought that charging for applications and hearings would encourage more disputes to be resolved in the workplace. However those organisations who have most experience of dealing with applicants considered that there would be a significant deterrent effect to low paid workers, particularly where the monetary value of the claim was small, despite the proposal to exempt those on benefit or unable to pay. A number of employers considered that it was unacceptable for tribunal respondents to pay a fee to attend a hearing.

49. The consultation document made clear that the proposal to introduce charging was intended to fund additional investment for the employment tribunal system. However in view of the concerns of many user groups about this proposal, it will not be taken forward.

50. The Government has set up an Employment Tribunal System Taskforce. The Taskforce will consider how services can be made more efficient and cost effective for users and will in particular advise on the need for new investment to meet service standards. The Taskforce may also want to consider operational aspects of the reform programme set out in this document. Details of the Terms of Reference are at Annex C.

<u>Expenses paid by Employment Tribunals Service</u>

51. Routes to Resolution proposed that if a charge for making a complaint to an employment tribunal were introduced it would follow that the expenses currently paid to parties in connection with the conduct and hearing of the case should be removed. It proposed that parties in genuine need should continue to receive expenses where necessary to pursue their case.

52. The responses which commented on the removal of expenses were concerned that this too would act as a deterrent to applicants. **The Government does not therefore intend to take this proposal forward.**

Awarding Costs

53. The consultation document suggested a number of possible changes to the way costs are dealt with in employment tribunals. The costs regime is intended to deter unreasonable behaviour by either party or their representatives. The definition of unreasonable behaviour is a tight one – it means that either party should not present a case which has no real prospect of success, or act vexatiously, abusively, disruptively or otherwise unreasonably in bringing or conducting their claim. The large majority of tribunal claims (applications and responses) do not fall under this definition; though the prospects of success may be uncertain, they are nevertheless arguable.

54. Discussions with those who represent applicants during the consultation period highlighted a concern that fear of an excessive costs award could act as a deterrent to applicants. Some claimed that changes to the costs regime which were introduced in July are widely misunderstood by applicants, and that unscrupulous employers are exploiting the situation to intimidate employees. In practice costs awards by tribunals are rare (under 250 costs awards were made in 2000/1 out of 218,000 applications and the average award was £295). They are made against respondents as well as applicants.

55. The Government recognises the concerns expressed about the operation of the costs system. It will provide advice and guidance to ensure that users fully

understand how the costs regime relates to their claim and to counter intimidatory tactics by some parties.

<u>Costs awards against representatives who charge for their services</u>

56. Many respondents to the consultation spoke favourably of the proposal that commercial representatives should face some sanction for unreasonable behaviour. Commercial representatives are those who charge for their services, including, for example solicitors, barristers, including in-house lawyers, and employment advisors, but excluding the not-for-profit sector (for example trade unions, Citizen's Advice Bureaux advisors and law centres). Those who commented on this proposal recognised that some representatives behave badly in pursuing their client's case and that there is a need to regulate representatives in the absence of a licensing system. CBI and others pointed out that tribunals should pay due regard to the fact that representatives act on the instructions of their clients. One tribunal chairman wrote that in his opinion the *"power to make orders for wasted costs directly against representatives who charge for their services would have the almost universal support of the tribunal judiciary"*.

57. The Government will therefore make the necessary legislative changes to enable tribunals to make wasted costs orders against representatives who charge for their services in this way.

Including case preparation time in costs awards

58. Routes to Resolution proposed that cost awards should include compensation for the time spent preparing or defending a claim. The CBI and a number of other employer organisations agreed. A significant minority of respondents including the TUC felt strongly that this might be difficult to implement or was inappropriate. One respondent felt that such a change might encourage employers to spend undue time and resources in preparing their case.

59. The Government believes it is right that those affected by weak and vexatious cases, applicants or respondents, are compensated for the time spent preparing their case. It will ensure that this compensation is limited to costs reasonably incurred.

Extending the costs regime to the Employment Appeal Tribunal

60. The Government will also act so that costs rules in the Employment Appeal Tribunal are aligned with employment tribunals. The Appeal Tribunal will, therefore, be able to award costs where either party has acted vexatiously in bringing or conducting the case, or where a claim or response is misconceived and has no real chance of success.

