

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Employment in Hampshire County Council Committee
Date:	22 March 2012
Title:	Employment Law Review
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Report From:	Director of Human Resources

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1. Executive Summary

1.1 The purpose of this report is to provide an overview of the Government's Employment Law Review, and to highlight the potential implications for Hampshire County Council.

2. Contextual Information

2.1 In April 2011 the Government launched The Red Tape Challenge. This will run for two years until 2013. The challenge, which is part of the Government's wider Growth Review, aims to review over 21,000 statutory rules and regulations that are active in the UK. Everyone, including individuals, businesses and representative bodies, are invited to give their views. The Government's priority is to focus on the regulations that place the biggest burdens on businesses and society.

2.2 The Government set out in its Coalition Agreement that it will review employment and workplace laws, for employers and employees, to ensure they maximise flexibility for both parties whilst protecting fairness and providing the competitive environment required for enterprise to thrive.

2.3 Employment is, therefore, a theme in The Red Tape Challenge and the Government are considering comments through the Employment Law Review. Employers and employees are encouraged to comment and the Government have emphasised that they are not rebalancing employment law simply in the direction of employers. They say they will keep the necessary protections in place to protect employees and any

changes are not an attempt to give businesses an easy ride at the expense of their staff.

- 2.4 The Red Tape Challenge breaks employment legislation into 4 sub-categories:

Compliance and Enforcement

Regulations that aim to ensure effective enforcement of rules such as the national minimum wage, the 48 hour working week etc. so that both employers and employees have confidence in the framework.

Letting People Go

Regulations that govern how employers can end the employment of staff.

Managing Staff

Regulations that look at issues that employers face in managing staff such as flexible working, and set a framework for how employers manage their staff.

Taking People On

The regulations that govern how employers can recruit staff.

- 2.5 The Government has also published a discussion paper "*Flexible, Effective, Fair: promoting economic growth through a strong and efficient labour market.*" The paper sets out the Government's vision for a strong and efficient labour market, and derived from this vision, the principles that are guiding the Government's approach to the labour market framework.

3. Actions to Date

- 3.1 Since the Employment law review was announced the Government have:

- **Consulted on a package of reforms to the Employment Tribunal (ET) system aimed at encouraging earlier resolution of disputes in the workplace and reducing the number of Tribunal cases.**

The consultation closed on 20th April 2011. Over 400 responses were received; 25% from individuals, 33% from businesses and their representative organisations and the remainder from the trade unions, Government agencies, charities, legal representatives and others.

The Government's response was published on 23rd November 2011. This confirms the proposals they intend to take forward which are:

- To require all individual employment disputes to go to the Advisory, Conciliation and Arbitration Service (ACAS) to be offered pre-claim conciliation before going to an Employment Tribunal.

- To look at ways to slim down and simplify existing dismissal processes including potentially working with ACAS to make changes to their Code, or supplementary guidance for small businesses.
- To increase the qualification period for unfair dismissal from one to two years with effect from 1st April 2012.
- Publishing a consultation on “protected conversations” which could allow an employer to discuss issues like retirement or poor performance in an open manner with staff without this being used in subsequent Tribunal claims.
- A further consultation on measures to simplify Compromise Agreements which will be renamed Settlement Agreements. (A Compromise Agreement is a legally binding agreement made between employer and employee in which the employee agrees not to bring a claim against the employer in return for a financial settlement to end their contract of employment).
- To appoint Mr Justice Underhill, former Head of the Employment Appeals Tribunal, to lead an independent review of the rules of procedure governing Employment Tribunals. This review will look to address concerns that Tribunals have become increasingly complex and inefficient over time and are no longer fit for purpose.
- To consult on the introduction of fees for anyone wishing to make a claim to an Employment Tribunal. The proposals will seek to transfer the cost burden from tax payers to users of the system and encourage claimants to seriously consider the validity of their claim. The consultation will seek views on two options. The first proposes a system that involves payment of an initial fee to lodge a claim, and a second fee to take that claim to a hearing. The second option involves payment of a single fee of between £200 - £600 for claims with a maximum award of £30,000. Those seeking a greater level of compensation would be required to pay an additional fee of £1,750.
- To consult on how and whether to develop a “rapid resolution” scheme which will offer a quicker and cheaper alternative to Employment Tribunal.
- Modifying the formulae for up-rating Employment Tribunal awards and statutory redundancy payments to round up to the nearest pound. It is anticipated that this will mean a direct net saving to business of £5.4 million per year.
- To close a whistle blowing case law loophole which allows employees to blow the whistle about their own personal employment contract.

