

Social Security Minister's response to the Recommendation of the Employment Forum on the "Jersey Employment Tribunal; Costs and Vexatious Claims"

Introduction

Prompted by concerns that employers were incurring unfair expense and inconvenience because employees have 'nothing to lose' by submitting a spurious application to the Tribunal, I asked the Employment Forum to review the matter of 'vexatious' claims. In particular, I asked the Forum to consult on whether the Employment Tribunal should have the power to order that one party makes a payment in respect of the tribunal costs incurred by another party.

The Forum published a White Paper in 2010 which made proposals that were intended to provide a balance between deterring genuinely vexatious Tribunal claims, whilst not deterring genuine claims. The Forum considered a number of additional suggestions to deter vexatious claims including; an application lodging fee, a requirement for an applicant to pay a deposit to pursue their claim to full hearing, and the power for the Tribunal to award legal and other costs.

The Forum was of the view that with some minor improvements to the Tribunal case management procedure, and measures to increase awareness of procedures to dispose of vexatious claims at an early stage in the process, it is not necessary to introduce the power to award costs at this time.

This report is my response to the Forum's recommendations. The Forum's recommendation is available in full on the website¹.

Social Security Minister
12 August 2011

Forum recommendations

The Forum recommended that the following three recommendations would assist in reducing or deterring vexatious claims;

1. The Tribunal should continue to manage cases via Interim Hearings (where appropriate) as early as possible in the process to avoid the issue of mounting legal costs, and that the grounds on which the Tribunal will consider striking out a claim must be clarified.
2. The Tribunal should publicise information about the grounds for requesting an Interim Hearing, including its purpose, the matters that can be dealt with and orders that can be made at the interim hearing, as well as formalising the rules and procedures that the Tribunal already operates under.

¹

www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/ID%20Employment%20Forum%20Costs%20Recommendation%2020101220%20JS.pdf

3. The Tribunal should clarify the support that it may provide to either party in respect of the procedures and the hearing.

Minister's response

The Minister accepts the Forum's recommendations and has suggested that the Employment Tribunal Chairman ensures that more detailed information is provided on these matters, in writing, to be publicly available as well as being provided to Tribunal users. This could be achieved via some simple changes to guides, letters and forms to provide more detailed information and give it more prominence.

The Minister agrees with the Forum's conclusion that the value of such changes could be assessed in terms of user awareness and has proposed that measures be put in place by the Employment Tribunal to undertake a user review of processes and powers, monitoring the frequency and appropriateness of the use of Interim Hearings and by reporting in more detail in the Tribunal's Annual Report.

The Forum had also concluded that *"the power to reduce an unfair dismissal award where an employee has contributed to their dismissal is new to the Employment Tribunal and a review will determine where this has had an impact on claims."* The Minister notes with interest the July 2011 case of *Uwins v C Le Masurier*, in which the Employment Tribunal decided by a majority decision that it would be just and equitable to reduce the unfair dismissal award by 65% in the circumstances. Those circumstances included; abuse of process, ignoring advice from JACS on claims that were unlikely to succeed and bringing claims that the Respondent had agreed to settle by agreement, thus incurring inconvenience and expense to the Respondent.

The Minister also notes that, in the context of the cost of legal representation, the Deputy Chairman commented in the written notification of the *Uwins v C Le Masurier* Tribunal's decision that *"the Tribunal is quite willing to deal with litigants in person and it will always assist them as far as possible in presenting their case."*

Costs award

The Minister had directed the Forum to consult on whether the Employment Tribunal should have the power to order that one party makes a payment in respect of the tribunal costs incurred by another party.

On the basis of the comments received during consultation, the Forum concluded that giving the Tribunal the ability to award costs would not necessarily reduce the number of vexatious Tribunal claims and that provision should not be made at this time. The Forum accepted however that, subject to a wider review of Employment Tribunal procedures, the Minister might conclude that it is necessary to introduce a limited power to award costs in the future.

The Minister accepts the Forum's reasons for rejecting other suggestions to introduce an element of a financial stake to a Tribunal claim, including a requirement to pay a small fee on lodging a claim, or a deposit to pursue a claim to full hearing

where the Tribunal has decided at an Interim Hearing that the claim has little reasonable prospect of success.

Conclusion

The Minister considers that the Forum's recommendations clarify that procedures are in place that should be developed and enhanced to deter vexatious claimants, and that there is no immediate requirement to introduce complex new procedures or legislation.

The Minister notes that there may be an opportunity to seek an independent expert to review the Employment Tribunal in 2011-2012, subject to resources.