

Panel composition in the employment tribunals and the Employment Appeal Tribunal Acas response

11 April 2023

This is the Acas Council response to the [Senior President of Tribunals' consultation on panel composition in the employment tribunals and the Employment Appeal Tribunal](#).

Our response

Acas welcomes the opportunity of responding to the Senior President's consultation seeking views on how new powers to determine the composition of employment tribunals and the Employment Appeal Tribunal might be exercised.

As you will know, Acas is an independent statutory body which has the duty of promoting the improvement of employment relations in Great Britain. In carrying out this duty Acas offers impartial conciliation in all potential and actual employment tribunal cases. We therefore have extensive experience of how tribunals work at a practical level and how they are perceived by both claimants and respondents.

Side members have been a feature of employment tribunals since their establishment as industrial tribunals in the mid-1960s. Their inclusion was justified not only because of the legitimacy they were felt to bring to tribunal decisions but also because they brought direct knowledge and experience of how workplaces operated in practice which could help benefit the decision making process.

Acas of course accepts that the situation has changed greatly since then and side members are no longer used as extensively on employment tribunals or the Employment Appeal Tribunal as was once the case. Nevertheless, we feel that the original justification for their inclusion on tribunals still carries weight.

No one could argue that tribunal judges acting alone would not be able to reach a fair decision. But Acas believes that it is equally unarguable that experienced and knowledgeable side members bring valuable insights which can help improve the decision making process. We believe that this is particularly the case for more complex cases or those which include discrimination jurisdictions, where workplace and wider insights can add greatest value to that process.

Developing criteria for when to use side members on a panel is not easy and may result in a 'one size fits all' approach. Acas would therefore prefer the use of guidance from the employment tribunal Presidents for determining when or when not to have side members. This would have the advantage of allowing the decision to be made on a case-by-case basis taking account of its own particular facts and circumstances. In our view the guidance should be framed so as to allow the maximum use of side members consistent with the need to reach timely decisions and not unduly burden the public purse.

Acas recognises the need to modernise and adapt systems to meet new challenges and can therefore understand the proposals set out in the Senior President's consultation. We would, however, urge the Senior President when taking this consultation forward not to fatally undermine the important role that side members can play in both employment tribunals and the Employment Appeal Tribunal.