- **Launched an Employer's Charter that reassures employers about what they can already do to deal with staff issues in the workplace.**

The Government says: "Advice and guidance on employment law often focuses on the rights of employees and what employers have to do to comply with their responsibilities. This focus can leave some businesses feeling they have lots of responsibilities but no rights, the balance is all in favour of the employee, and being afraid to take on and effectively manage their staff."

The Employer's Charter therefore aims to dispel some of the myths about what employers can and can't do in managing their workforce, what employers are entitled to ask, and what action they can take if there are problems.

- **Launched a review of the compliance and enforcement arrangements for those employment rights enforced by Government.**

The compliance and enforcement review is primarily concerned with the employment rights and related protections that are enforced by government agencies including the national minimum wage (it is proposed to merge 17 national minimum wage regulations into one set which will simplify the current regime), employment agency conduct regulations and the Working Time Regulations. The purpose of this review is to establish what scope there is to streamline the arrangements and make them more effective.

- **Removed the Default Retirement Age (DRA)**

The DRA was abolished with effect from 1st October 2011. Employers are therefore no longer able to compulsorily retire employees, other than where this can be objectively justified, for example, for those in high risk occupations such as air traffic controllers etc.

- **Commissioned an independent review of the system for managing sickness absence.**

On the 21st November 2011, the Government published the findings of a major review of the sickness absence system in Great Britain which was jointly chaired by David Frost, former Director General of the British Chambers of Commerce and Dame Carol Black National Director for Health and Work.

The review presents an analysis of the sickness absence system in the UK, the impact of sickness absence on employers, the state and individuals, and the factors which cause and prolong sickness absence and which in many cases mean that employees move out of work and on to benefits. The review also provides a critique of the current system and

the roles that healthcare professionals, employers and government services play. In summary the key proposals are:

- To revise government guidance on fit notes so that GPs advise whether an individual is fit to return to any work, and not just to their own job.
- To create a new Independent Assessment Service (IAS) to assess ill health. This is primarily aimed at small employers who do not have access to occupational health services and find it difficult to obtain information on an employees health and return to work.
- To create a new “job-brokering” service to support employees changing employer when their health needs cannot be accommodated by their current employer.

The Government have said they will respond to the review in the next few months.

- **Announced their intention to create a universally portable CRB check that can be viewed by employers instantly online, from early 2013.**

It is proposed that a Universally portable CRB check will be available to individual applicants who register and pay a fee, but will not be freely available to all.

4. Further Actions Announced

4.1 in May 2011, the Government announced two new areas to be reviewed:

- **Collective redundancy consultation periods**

Through the Employment Law Review employers have said that the current rules on collective redundancy consultation slow their ability to restructure effectively and can have a detrimental impact on workforce morale and productivity.

Therefore, from 23rd November 2011 – 31st January 2012 the Government made a Call for Evidence on collective redundancy consultation, including the link with TUPE legislation. The Government response is awaited.

- **Transfer of Undertakings (Protection of Employment) Regulations 2006**

Also from 23rd November 2011 – 31st January 2012, the Government ran a Call for Evidence on the effectiveness of the TUPE Regulations and how they might be improved. The Regulations implement a European Directive but the Government is concerned that some businesses believe

they are overly bureaucratic. If the Call for Evidence points to the need for change then a formal consultation on any proposed changes will take place in 2012.