Changing the presumption on awarding costs

61. The consultation document put forward the proposal that there would be a presumption that tribunals would award costs to the winning party against a weak application or response. Many employers and their representative organisations believed that changing the presumption on costs could be beneficial. They considered that tribunals do not always make these awards, even where there is evidence to justify them.

62. Others including most trade unions and the TUC do not see the benefits in such a change. A member of the tribunal judiciary felt that the costs rules were already sufficiently broad to award costs in appropriate cases and that no change should be made.

63. The Government is committed to a costs regime which deters unreasonable behaviour by either party or their representatives. Before acting on this proposal, it will consider the issue further, and examine the operation of the current cost regime.

Summary of Regulatory Impact

64. Together the costs proposals lead to a small reduction in the number of weak applications and responses. The reduction in caseload leads to **benefits** for **employers of £0.9 - 2.1 million** and to the **taxpayer of £0.7 million**. Applicants **benefit** where

they are awarded costs by **£0.4 - 0.5 million**. The **costs** of the proposal are estimated to be **£1 – 1.4 million** to applicants (and their representatives) and **£0.8 million** to **employers and their representatives** for the same reason. There are small administration **costs** to the tax payer. In total the proposal will lead to net benefits.

Striking out weak claims after a pre-hearing review

65. The consultation document asked what more could be done to ensure that weak cases are identified and dealt with at an early stage. A number of respondents proposed that more use should be made of pre-hearing reviews.

66. Currently an employment tribunal may hold a pre-hearing review if it considers that a claim (application or response) appears to be without merit. If the hearing confirms the weakness of the claim, the tribunal may impose a deposit on a party who nevertheless wishes to proceed. **The Government is committed to eliminating weak cases from the tribunal system and will provide specifically for tribunals to be able to strike out a claim at a pre-hearing review as an addition to the existing powers of tribunals to strike out claims which are misconceived and have no real prospect of success.**

Fast track

67. The consultation document sought views on the introduction of a fast track system for certain jurisdictions such as breach of contract, unlawful pay deductions and redundancy payments. Such cases are already often dealt with by a chairman sitting

alone. Respondents welcomed the principle of moving such cases through the system swiftly (in many cases these claims are already dealt with quickly by tribunals). However, some expressed concerns over the way this was to be achieved, including that such cases were not always straightforward and this proposal might put an extra burden on the syste m if a period of conciliation was not included.

"I think the case for introducing a fast track for certain jurisdictions is compelling ... particularly those employees whose employers have refused to pay them. They should not be kept waiting for their money any longer than is absolutely necessary to secure a fair hearing. Whilst the sums may often be small they sometimes represent the only asset of the applicant." Member of employment tribunal judiciary

The Role of ACAS in fast track cases

68. The overwhelmin g majority of respondents felt that ACAS has an important role to play in conciliating settlements in pay, breach of contract and redundancy payment cases, whilst recognising that their resources are under pressure. Most of those who commented on this issu e felt that it would be a mistake to remove ACAS from the conciliation process as a whole, as the consultation paper had proposed. There was support for a short period of conciliation where both parties considered this would be helpful.

69. The proposal to establish a fast track, and to do so without a conciliation process, was designed to allow certain cases to be dealt with in a way proportionate to the nature of the case. In the jurisdictions listed above, as well as in uncontested cases, there is strong support for the case to be dealt with quickly.

70. The Government will take forward the proposal to introduce a fast track. It will provide for ACAS conciliation of fast track claims within a short fixed time period. Extensions to the fixed period will be limited to those cases where the conciliator considers that settlement within a short additional timeframe is likely.

Allowing for written determinations in fast track cases

71. Those who commented on this point were strongly supportive of the proposal provided that both parties had specifically waived their right to an oral hearing. Concerns were expressed that there should be a means of ensuring that parties who could not adequately explain their case in writing should not be able to opt out of an oral hearing.

"The introduction of a fast track system would be very beneficial to all parties and would make the system much more efficient. A written determination could be particularly helpful for employers as would written evidence instead of attending a hearing." Manchester Chamber of Commerce.

