

## LAW AT WORK

## The UK weighs up the arguments for class actions in equality claims

The US has long had a ferociously litigious culture. In the employment sphere, the claims most feared by US employers are “class actions”, which account for a significant percentage of all employment claims and are often of an extraordinarily high value. In a number of cases, awards of over \$100 million (£53m) have been made against employers because of class actions.

Traditionally, these lawsuits have taken one of two forms: action by a third party, such as an equality commission or a litigation-hungry lawyer, on behalf of a group of unnamed individuals who share some defining characteristic, or action by a third party on behalf of a group of named individuals. In the UK, claims have to be filed for each individual claimant, but that could soon change.

The first sign that the government is seriously thinking of introducing class actions came recently when Harriet Harman, minister for women and equality, presented the *Framework for a Fairer Future* white paper, outlining plans for a new equality bill. The bill is designed primarily to strengthen and harmonise existing discrimination legislation, with the paper suggesting that the government might be considering whether to allow bodies such as trade unions or the new Equality and Human Rights Commission (EHRC) to take cases to court on behalf of individuals. As these class – or representative – actions would be a departure for the UK, the government has asked the Civil Justice Council, an advisory body, to gather evidence on the issue (see panel, right).

These developments follow on from last year’s consultation paper,

*A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*, which considered how other countries, in particular the US, approach class actions. At first, the government appeared to have rejected the idea of following the US model, even though it has some influential supporters. Citizens Advice said in its response to the consultation that “class actions... can be a cost-effective way of tackling systematic discrimination”.

There is little doubt that the financial, emotional and reputational costs of claims discourage some employees from pursuing genuine grievances. If, however, the EHRC or trade unions were to bring claims on behalf of employees, many of these obstacles would disappear.

There is, of course, another side to the argument. The CBI fears class actions would encourage weak and frivolous claims and undermine relationships between employers and both trade unions and the EHRC. Some employers undoubtedly fear that for every genuine employee whom class actions would assist, several spurious claimants would jump on the bandwagon.

However, advocates of class action say it would improve access to justice for those whose claims are too low in value to pursue individually. Other claimed advantages include cost-effectiveness for claimants and the efficiency of aggregating a large number of small claims into one case. Class actions would certainly ease the administrative burden on employment tribunals, which had to cope with around 44,000 individual equal pay claims in 2007.

Some reform is clearly needed to ensure Britain’s anti-discrimination laws are enforced. At the

Employment Lawyers’ Association’s recent annual conference, Anthony Robinson, the EHRC’s litigation director, highlighted the remarkably low numbers of successful discrimination cases in the UK – less than 5 per cent of those brought under each type of discrimination.

Many discrimination claims are, of course, settled before they reach a court or tribunal – but the same is true of unfair dismissal claims, which have a far higher success rate. Would class actions make discrimination claims more likely to succeed? It’s hard to say – but they appear to have the potential to make a difference.

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### KEY FACTS

- ◆ Class actions (or representative actions) are lawsuits taken by a third party on behalf of a group of individuals.
- ◆ In the US, these actions are taken by a third party either on behalf of a group of unnamed individuals who share certain characteristics or a group of named individuals.
- ◆ UK employment law does not currently permit class actions.
- ◆ The government has asked the Civil Justice Council to gather evidence on this subject. Interested parties can send their views to the Civil Justice Council at [cjc@judiciary.gsi.gov.uk](mailto:cjc@judiciary.gsi.gov.uk)