

The British Chambers of Commerce welcomes the consolidation of existing equalities law; but is concerned about the new burdens created by this Bill.

## Summary

**As a whole, the BCC is disappointed with the Single Equalities Bill. Whilst we support the intentions behind the legislation, we think that the mechanisms it uses will increase the administrative burden on business, and furthermore are unlikely to have the desired impact in terms of equality.**

We welcome the Equality Bill as a consolidation exercise and would like to see this replicated in other areas of employment law. However, the purpose of the bill is not just one of simplification, because of the extra clauses that have been added to it, further complicating an already complex area of law. Because of the recession, there has been much debate about whether this is the right time for an Equality Bill. Our argument is not that equality should be postponed due to the downturn, but that many of the measures in the bill will increase the administrative burden on businesses as well as failing to make gains in terms of equality.

Businesses already struggle with employment law. The Government needs to make sure that they do not discourage job creation at this important time by putting employers and potential employers off recruiting altogether.

## Background

In summary, the Bill includes clauses to:

- bring all the existing discrimination law, which has grown organically over many years, into one single Bill;
- allow firms to use positive action to encourage recruitment from groups underrepresented in their workforce;
- encourage all large firms to publish gender pay data, including powers to make this compulsory if the Government is not satisfied with the progress on gender equality;
- ban secrecy clauses in the workplace which prevent employees from disclosing pay rates to other staff;
- allow employment tribunals to make broader recommendations, which an employer would be obliged to act upon, or face penalisation in future cases;
- place a duty on public authorities to use procurement as a lever to promote equality outcomes.

<sup>1</sup> BCC Workforce Survey April 2009

<sup>2</sup> Ibid.

<sup>3</sup> ONS



## Issues for Businesses

### Simplification of discrimination law

In the long term, this will make it easier for businesses to understand the law and we support this consolidation. In a recent British Chambers of Commerce (BCC) survey,<sup>1</sup> nearly 50% of micro-businesses said they found navigating employment law difficult. As there will be initial familiarisation costs, the prompt issuing of clear and easy-to-use guidance will be crucial. The Equality and Human Rights Commission (EHRC) has the responsibility to produce this guidance but the BCC believes that Businesslink should be used as the primary vehicle to disseminate this information to businesses.

### Positive Action

It is unlikely that the majority of businesses will use this provision in recruitment. Employers want to hire the best person for the job. For example, sometimes that will mean taking into account criteria such as the gender ratio in the office, or the nature of the community that a new salesperson will be selling into. They already take these considerations into account, and we do not believe this new provision will change that.

However, there is a risk that this will further complicate the law surrounding the hiring of staff. Again, the guidance here will be key. For example, if a business attempts to use this power but then finds that they have not used it in the correct situation (i.e. when two candidates are 'as qualified' as each other), they could find themselves in front of a tribunal.

The current language around this is not helpful. For example, the bill uses the term 'as qualified'; the guidance notes use, 'equally qualified'; and, the Solicitor-General, Vera Baird MP often uses the language 'equally acceptable.' These terms are not all the same and in the interests of certainty, and to ensure consistency with EU law, 'equally qualified' should be the only term used. We therefore support the Conservative amendment to the Bill on this matter.

## Gender pay audits

Clause 75 in the Bill allows the Government to make pay reporting in a specified form mandatory for large businesses.


If an employee believes they are being discriminated against on the grounds of gender, there are several processes and remedies an employee can seek: firstly, they could launch an equal pay claim; secondly, they could ask their employer to fill in an equal pay questionnaire to enable them to get information about their pay compared to their colleagues; and finally, the EHRC can launch an enquiry into an entire sector as they have done on several occasions. We therefore dispute the need for companies to undertake these audits to help decrease the gender pay gap.

No companies should be forced to carry out these audits, although we applaud companies who choose to actively work to reduce any gender pay gap. Compulsory audits would be expensive and will result in a 'tick box' attitude to compliance. It should also be noted that EHRC, the regulator of these audits, also did not support making them mandatory. Furthermore, in EHRC's recent response to Government Equalities Office's consultation on the public sector duty, they doubted the usefulness of public bodies having to report on a single median figure. At the very least, there should be an assurance in the Bill (rather than just in explanatory notes), that this power to compel private sector reporting cannot be used until 2013, at the earliest.

EHRC has consulted on what information businesses should have to make available, and in what form. The range of what they could ask businesses to provide is very large, from a simple mean of male and female pay, to a much more complicated matrix involving job evaluations. This latitude means Clause 75 could be very burdensome on business and we support the amendment to scrap it entirely.

### Secrecy clauses

The BCC believes that it is reasonable to ban secrecy clauses which are only used in a minority of workplaces. This will help to increase transparency.



<sup>1</sup> British Chambers of Commerce Workforce Survey April 2009



## Procurement

We dispute the premise that public money should be used as a lever to promote equality outcomes. Quality, value for money, and the impact on the economy should be the prime objectives when deciding who a contract should be awarded to.

