



ASLEF Response to the BIS Consultation - Ending the employment relationship

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train drivers' union representing approximately 18,000 members in train operating companies and freight companies as well as London Underground and light rail systems.
2. ASLEF believes that settlement agreements carry unintended consequences for both employers and employees. Very often they can be open to abuse by employers. The Government's proposals rather than solving many of the issues raised within the consultation will in fact create disputes and confusion. Rather than reducing litigation they will increase discrimination claims.
3. Firstly ASLEF would contend that many of the conversations and resolutions envisaged by this consultation already take place with employers. Both trade unions and employers initiate such discussions and very often situations can be resolved without the need to go to a tribunal.
4. The proposals within the consultation are ill-conceived and they have been drafted on the basis that an offer is made and accepted in short order without fuss. They fail to adequately consider the alternatives and how these proposals fit within a broader employment rights, and industrial relations context. ASLEF therefore believe that they would create all sorts of unintended consequences for employer and employee alike, and that these would cause the uncertainty, delay and expense that these measures are intended to avoid.

5. ASLEF can see some benefits to protected conversations in the context of capability and conduct but remains concerned by their use in other contexts.
6. It could create major issues with regards to redundancies. For example an employer wants to make redundancies, but wishes to avoid the 'red tape' of fair selection criteria and consultation. It also wants to lose specific individuals and avoid the contractually enhanced redundancy payments. It therefore calls the identified employees into a protected conversation, conceals the fact that a redundancy situation exists and successfully persuades them to go at a fraction of the cost.
7. It could also lead to constructive dismissal but without the vital evidence being available to a tribunal. For example a manager has taken a personal dislike to an employee. He institutes a protected conversation and makes it clear to the employee that they have no future in a way which would be a fundamental breach of mutual trust and confidence. He makes them an offer in terms which he knows the employee will not accept and sits back and waits for the employee to leave of their own accord. This would clearly be a case of unfair dismissal but no evidence could be put forward.
8. ASLEF fails to see any way in which employees could exploit a protected conversation. The union therefore feels that should the government pursue this idea, it must be restricted to capability and conduct.
9. The reason for offering the settlement and the actual offer should be clear and set out in writing.
10. ASLEF believes that it is wrong to ask whether a cap of 12 months' pay would encourage a faster resolution of disputes as it assumes that the workforce share the philosophy of the commoditisation of rights. The union

also believes that a cap would not lead to more realistic perceptions of tribunal awards for both employers and employees.

11. The proposal is, in our view, simplistic and naïve and does not make sense even on its own logic. The proposal is based on the fact that the median unfair dismissal award in 2011-12 was £4,560. Even applying the median wage stated in the consultation of £26,000 this is just nine weeks pay. That figure ignores the role of the Basic Award so the Compensatory Award figure is actually much less. It is difficult to see how setting up an expectation of recovering 5.7 times the average award is much better than one of recovering 15.8 times.
12. Where an employee has a clear claim, with losses clearly in excess of the maximum, and the employer's expectations are realistic, then earlier resolution is a reasonable expectation. However, if expectations are not realistic, either for the previously mentioned reasons, or because the figures for the maximum award continue to be a 'one size fits all' approach, we do not think that settlement is likely to come earlier as a result of this proposal.
13. ASLEF therefore rejects the prospect of a cap on compensation of 12 months' pay. The union feels that it fails to realise that expectations are more complicated and subtle than the reduction of employment rights to a fixed-price menu.
14. In reality very few claimants will be affected by the proposals. The official statistics demonstrate this. However, for those who are impacted by them the effects will be significant and long lasting. There are numerous examples of employees whose lives have been so blighted by their employer's wrongdoing that their losses significantly exceed 12 months wages. Not only will they lose out on the compensation that they are morally due, but the wrongdoer has been allowed to limit the effect of their

wrongdoing, thus leaving them free to repeat that behaviour. This is not acceptable.

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