72. The Government proposes to provide for a fast track, which will include the possibility of a written determination. It proposes to ensure that parties are fully aware of the effect of opting for a written determination by building safeguards into the system so that parties seek advice from a recognised third party to ensure that their consent to a written determination is fully informed. Tribunals will have the discretion to require an oral hearing to be held where there is doubt that either or both parties' case could be properly decided by written submissions alone, even if they have opted for a written determination.

Application forms

73. Three quarters of respondents who commented on the proposal for mandatory application and response forms were in favour. Many suggested that the IT1 and IT3 should be presented in a way that helped applicants and respondents ensure that they were providing a full picture. However the Council of Employment Tribunal Chairmen thought that this could lead to an increase in the number of preliminary hearings, and some respondents asked that the needs of applicants who were illiterate or non-English speakers should be taken into account. One respondent suggested the form should be availab le in electronic format.

74. The Government will act to make the use of an employment tribunal application form mandatory, as this will bring considerable operational benefits. It considers that it is helpful to ensure that as much information as possible is exchanged between the parties and provided to the tribunal at the outset. It will ensure that

proper guidance on completing the form is provided to applicants and respondents and that the needs of disadvantaged applicants are met.

Practice Directions

75. Respondents who commented overwhelmingly supported the proposal to enable the Presidents of the employment tribunals to issue practice directions on procedural and interlocutory issues as a means of providing greater clarity and consistency across the regions.

"We see no reason why the system should not be formalised to allow the Presidents to issue practice directions, since already they offer guidance on various matters and it would be helpful to have that system formalised and recognised" Member of employment tribunal judiciary

76. The Government will therefore provide for the Presidents of the employment tribunals to issue practice directions on such issues and may act through regulations to secure compliance with practice directions.

Public registration of cases

77. Routes to Resolution proposed that employment tribunal applications should only be registered publicly after conciliation has failed and the claim is listed for a hearing. Almost all respondents who commented on this proposal were in favour of later registration. Supporting this proposal the Employment Group of Applicant

Representatives commented that the proposal might encourage some respondents to enter into the conciliation process. There were also calls for the Government to abolish the register on the basis that public registration of claims is damaging to conciliation, and to the interests of the parties.

"The CAB service welcomes the proposal to delay publication of tribunal applications on the public register, so as to allow for a period of conciliation. However we would urge the Government to go further, and to consider removing such information from the public domain altogether." NACAB

78. In view of the support expressed through consultation for abolition of the public register the Government will consider the issue of registering tribunal claims further, mindful of a wider public interest in the disclosure of information on applications.

Publishing the particulars of a case

79. The consultation document also sought views on including the particulars of the complaint and the response on the public register. The vast majority of those who commented on this proposal were opposed to making more information available on the register. There was concern that the provision of more information could deter applications and lead to difficulties for employees in finding future employment. One Chamber of Commerce summed up employers' concerns saying "This may encourage the media to focus on newsworthy cases and this could make it more difficult to

achieve a settlement … Members would prefer greater privacy." CBI considered that such an action would only encourage the blacklisting of employees or employers and prevent any closure of the case when the dispute has been finally settled. However, the TUC and Public Concern at Work saw a public interest in disclosure for complaints made under the Public Interest Disclosure Act 1998 to reduce the risk of an overriding public interest being bought off in settlement of the claim.

80. The Government will not take forward the proposal to place on the register the particulars of the complaint and the response.

ANNEX A

Regulatory Impact Assessments

1. Regulatory impact assessments for individual proposals are available from DTI library on request and will be made available on the DTI website.

Summary partial Regulatory Impact Assessment

2. The government's proposals provide for improved dispute resolution in the workplace and in the employment tribunal system. Existing problems in the current system of dispute resolution have contributed towards increasing numbers of employment tribunal applications. These are putting employers, employees and the tribunal system itself under strain. A dispute resolved in the workplace, especially one resolved early and informally, will reduce workplace tensions and increase retention of valuable staff. A dispute resolved in a tribunal often leads to the end of the employment relationship. For the employee this means the loss of a job; for the employer it means unnecessary recruitment and lost skills. And where a dispute does have to go through the tribunal process, cases should be resolved more quickly, reducing uncertainty for applicants and employers alike.

