



**Unite the Union response to Ministry of Justice consultation on  
TRANSFORMING TRIBUNALS: IMPLEMENTING PART 1 OF THE TRIBUNALS  
COURTS AND ENFORCEMENT ACT 2007**

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**This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. Our members work in a range of sectors including manufacturing, financial services, print, media, construction, local government, education and not for profit.**

**The response focuses on employment tribunals and the employment appeal tribunal.**

**Executive Summary**

These are the areas of primary concern to Unite in relation to employment cases:

- The potential not to recognise the distinct nature of employment cases and the necessity for a separate pillar in respect of such cases
- “Cross-ticketing” – whereby the members of one type of tribunal could sit on another tribunal
- The dilution of the role and status of lay members of employment tribunals and employment appeal tribunals
- The development of adverse costs orders discouraging claimants, but not businesses
- The extent of involvement of tribunal staff in decision making.

## List of Questions and Responses

### Chapter 7: Overview of Tribunal Structure

#### Assignment

Question 1. **Do the proposals on assignment of judges and members strike the correct balance between maintaining judicial expertise and encouraging judicial career development?**

Comments:

**In relation to cases before an ET or EAT cases, the judges should be qualified and specialist. Unite believes there should be increased specialisation, for example in relation to equal pay cases. Such specialisation has reaped rewards in other areas, and in particular in Master Whittaker's approach to mesothelioma cases.**

**In ET and EAT cases lay members are chosen by reference to their expertise and they should continue to sit in those tribunals.**

**Employment law rapidly changes, and the issues are often complex. Work cases are generally brought between parties with an employee or worker as claimant and employer as defender.**

**It follows that Unite is believe that cross-ticketing with non-employment tribunals would be very damaging. Those who adjudicate now in employment cases should not be expected to waste their talents elsewhere and those who adjudicate in other tribunals will not have the requisite expertise.**

#### Proposed Chambers Structure

Question 2. **Do you agree with this general approach for Chambers?**

Comments:

**Unite believes that ETs and the EAT should remain a separate pillar. No decisions should be made affecting the running of employment cases (such as in relation to the rules), nor concerning employment tribunal jurisdiction, which could tend to affect the special status of employment cases.**

Question 3. **Is the allocation of jurisdictions to Chambers the right one?**

Comments:

**See answer to question 2. above.**

### Chapter 8: The Upper Tribunal

#### Structure of the Upper Tribunal

Question 4. **Do you agree with the proposed three-chamber structure for the Upper Tribunal?**

Comments:

**The EAT should remain as the tribunal taking appeals from an ET and remain separate from the Upper Tribunal.**

#### Location

Question 5. **Do you agree with this approach to where the Upper Tribunal is located?**

Comments:

Unite believes that the EAT could sit (with specialist judges and lay members) in a suitable venue and with appropriate support staff at locations other than London and Edinburgh.

#### **Jurisdictions of the Upper Tribunal**

Question 6. Do you agree with the proposals for transferring existing appeal rights?

Comments:

**Unite has no specific comment to make.**

Question 7. Are there other appeal rights not listed?

Comments:

**Unite has no specific comment to make.**

#### **Proposed Changes to and Exclusions from Appeals**

Question 8. MHRT. Do you agree?

Comments:

**Unite has no specific comment to make.**

Question 9. SENDIST. Do you agree?

Comments:

**Unite has no specific comment to make.**

Question 10. PAT. Do you agree?

Comments:

**Unite has no specific comment to make.**

Question 11. CST. Do you agree?

Comments:

**Unite has no specific comment to make.**

Question 12. Lands. Do you agree?

Comments:

**Unite has no specific comment to make.**

Question 13. Transport. Do you agree?

Comments:

**Unite has no specific comment to make.**

#### **First Instance Jurisdiction of the Upper Tribunal**

Question 14. Which would be the appropriate option for the Information Tribunals work?