5. The Growth Review

5.1 In November 2010 the Government set up the Growth Review. The Growth Review has called upon business and industry to challenge Government departments on the measures they are taking to allow the private sector to flourish.

5.2 As part of the Growth review the Government have:

- Announced a moratorium on all new domestic legislation, including employment law, for micro businesses (employing less than 10 staff) and start-ups for a period of three years that began on 1st April 2011.
- Repealed the planned extension to the right to request flexible working to parents of 17 year olds.
- Decided not to bring forward the dual discrimination provision in the Equality Act.
- Decided not to extend the right to request time to train to companies with fewer than 250 staff.

6. The Implications of the Employment Law Review for Hampshire County Council

6.1 The implications of the Employment Law Review, for HCC, are set out in appendix one.

7. Recommendations

7.1 It is recommended that Employment in Hampshire County Council Committee:

- a) Note the Government's proposals in relation the Employment Law Review.
- b) Note the potential impact on the Council and that Hampshire County Council's employment policies will updated, as necessary, in response to any changes in employment legislation.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

<i>Hampshire safer and more secure for all:</i>	no
Corporate Improvement plan link number (if appropriate):	
<i>Maximising well-being:</i>	no
Corporate Improvement plan link number (if appropriate):	
<i>Enhancing our quality of place:</i>	no
Corporate Improvement plan link number (if appropriate):	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1 Any changes to HCC employment policies which result from the Employment Law Review will be subject to an Equality Impact Assessment to ensure they are free from bias in accordance with the protected characteristics set out in the Equality Act.

2. Impact on Crime and Disorder: N/A

3. Climate Change:

3.1 How does what is being proposed impact on our carbon footprint / energy consumption? N/A

3.2 How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

Appendix One

Proposal		Implication for HCC	Impact for HCC
1	Reforms to the ET system		
	All employment disputes to go to ACAS to be offered pre-claim conciliation before going to an ET.	So far in the financial year 2011/12 HCC has received 41 new ET claims. 11 of these were successfully defended by HCC’s Employment Law Team and 12 were settled prior to ET using ACAS. The remaining 18 are ongoing.	Low
2	Slim down existing dismissal processes, including potentially making changes to the ACAS Code.	HCC is currently reviewing our misconduct and incapability dismissal procedures to make these as streamlined as possible. Any change to employment legislation, which allows for further streaming, will therefore be welcomed.	Medium
3	Increase the qualification period for unfair dismissal from 1 – 2 years with effect from 1 st April 2012.	HCC’s dismissal procedures: misconduct, incapability and ill-health, will be amended to allow for a simplified dismissal procedure during the first two years of service. (These currently contain simplified processes for the first year). N.B. Equality Act claims are not subject to a qualifying period and will therefore still be able to be made in the first two years of employment.	Medium/High
4	Consultation on “protected conversations”.	HCC currently uses “without prejudice” discussions, to agree a severance payment subject to a Compromise Agreement, to terminate employment in cases which are too costly to resolve through normal employment procedures.	Medium
5	Consultation on measures to simplify Compromise Agreements.	For the “without prejudice” rule to apply the employee must have genuinely consented to the discussion being “off the record”, there must be a pre-	

		<p>existing dispute between the parties (or the contemplation of litigation) and the discussion must be a genuine attempt to settle the dispute.</p> <p>Any simplification of these rules would be welcomed by HCC, particularly if the change meant that protected conversations could take place prior to a dispute arising or becoming costly to resolve.</p>	
6	An independent review of the rules of procedure governing ETs.	Any simplification of the rules would be welcomed by HCC.	Low
7	Consultation on the introduction of fees for making an ET claim.	HCC operates sound employment practices and the number of ET claims received are already low. This is therefore likely to have little impact.	Low
8	Consultation on the development of a "rapid solution scheme as an alternative to ET.	Please see 1, above.	Low
9	Modifying the formulae for up-rating ET awards.	Please see 7, above	Low
10	Close a loophole in the law which allows employees to blow the whistle about their own contract of employment.	This would be welcomed by HCC as it will restrict the ability of employees to add a whistleblowing claim to another claim such as unfair dismissal.	Low
11	Launch of an Employers Charter	HCC currently operates sound employment practices in respect of all the issues covered by the Charter.	None.