3. This response contains several measures to address this. Not all of them have implications that need to be assessed in a regulatory impact assessment. Those included in the RIA are:

- Implied term of contract to confer right/obligation to follow the minimum grievance and discipline procedural standards;
- All written statements of terms and conditions to include reference to workplace procedures (removal of small firms exemption);
- Tribunals to mitigate awards to reflect whether the minimum procedural standards were followed and whether terms and conditions were provided;
- Removing procedural traps in unfair dismissal cases;
- Fixed period of conciliation in all tribunal cases;
- Changes to reduce wasted costs.

4. The individual paragraphs below contain costs and benefit estimates for these provisions. There are strong overlaps between most of these proposals. The total benefits and costs are less than the sum of the individual benefits and costs. More detailed partial Regulatory Impact Assessments are provided in the Regulatory Impact Assessment supporting the Employment Bill [1] with the exception of the proposal for a fast track, where the changes proposed may not require legislative change.

[1] The estimates of costs and benefits presented here differ slightly from those presented in the RIA accompanying the Employment Bill. This is because the dispute resolution proposals in the Bill include a proposal for an equal pay questionnaire, which is not covered in this Government response.

Proposals for:

(i) Implied term of contract to confer right/obligation to follow the minimum grievance and discipline procedural standards;
(ii) All written statements of terms and conditions to include reference to workplace procedures (removal of small firms exemption); and
(iii) Tribunals to mitigate awards to reflect whether the minimum procedural standards were followed and whether terms and conditions were provided

5. All employers will have to introduce a satisfactory (that is at least compliant with the minimum procedural standards) three step dispute and grievance procedure to deal with employment issues arising in the workplace. Employees are also obliged to use these standards. If either party does not fulfil their obligation, this will be reflected in the award.

6. This provides both employees and employers with an incentive to start a discussion about any problems that may arise. This should in the medium to longer term improve employment relationships and open up the way both parties handle conflicts. Employers will feel the benefit of a clear transparent process that helps them to resolve problems. Employees who otherwise would have left because they felt they had been treated unfairly, or because the relationship had deteriorated over the months leading up to a tribunal case, may now decide to stay.

7. The evidence suggests that most large employers have procedures that already meet the minimum standard. A disproportionate share of tribunal applications arise in workplaces where procedures are absent or have not been followed adequately. Greater use of procedures should therefore reduce significantly the volume of tribunal applications.

8. The estimated reduction in the number of applications is between 30,000 and 40,000 applications per year. Employers save time and money (£60 – 80 million), employees save their own time and reduce stress levels and there are savings to the taxpayer through fewer cases (£11 –15 million). There will be a time lag between the more widespread introduction of procedures in firms and a reduction in tribunal applications of perhaps one year.

9. There are costs to employers. There are one-off costs arising from the introduction or revision of disciplinary and grievance procedures where these do not already meet the minimum procedural standards, and from incorporating these into the written statement of employment (£46 –86 million). There are also on-going costs arising from the management time involved in greater use of these standards (£42 –90 million per year).

Removing procedural traps in unfair dismissal cases

10. Some employers have lost faith in the tribunal system because they believe they will lose an unfair dismissal case because of a small procedural mistake, even if following the correct procedure would have made no difference to the outcome. The

government proposes that the tribunal should disregard the procedural error if it would have made no difference to the outcome. This will only apply for procedures that go over and above the minimum procedural standards that will now be part of the contract of employment.

11. This change should discourage some tribunal applications based mainly on procedural error. The benefits to employers are £6-9 million per year. Of these about £4-6 million are transfers from employees due to changes in the structure of tribunal outcomes. The benefits to the taxpayer are about £1 million.

12. The costs of the proposal are also related to the shift in outcomes. Individuals have reduced awards and settlement payments of about £1 million. Respondents lose £4-6 million. There are costs to the taxpayer of £2-5 million.

Fixed period of conciliation in all tribunal cases

13. A large number of applications are settled with the help of ACAS conciliations (38%). This proportion differs between jurisdictions. ACAS conciliators can also play a role in withdrawn cases. Some of the settlements or withdrawals occur just before the hearing. This can be costly for the taxpayer and the parties.

14. A provision to be introduced is to use a fixed period for conciliation during which the minds of both parties can focus on the conciliation process.

