

## Employment tribunals – changes ahead?

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Back in September 2018, a consultation was launched regarding potential reform within the Employment Tribunal (“Tribunal”) system. Fast forward more than 18 months later, the Law Commission has now published its 212 page report on [Employment Law Hearing Structures](#). The report by itself does not make any changes to the Tribunal system but rather sets out the Law Commission’s recommendations (all 23 of them) for consideration by the Government.

Some of the more wide-reaching potential reforms that are discussed within the report – such as giving Tribunals the jurisdiction to consider allegations of discrimination outside the employment sphere (through the creation of a single Employment and Equalities Tribunal), providing for “concurrent jurisdiction” with the civil courts (i.e. allowing a claimant to “forum shop” by choosing whether to bring non-employment-related discrimination claims in the Tribunal or civil courts), or allowing Tribunals to issue injunctions – do not make it into the Law Commission’s recommendations. Nevertheless, the recommendations that have been made are significant and, if implemented, are likely to increase the number of claims within an already resource-stretched Tribunal system.

The key recommendations include:

- Standardising the time-limit by which claims need to be presented in the Tribunal to six months. This is currently the time limit for equal pay claims but would see a substantial extension for other types of claims such as unfair dismissal and discrimination claims. The Law Commission did not reach a conclusion as to whether this 6 month limit would be inclusive or exclusive of any ACAS conciliation period – an inclusive period would give the benefits of certainty and much-simplified time limit provisions but could put claimants under pressure to choose between conciliation and filing a claim.
- For those claims which currently allow for extensions to the primary limitation period only where it “was not reasonably practicable” for the claim to be filed in time (such as unlawful deductions from wages or unfair dismissal claims), giving Tribunals the discretion to extend time where it is “just and equitable to do so”. This wider discretion already applies in discrimination claims and was felt by the Law Commission to be a more suitable test which would facilitate more “just and fair” outcomes. However, if implemented, it remains to be seen how many out of time decisions would still be dealt with as preliminary matters, and how many would be deferred to the substantive hearing, with Tribunals preferring to hear all matters before determining whether time limits should be extended. In addition to this change, the Law Commission recommended introducing a power to extend time where it is just and equitable to do so in equal pay claims.
- Extending the jurisdiction of the Tribunal in respect of breach of contract claims. At the moment, the Tribunal can only hear breach of contract claims where employment has terminated and where the claim arises or is outstanding on termination. The Law Commission has recommended extending jurisdiction to cover breach of contract claims (and employers’ counter-claims) where employment is continuing, and where the claim arises after termination. Although unlawful deductions from wages claims can already be brought during employment, there is a two-year limit which applies in cases where there is a series of deductions; this two-year limit would not apply in breach of contract claims. The Law Commission recommended raising the breach of contract compensation cap from £25,000 to £100,000 (and thereafter maintaining parity with the limit on financial claims in the county court) – this would be particularly relevant where higher-paid employees (or those with longer notice periods) choose to bring both unfair and wrongful dismissal claims in the Tribunal as it would allow more significant notice pay amounts to be claimed separately outside of the unfair dismissal compensation

cap. The Law Commission has also recommended extending the Tribunal's jurisdiction to hear breach of contract claims brought by workers (but not the genuinely self-employed).

- Allowing respondents in discrimination claims to claim a contribution from others who are jointly and severally liable (regardless of whether or not that person is a party to the original claim). In discrimination claims, Tribunals are not able to apportion compensation where two (or more) individuals are responsible for the same act of discrimination. The compensation awarded is joint and several and the claimant is free to pursue whichever respondent they wish for the full sum (usually the one with the deepest pockets). The Law Commission considered whether, instead, compensation should be apportioned such that the claimant has to pursue each respondent for their share. However, instead, it recommended that the paying respondent should be able to claim a contribution from the others responsible (whether they had been named as a respondent or not).

It remains to be seen which of the recommendations will be taken forward by the Government but the Law Commission's comments on the current Tribunal time limits (referred to as being "undesirably short") will no doubt be welcomed by those groups who are currently seeking temporary time-limit extensions for harassment and discrimination claims from the Lord Chancellor due to the impact of the coronavirus.

## Contact



**Mark Hickson**

Head of Business Development

[onlineteaminbox@brownejacobson.com](mailto:onlineteaminbox@brownejacobson.com)

+44 (0)370 270 6000

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