12	<p>Review of the compliance and enforcement arrangements for employment rights enforced by government.</p>	<p>Any simplification of the minimum wage regulations would be welcomed by HCC, although the numbers of staff employed on the minimum wage is low.</p> <p>In line with the Working Time Regulations HCC currently allows some workers to opt out of the 48 hour per week working time limit, were this is approved by their manager. However, the numbers “opting out” are low and any change to the 48 hour working week is therefore likely to have minimal effect on HCC.</p> <p>The Conduct of Employment Agencies and Employment Business Regulations govern the way employment agencies and employment businesses conduct their relationships with their clients and workers. There is also a wealth of case law in this area and any simplification of the current regulations would be welcomed by HCC.</p>	<p>Low</p> <p>Low</p> <p>Low</p>
13	<p>Removal of the Default Retirement Age</p>	<p>Since 1st October 2011, in compliance with the legislation, HCC has operated without a default retirement age. To date this has had little impact although a greater impact may be experienced in future years if employees choose to continue working beyond pensionable age.</p>	<p>Low/Medium</p>
14	<p>Review of the sickness absence system in Great Britain.</p>	<p>The proposed changes to the “fit note” system are particularly welcomed by HCC as this will require GPs to provide guidance as to whether sick employees could carry out some of their duties, rather than remaining at home on sick pay.</p> <p>The Independent Assessment Service will be primarily aimed at small employers. HCC has it's own Occupational Health Service, and this proposal is therefore likely to have minimal impact.</p> <p>Similarly, whilst the proposal for a “job-brokering” service may be of some assistance to HCC, HCC already operates an effective redeployment</p>	<p>Medium</p> <p>None / Low</p> <p>Low</p>

		process for employees who, for health reasons, need to be redeployed to an alternative post.	
15	Create a universally portable CRB check.	Universally portable CRB checks will only be available to those individuals who register and pay a fee. The number of job candidates who may take up this option is not yet known but is not anticipated to be high.	Low
16	Consultation on collective redundancy periods.	HCC has successfully delivered an efficiency programme involving some 1050 voluntary, and 33 standard scheme redundancies, to date, and has complied with the current legislation on collective redundancy consultation without difficulty. Whilst any simplification of the legislation in this area would be welcomed, HCC will want to ensure that we continue to adopt best practice both in terms of the length of time allowed, and in terms of our approach to consultation, in respect of any employees who are facing redundancy.	Low
17	Consultation on simplifying the TUPE Regulations	The TUPE Regulations are complex in themselves, and are further complicated by a wealth of case law. Any simplification would therefore be welcomed by HCC, particularly in relation to new models of service delivery, such as shared services, where the potential for TUPE transfers into, or out of, the organisation is likely to increasingly become an issue.	Medium/High – depending on the number of TUPE transfers.
18	Moratorium on new legislation for businesses employing less than 10 staff.	Not applicable to HCC.	None.
19	Repeal of the planned extension of the right to request flexible working to parents of 17 year olds.	An employee who has worked for an employer for 26 weeks or more, and who is the parent of a child under the age of 17, a disabled child under the age of 18, or who has caring responsibilities for an adult aged 18 or over, is entitled by law, to have a request for flexible working considered. HCC complies with this statutory requirement and, in practice, also accepts	Low

		requests for flexible working from employees without these responsibilities.	
20	Not to bring forward the dual discrimination provision in the Equality Act.	The dual discrimination provisions would have allowed claimants who believed they had been treated less favourably because of a combination of two protected characteristics to bring a combined claim. The removal of this proposal is a welcome development.	Low/Medium (Please read in relation to 3, above).
21	Not to extend the right to request time to train to companies with fewer than 250 staff.	Not applicable to HCC.	None.