15. A fixed conciliation period aims to increase the number of settlements and reduce the number settling close to a hearing date. The latter effect, in particular, will help the Employment Tribunals Service to handle other applications more efficiently.

16. The number of hearings is expected to fall by between 1,700 and 3,400 each year. There are some transfers between respondents and applicants due to a change in the structure of outcomes. There are financial benefits to employers of £3-7 million and to the taxpayer of £2-3 million. Individuals also benefit by £1-2 million from more settled cases at the expense of employers.

Costs awards

17. The government proposes to provide stronger disincentives to unreasonable behaviour both up to and during the hearing process, through changes to the rules on award of costs. Costs awards will include the cost of time spent by parties where cases or defences are weak, or where the other party has behaved unreasonably. Awards will be possible against paid representatives where it is their behaviour that has triggered the costs award.

18. The proposals should discourage a small number of weak tribunal applications and responses (100-500 per year) and will also encourage more settlements and fewer hearings. In addition, more costs awards will be made, providing more compensation to those at the receiving end of unreasonable behaviour.

19. It is estimated that savings to the taxpayer will amount to a little under £1 million per year, together with benefits to employers from less applications of £0.2 -1 million. There will also be increased flows of payment between employers and applicants arising from the increased use of costs awards. Applicants are expected to benefit by £0.4-0.5 million whereas respondents are expected to benefit by £0.7 -1.1 million (respondents benefit more because they are likely to incur more management time and legal representation in dealing with a tribunal application).

Fast track

20. The government proposes to introduce a fast track system into the existing tribunal structure. This new fast track would be open for certain jurisdictions that are primarily factually based, e.g. unlawful deduction of wages, breach of contract and redundancy pay. Eligible cases would be sent to ACAS for a short, fixed conciliation period after which they would be listed for hearing. The option of a written determination would also be available.

21. Perhaps 15,000 applications a year would be suitable for the fast track, although this could be an under-estimate. The effect of the fast track will be that less applications are settled and conciliated and more go to a tribunal for a determination either at a hearing or in writing.

22. Employers benefit by £1.5 - 1.9 million in cases where settlements are avoided or where cases do not reach tribunals but face offsetting costs due to other cases that now become more likely to reach a tribunal (£1.4 - 1.6 million). Some applicants gain as a result of the fast track because awards at tribunal tend to be higher than settlements (£0.7-0.8 million) but more lose because they lose the tribunal case or withdraw rather than settle (£ 1.7-2.1 million). The impact on the ETS is also broadly neutral. More hearings add £0.6-0.7 million to costs but there are offsetting savings from more efficient case handling (£0.4 -0.8 million).

23. The fast track also has wider benefits. There is the potential for some ACAS resources to be re-deployed to improve conciliation rates in other jurisdictions.

Overall effect of dispute resolution procedures

24. The overall effect of the proposals above is not the sum of each individual proposal. Several proposals address the same or closely related issues. Their effects therefore overlap.

25. The table below summarises the quantified costs and benefits of each proposal together with their contribution to the overall impact of the dispute resolution proposals.

All figures in 2000/01 prices, £ million, recurring costs and benefits unless otherwise stated.

	Quantified benefits	Quantified costs
Procedures (minimum procedural standards, written statements, mitigation of awards)		
Self-standing benefits and costs:		
To employers	60 - 80	46 - 86 (one-off) 42 - 90 (recurring)
To individuals		
To the taxpayer	11 - 15	
Used as the baseline for the aggregate costs.		
Removal of procedural traps		
Self-standing benefits and costs:		
To employers	6 - 8.5	1.4 - 4.1
To individuals		4 - 6.1
To the taxpayer	0.9 - 1.5	1.8 - 5.4
Simple and effective procedures widely understood and supported through advice and guidance will remove some but not all of the scope for procedural errors. Therefore reduce costs and benefits by 50%.		
Contribution to aggregate effect:		
To employers	3 - 4.3	0.7 - 2.1
To individuals		2 - 3.1
To the taxpayer	0.5 - 0.8	0.9 - 2.7
Fixed period of conciliation		
Self-standing benefits and costs:		
To employers	3.2 - 6.5	0.7 - 2.4
To individuals	0.7 - 2.4	0.4 - 1.4
To the taxpayer	1.5 - 3	
More effective and widespread procedures in first place reduces the number of disputes. Proposals on costs that tackle weaker cases will also tend to encourage early settlement of weaker cases. The fast track proposal will also reduce the impact. Therefore reduce costs and benefits by 50%.		
Contribution to aggregate effect:		
To employers	1.6 - 3.3	0.4 - 1.2
To individuals	0.4 - 1.2	0.2 - 0.7
To the taxpayer	0.8 - 1.5	
Proposals to tackle wasted costs		
Self-standing benefits and costs:		
To employers	0.9 -2.1	0.4 - 0.5
To individuals	0.4 - 0.5	1 - 1.4
To the taxpayer	0.7	
Reduce costs and benefits by the portion arising from fewer tribunal applications, as these are likely to be also discouraged through better use of procedures. But more procedures alone will not discourage all unreasonable behaviour.		
Contribution to aggregate effect:		

