

Employment Tribunal claims and PIDA consultation response form

It is recommended this response form is completed online through survey monkey: <http://tinyurl.com/l9aetv>

Alternatively, you can send a completed response form to

etclaims.pida@bis.gsi.gov.uk

Please state if you are responding as an individual or representing the views of an organisation, by selecting the appropriate group on the consultation response form. If responding on behalf of a company or an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled. Please tick the box below that best describes you as a respondent to this consultation:

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	"Prescribed Person" under PIDA legislation
X	Other (please describe): the AJTC is a non-departmental statutory body. This response is made on behalf of the Council and represents the comments of its members.

The Administrative Justice and Tribunals Council (AJTC) welcomes the opportunity to comment on the proposed process for dealing with claims to employment tribunals involving claims under the Public Interest Disclosure Act 1998 (PIDA).

The AJTC is a non-departmental statutory body responsible for keeping under review the administrative justice system and the operation of listed tribunals, under the provisions of the Tribunals, Courts and Enforcement Act 2007 (the TCE Act). The TCE Act defines 'administrative justice system' as the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedure for making such decisions, the law under which such decisions are made, and the systems for resolving disputes and airing grievances in relation to such disputes. Employment tribunals are listed tribunals for the purposes of Schedule 7 of the TCE Act and as such are under the oversight of the AJTC.

The AJTC's overarching strategic objective is to focus, first and foremost, on the needs of users of the administrative justice system.

Responses to questions raised in consultation document

Question 1: Do you agree with the proposed process?

Yes [X] No []

If no, please explain why and describe any other better options

The AJTC broadly supports the proposed process as described in the consultation document, to send relevant extracts of a claim to the Employment Tribunal (ET) which involve 'whistleblower' allegations, directly to the relevant regulator in PIDA cases. The AJTC agrees that this process would enable PIDA claims to be investigated without imposing any additional burden on parties involved in an ET claim. However, the AJTC believes that the proposals should not be implemented without taking into account the potential impact on tribunal users and claimants. In particular, the stage at which the information is passed to a regulator could have a significant impact on both the progress and outcome of the claim.

While it is not clear from the consultation document how ET claims will progress once information is passed to the regulator to investigate a PIDA claim, it is understood that the investigation and outcome of PIDA claims are not expected to delay the corresponding ET proceedings.

However, the AJTC is concerned that conflicting findings may result from concurrent PIDA investigations and ET proceedings and that this may lead to some appeals to the Employment Appeal Tribunal (EAT), or cause further delays in the process. Moreover, a PIDA investigation which takes longer than the 42 day time-limit within which EAT appeals must be lodged could cause undue hardship for claimants, particularly if their claim form is forwarded to

more than one regulator. The AJTC believes that the implications for users of providing consent for their ET1 form to be forwarded to a regulator, need to be identified and explained at the beginning of the process, allowing users to make an informed decision about the claim.

The AJTC is also concerned that requiring claimants to provide consent at the lodgement stage of their ET claim form could deter some users from lodging a claim at all, particularly if claimants do not have access to guidance regarding the consequences of providing consent. A more appropriate step at which to request consent and to provide information to the relevant regulator is after the employer has filed their response to the ET3 form. This would also allow the regulator to have both sides' formal pleading.

Question 2: Do you agree with obtaining express consent of the claimant?

Yes [X] No []

If no, please explain why

The AJTC fully supports the proposal to obtain express consent from the claimant before any action which may separately impact on their claim is taken. However the AJTC has some concerns about the way in which consent will be obtained. The AJTC believes that the proposed method, requiring claimants to tick a 'yes' box on the ET1 claim form, incorrectly assumes a sufficient level of knowledge about PIDA claims, and the consequences of pursuing such action, amongst the general public.

While it is not clear from the consultation document what guidance will accompany the ET1 form to assist potential claimants to assess whether they wish to provide consent, the AJTC understands that it is intended to amend the guidance booklet. It is suggested that guidance on PIDA be included here and also disseminated more widely, including on the ET website.

The proposed amendment to the ET1 claim form is not sufficiently prominent to draw attention to the request for consent, nor does it adequately explain the potential effect on the user of providing consent. The AJTC suggests that the ET1 claim form (or as we would prefer, a separate form sent to the claimant following receipt of the ET3 form) should contain a separate section for the request for consent, setting out clear information about what investigation of a PIDA claim entails, particularly with regard to any impact it may have on the claimant.

Question 3: Are you content with the Statutory Instrument as drafted?

Yes [X] No []

If no, please explain why and detail the amendments you would wish to see

Question 4: Do you agree with a phased implementation?

Yes No

If no, please give your reasons.

The AJTC agrees that a phased implementation of the proposals within the consultation document is the best way to ensure that the system works effectively and without undue impact on tribunal users. The AJTC suggests that phased implementation should be used to run a pilot programme of the process, measuring the effectiveness of the procedures and the impact of the proposals on users.

Question 5: Do you have any further comments on what is proposed?

Yes No

If yes, please detail below.

The AJTC broadly supports the underlying aims behind the proposals to deal with ET claims involving PIDA allegations. It is however, important that the needs of tribunal users are adequately considered.

The AJTC is concerned that requiring claimants to provide consent at the lodgement stage of their employment tribunal claim form may deter some users from lodging a claim. In addition, the method of obtaining consent, in the form currently proposed in the consultation document, is not sufficiently prominent. The AJTC recommends that a more obvious tick box is incorporated into the relevant claim form, and that forms are accompanied by guidance which explains to claimants the implications of providing consent.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

We will publish all the responses received in this consultation unless you tick the box below.

Please treat my response as confidential

Department for Business, Innovation and Skills www.bis.gov.uk

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