We were very disappointed that the impact assessment to the Bill did not include an assessment of the costs derived from using the enabling power in the act. There has still been no economic assessment as to how these regulations will affect the private sector. The Glover Review and recent APPG Small Business report have both recognised the problems small businesses face in gaining public sector contracts. With £175bn of funds available, this money will be crucial in helping private businesses through this recession. The Government should be focusing on helping SMEs to access these contracts rather than putting more barriers in their way.

The Bill itself does not contain much detail about how public authorities will be expected to carry out this duty. However, we understand the regulations may include clauses to prevent businesses with one or more tribunal claims against them from applying for public contracts. Whilst we would support the exclusion of businesses that persistently discriminate from tendering, one employment tribunal claim should not disqualify a firm from procuring public contracts. At the very least a disqualification must be time limited so that a business that disciplines the line manager in question or that changes hands is not punished forever.

## Employment Tribunal recommendations

BCC does not support the extension of tribunals' jurisdiction to the wider workplace. Employers often tell us that they do not believe that tribunals always understand the business side of cases. With that in mind, it is difficult to see how a tribunal would be able to make broader recommendations regarding the workplace with the limited information they have from a specific case. These recommendations will either be so generic that it will be difficult to judge whether a business has taken them up, or relate very specifically to the one

case that may not be representative of the workforce as a whole.

The BCC is also concerned that a tribunal may find against an employer by taking into account a previous judgement, which would be fundamentally unfair. We would support a mechanism to help employers who have been found against at tribunal to improve their HR practices, but this clause is not the answer.

## Dual Discrimination

The BCC has consulted members extensively on this issue. There is widespread concern that this new provision will complicate discrimination law at a time when employers are already struggling to navigate existing employment law. The issue here is one of proportionality; the Government impact assessment acknowledges this legislation will result in only five additional successful claims<sup>2</sup> per year.

We believe this clause could be very burdensome for employers who face increased claims, greater complexity within claims, and the knowledge that many of them will be unmeritorious. Legal costs will also increase, as will the cost of settling unmeritorious claims.

The BCC has always maintained that this clause should be brought into law if evidence can be brought which shows a number of people are missing out on accessing justice because they cannot combine claims in this way. However, in the absence of this evidence we cannot support such a significant change to UK discrimination legislation.



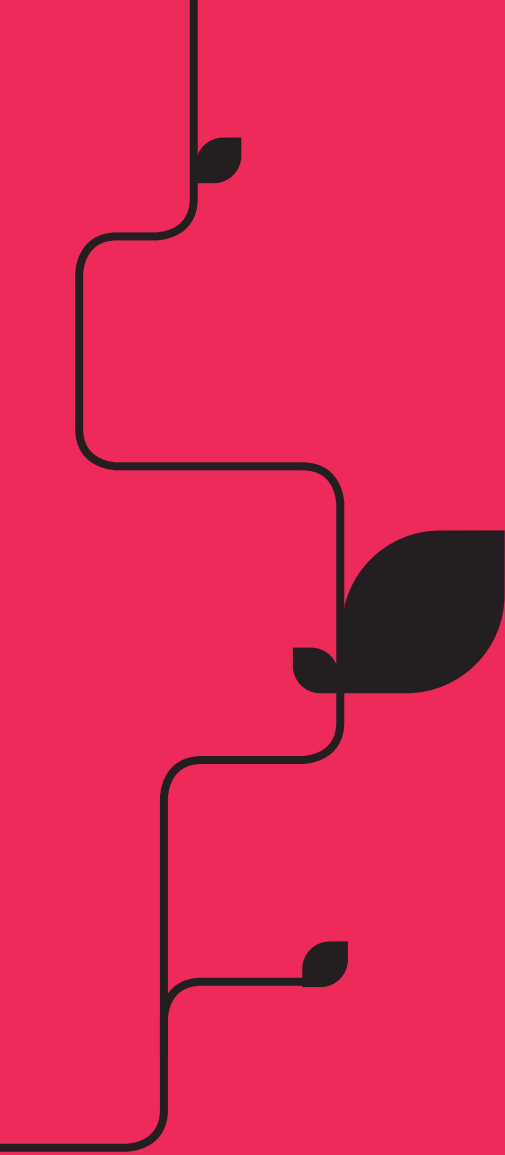
<sup>2</sup> GEO Multiple Discrimination Consultation pg46



## Representative actions

We are pleased that the Government has decided not to use the Equality Bill to allow representative actions at employment tribunal, but understand that amendments may be tabled on this issue. The BCC believes that this would be an unnecessary reform and goes against the principle that the tribunal system should be quick and easy for employees to bring claims themselves, and for employers to defend themselves. We have not seen any evidence that a number of people are missing out on accessing justice because UK law does not allow for representative actions in Employment Tribunals. Our concern is that representative actions in Tribunals would make cases more complex and require greater professional assistance, thus dividing up costs as is the case in the USA. If evidence comes to light suggesting that there are barriers to receiving justice due to the ban on representative actions then we will reconsider our position.





## Contacts

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