	Quantified benefits	Quantified costs
To employers	0.7 - 1.1	0.4 - 0.5
To individuals	0.4 - 0.5	1 - 1.4
To the taxpayer	0.5 - 0.8	
Fast track		
Self-standing benefits and costs :		
To employers	1.5 - 1.9	1.4 - 1.6
To individuals	0.7 - 0.8	1.7 - 2.1
To the taxpayer	0.4 - 0.8	0.6 - 0.7
The reduction in applications due to more widespread procedures (23 -31%) will feed through into the fast track caseload. The proposals on costs may also have some impact. Reduce costs and benefits by 35% to allow for these effects.		
Contribution to aggregate effect:		
To employers	1 - 1.2	0.9 - 1
To individuals	0.5 - 0.6	1 - 1.4
To the taxpayer	0.3 - 0.5	0.4 - 0.5
Total benefits of dispute resolution proposals included in Bill (rounded to nearest £1 million):		
To employers	**66 - 90**	**46 - 86 (one-off)** **44 - 95 (recurring)**
To individuals	**1 - 2**	**4 - 7**
To the taxpayer	**13 - 19**	**1 - 3**

26. The most significant proposal by far in terms of impact is the introduction of grievance and disciplinary procedures as a contractual right. If this is implemented, fewer disputes will go to tribunals - thus reducing the costs and benefits of almost all of the above proposals that address cases that do reach tribunals.

27. The total effect of the proposals is estimated to be a reduction in the number of applications of 23-31% or by between 30,000 and 40,000 applications (using current application volumes as a starting point) [2]. The related benefits to employers are estimated to be £66-90 million once the proposals have fed through into reduced tribunal applications. The taxpayer will benefit by £13 -19 million and individuals by £1-2 million. There are some costs to employers especially due to the introduction of minimum procedural standards. One-off costs are £46-86 million. The use of procedures leads to ongoing costs of £42 -90 million. Employers who already have and use procedures will not face additional costs. The other proposals add a further £2-5 million. Costs to the taxpayer are mostly related to changes in the outcome of applications and are therefore policy costs not implementation costs. These are £1 -3 million.

[2] ETS has only been able to deal with 70% of applications in 2000/01. The benefits to ETS are therefore built on 70% of the estimated reduction in the number of cases.

Impact on small businesses

28. The measures proposed affect businesses of all sizes. The consultation exercises carried out for most of the proposals received responses from small and large businesses. Focus groups were convened with small firms. The Small Business Service has been consulted on the contents of this RIA.

29. The proposal to require minimum disciplinary and grievance procedural standards to be introduced is likely to disproportionately affect small firms. This is because they are less likely to have procedures that meet these standards or follow them if they are in place. Hence the costs of introducing them will bear most on small businesses - but so will the benefits through reductions in cases going to employment tribunals. The proposal to remove procedural traps may benefit small businesses especially as there is evidence that small firms are most likely to make procedural errors.

Sensitivity analysis

30. A great many assumptions have to be made in preparing these impact assessments. The ranges presented should not be taken as capturing all the possible range of uncertainty. Assumptions have had to be made about the future behaviour of employers and employees that are difficult to test on the basis of historic data. This assessment has also been prepared on the assumption of full compliance with the government's proposals. Significant levels of non-compliance with the provisions on minimum procedural standards, for example, would be likely to reduce considerably both the costs and the benefits of these proposals.