Comments:

**Unite has no specific comment to make.**

### **Chapter 9: Review of the Role of Non-Legal Members**

#### **Appointments and Tribunal Composition**

Question 15. **Do you agree that this is the right approach to tribunal composition?**

Comments:

**Unite notes that the consultation paper comments that** “Members of the Asylum and Immigration Tribunal and the Employment Tribunals will become *ex officio* members of the First-tier Tribunal by virtue of sections 4(3)(c) and (d) and 5(2)(d). Similarly, members of the Employment Appeal Tribunal and the AIT will become *ex officio* members of the Upper Tribunal (by virtue of section 5(2)(c) and (d)). It is these provisions that will allow members to be pooled together and deployed across jurisdictions in the same way as tribunal judges.”. **We do not agree with members of tribunals being pooled and deployed across jurisdictions, if this involves ETs or the EAT.**

**The current rules relating to ET chairs or judges sitting alone should not be extended.**

**The role of lay members in relation to ETs and the EAT should be retained and not diluted or diminished as expressed elsewhere.**

**Lay members have experience of the world of work specifically to enable them to assist the legal member of the tribunal in applying the law in the context of events that occur at work and which lead to the case being brought. This has often been referred to by the judiciary.**

Question 16. **Should there be different principles for certain Chambers or appeal rights, and if so, why?**

Comments:

**See responses above. Unite has no further specific comment to make.**

#### **Categories of Non-Legal Member**

Question 17. **Do you agree that these are the appropriate categories for members?**

Comments:

**See responses above. Unite has no further specific comment to make.**

#### **Titles**

Question 18. **What should the description be?**

Comments:

**We agree with those who have suggested “employment member” in relation to ETs and the EAT.**

Question 19. **Would the term member suffice?**

Comments:

**See response to 18. above. Unite has no further specific comment to make.**

### **Chapter 10: Tribunal Procedure**

#### **Improving the Service to Tribunal Users**

Question 20. **Do you agree that where a function of a tribunal is carried out by staff there should always be right of access to a judge?**

Comments:

**Yes.**

Question 21. **Are there any functions of a tribunal which should never be performed by staff, whatever the safeguards?**

Comments:

**Employment Tribunal staff should not make decisions as to jurisdiction, liability or remedy.**

### **Costs**

Question 22. **Are these the right criteria against which a costs regime should be judged? Is there good reason for inclusion of other principles?**

Comments:

**The current regime for ETs and the EAT provides for frivolous and vexatious claims to be weeded out and the extent to which one party can be penalised in costs should not be extended for the very real fear that claimants will be deterred, when employers, particularly large employers, including local authorities and the like, do not face the same impact and are often blasé about the consequences.**

## **Chapter 11: Tax Appeals Modernisation**

### **Tax Appeals Modernisation**

Question 23. **What features of the present system should be retained in the new one?**

Comments:

**Unite has no further specific comment to make.**

Question 24. **What are your views on the type of cases that could be heard by nonlegal members?**

Comments:

**Unite has no further specific comment to make.**

Question 25. **What types of case should go straight to the Upper Tribunal?**

Comments:

**Unite has no further specific comment to make.**

Question 26. **What types of case will require early case management?**

Comments:

**Unite has no further specific comment to make.**

Question 27. **What are the types or features of cases that you think should be subject to an award of costs?**

Comments:

**Unite has no further specific comment to make.**

Question 28. **How do you think the award of costs should operate in practice?**

Comments:

**Unite has no further specific comment to make.**

## **Chapter 12: Land, Property and Housing**

### **Land, Property and Housing**

Question 29. **Do you agree that this is the right long-term vision for tribunals dealing with land, property and housing? If not, do you have an alternative?**

Comments:

**Unite has no specific comment to make.**

Question 30. **Do you agree that the jurisdictions of the RPTS and the ALR should be transferred to the First-tier Tribunal and their administration to the Tribunals Service?**

Comments:

**Unite has no specific comment to make.**

### **General and conclusions**

**In addition to the comments above, Unite believes that not only the members of tribunals dealing with employment cases need to be specialist and remain focused on such cases, but that the staff who serve them must also be specialist. Further, the facilities for hearings must reflect the distinct nature of such cases even down to the need for rooms for claimants and respondents and suitable facilities for representatives and their clients.**

**Unite would also wish to see consultation on the selection process of members of employment tribunals to deal with the problem that over recent years, there has been a diminution in the selection of employee side members and an increase in those who reflect the employers' side.**

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