ANNEX B

Respondents to the Consultation

Abbey National Group
Advisory, Conciliation and Arbitration Services (ACAS)
Alliance and Leicester
Amalgamated Engineering and Electrical Union
Associated Society of Locomotive Engineers & Firemen
Association of Colleges
Association of Consultants and Architects
Association of Convenience Stores
Avon & Bristol Law Centre
Avon and Somerset Constabulary
Better Regulation Task Force
Birmingham Chamber of Commerce & Industry
Birmingham Regional Employment Tribunal
Black Country Chamber Technology Centre
Blackburn & District Trade Council
Blyth Valley Citizens Advise Bureau
British Chambers of Commerce (BCC)
British Printing Industries Federation (BPIF)
Bradford Chambers of Commerce
Bradford Law Centre
Bristol Employment Tribunal Members' Association
British Furniture Manufacturers Limited
Broadcasting, Entertainment, Cinematograph and Theatre Union
Buddenbrook Consultancy
Business Lawyers in Europe
Business Service Association
Cannock Chase Constituency Labour Party
Carter Hodge Solicitors
Catholic Bishops' Conference of England and Wales
Centre for Dispute Resolution

Charter Chambers
Chartered Institute of Personnel Development
Chemical Industries Association
Commission for Racial Equality
Confederation of British Industry
Conflict Management Plus Limited
Consignia
Construction Confederation
Council of Employment Tribunal Chairmen
Council of Employment Tribunal Members' Association
Council on Tribunals
Coventry & Warwickshire Chamber of Commerce
Coventry Law Ce ntre
Dairy Industry Federation
Derby City Branch UNISON
Disability Rights Commission
Discrimination Law Association
DLA Solicitors
Driving Standards Agency
East Midlands Development Agency
East of England Local Government Conference
Electrical Contractors' Association
Electricity Association (EA)
Employer Forum on Statute & Practice
Employers Organisation for Local Government
Employment Law Bar Association
Employment Law Group Applicants' Representatives (ELGAR)
Employment Law Practitioners' Association
Employment Lawyers Association
Employment Tribunal Chairman
Employment Tribunal Members Association London Central
Employment Tribunal, Southampton
Employment Tribunals (Scotland)
Engineering Construction Industry Ass ociation

Engineering Employers' Federation
Equal Opportunities Commission
Equity
Fawcett Society
Food and Drink Federation
Ford Motor Company Limited
Forum of Private Business
Freedom to Care
Freshfields Bruckhaus Deringer
Gately Waring Solicitors
Geo Post
GMB Union
Graphical Paper & Media Union
Greater Manchester Low Pay Unit
HALDANE Society of Socialist Lawyers
Heating & Ventilating Contractors Association
Hyndburn and Rossendale Trade Union Council
Ilfracombe & District Trades Council
Industrial Society
Institute for Public Policy Research
Institute of Directors
Institute of Employment Rights
Institute of Professional Managers & Specialists (IPMS)
Involvement and Participation Association (IPA)
John Ellis Associates
John Lewis Partnership
John Stamford & Associates
Lancashire Association of Trade Union Councils
Law Centres Federation
Law Society
Law Society Local Government Group
Legal Action Group
Littlewoods PLC
Lloyds TSB

London Borou gh of Camden
London Central Employment Tribunals
London Electricity
Low Pay Unit & Morrish & Co
M J Carter Associates
Managerial and Professional Staffs Association
Manchester Chamber of Commerce
Menzies Group
METCOM Mechanical & Metal Tra des Federation
Metropolitan Police Service
Mid Yorkshire Chamber of Commerce and Industry
Middlesbrough Citizen's Advice Bureau
Manufacturing, Science and Finance Union (Rugby District)
National Association of Citizen's Advice Bureau (NACAB)
National Association of Teachers in further and higher education (NATFHE -North West Region)
National Association of Teachers in further and higher education (NATFHE)
National Council for One Parent Families
National Hairdressers' Federation
National Union of Rail Maritime and Transport Workers
National Union of Schoolmasters Union of Women Teachers
Nelson & Co
Newcastle Employment Tribunal Users Group
Newspaper Society
North Staffordshire Chamber of Commerce
Northern Employment Rights Netw ork
Northumberland County Council
Otley Citizens Advice Bureau
Oxford Employment Rights
Public & Commercial Services Union (PCS)
Public & Commercial Services Union (PCS/LCD Manchester Branch)
Peninsula Business Services Limited
Personnel Advi sory Services
Peninsula Employment Tribunal Members Association (PETMA)
Prison Officer's Association

Professional Association of Teachers
Public Concern at Work
Recruitment & Employment Confederation
Reed Executive PLC
Retail Motor Industry F ederation Ltd
Road Haulage Association
Roberts Menton Ltd
Royal College of Nursing
Royal National Institute for the Blind (RNIB)
Royal National Institute of Deaf People (RNID)
Rugby District Trades Union Council
Rydale Citizen's Advice Bureau
Scottish Association of Citizen's Advice Bureau
Scottish Employment Rights Network
Scottish Law Centre
Scottish Low Pay Unit
Selby District Citizens Advice Bureau
Select
Small Business Council
Society of Editors
Southampton & District Un employed Centre
Southampton City Council
Students' Advice Centre
Tayside Police
Thompson's Solicitors
Total Conflict Management
Transport Salaried Staffs' Association
Travers Smith Braithwaite
Trades Union Congress (TUC)
UNIFI
Union of Construction, Allied Trades and Technicians (UCATT -Scotland)
Union of Shop, Distributive and Allied Workers
UNISON
West Midlands Employment & Low Pat Unit

Wordwave
Yorkshire and Humber Regional Development Agency
Yorkshire and Humberside Low Pa y Unit

26 responses were received from individuals

ANNEX C

Employment Tribunal System Taskforce: Terms of Reference

1. The Employment Tribunal System Taskforce will make recommendations to the Secretary of State for Trade & Industry and the Lord Chancellor on how services can be made more efficient and cost effective for users, against a background of rising caseloads.

2. The Taskforce's overall objective is to ensure that the employment tribunal system reflects the needs of its users and the changing environment in which it operates. Building on best practice, the Taskforce will:

   - identify ways of improving operational efficiency and the scope for improving services including through electronic business;

   - advise on the need for new investment to meet any revised service objectives and performance measures;

   - consider how to improve liaison between all those involved in the system, including the judiciary and the administration;

   - examine possible improvements to the management of caseflow, and of case-management.

3. In coming to its conclusions, it will take fully into account the needs of users (in particular individual applicants and small businesses), and the views of the judiciary and the staff.

4. The remit of the Taskforce does not cover the primary legislative framework in which the employment tribunal system operates or the employment rights they enforce. But the Taskforce may wish to consider the operational aspects of implementing proposals set out in the 'Routes to Resolution' consultation paper, including operational aspects which could be implemented by secondary legislation. The Taskforce will pay due regard to judicial independence and devolved responsibilities.

5. The Taskforce will finish its work and report in Spring 2002. It will be chaired by Janet Gaymer.

ANNEX D

Contact Points

Advisory, Conciliation and Arbitration Service (ACAS)
Website: www.acas.org.uk
Helpline: 020 7396 5100

DTI Employment Relations
Website: www.dti.gov.uk/er

Court Service
Email: cust.ser.cs@gtnet.gov.uk
Telephone: 020 7210 8500

DTI Information and Library Services
Open Government and Data Protection Unit
Telephone: 020 7215 6226

Employment Appeal Tribunal (EAT)
Website: http://www.employmentappeals.gov.uk/
Telephone: 020 7273 1044

Employment Tribunals
Website: www.employmenttri bunals.gov.uk

Employment Tribunals Service (ETS)
Website: www.ets.gov.uk
Telephone: 020 7273 8666

Employment Tribunal System Taskforce
Website: www.employmenttribunalsystemtaskforce.gov.uk

Lord Chancellors Department
Email: general.queries@lcdhq.gsi.gov.uk

Partnership Fund
Website: http://www.dti.gov.uk/partnershipfund

Tailored Interactive Guidance on Employment Rights (TIGER)
Website: www.tiger.gov.uk

The Stationery Office (Mail, telephone and fax orders only)
General Enquiries: 0870 600 5522