

**LAW COMMISSION RECOMMENDS SPECIALIST HIGH COURT LIST
FOR EMPLOYEE COMPETITION CASES**

In a potentially significant development for employee competition litigation, the Law Commission, in a report published on 29 April 2020, recommends that a specialist “Employment and Equalities List” be established in the High Court for employment disputes, including restrictive covenant, breach of confidence, garden leave and team move cases.

Employment Law Hearing Structures: Report

The Law Commission’s 13th Programme of Law Reform included a review of employment law hearing structures. On 26 September 2018 it published a consultation paper. The consultation period closed on 31 January 2019, responses having been received from 72 consultees. On 29 April 2020, the Commission published a 212-page report “*Employment Law Hearing Structures*”, which sets out its 23 recommendations for reform. Happily, the main report is accompanied by a 26-page Summary.

The Report is wide-ranging and covers the jurisdiction of employment tribunals, both exclusive and concurrent, the Employment Appeal Tribunal and the High Court. Its recommendations include increasing the time limit for bringing employment tribunal claims to 6 months, replacing the “not reasonably practicable” test with the “just and equitable” test for extensions of time to present certain claims, increasing the contractual jurisdiction from £25,000 to £100,000 and many other important recommendations of general interest to employment practitioners. This note focusses on the Commission’s recommendations for High Court claims, particularly those concerning employee competition cases.

Allocating employment cases to judges with specialist expertise and experience

Chapter 10 of the Report discusses what measures might be adopted to ensure that cases concerning employment and/or discrimination law in the High Court are heard by judges with relevant specialist experience.

The Commission notes that, at present, an employment-related claim may be issued in the Queen’s Bench Division or the Chancery Division of the High Court and, in theory, come before any one of their 91 permanent judges or the large number of deputy High Court Judges, who may or may not have appropriate experience.

Whilst various proposals have been floated in recent years, such as a new “Employment and Equalities Court” or assigning employment cases to a particular division or creating a formal “specialist list”, these proposals face particular hurdles such as the need for legislation.

Another method of encouraging allocation to judges with appropriate experience is for an informal specialist list of cases to be created within a Division of the High Court as an administrative measure. An example is the Media and Communications List in the Queen’s Bench Division, which is widely regarded as successful.

An Employment and Equalities List

The provisional view expressed in the Commission's consultation paper was that an informal specialist "employment" or "employment and equalities" list should be established within the Queen's Bench Division. This view met with overwhelming support amongst consultees and is now recommended by the Commission.

Recommendation 22.

An informal specialist list should be established to deal with employment and discrimination-related claims and appeals within the Queen's Bench Division of the High Court.

Of particular interest to readers of this Bulletin is that the Commission recommends that employee competition cases are included in this list.

Recommendation 23.

The subject matter within the remit of the new List should be:

- (1) employees' claims for wrongful dismissal or other breach of contract where the sum exceeds the limit on tribunals' jurisdiction under the Extension of Jurisdiction Order;
- (2) employees' equal pay claims;
- (3) **employers' claims to enforce covenants in restraint of trade;**
- (4) **employers' claims for breach of confidence or misuse of trade secrets;**
- (5) employers' claims against trade unions for injunctions to prevent industrial action or for damages following what is alleged to be unlawful industrial action;
- (6) **claims arising in "employee competition" cases such as team moves and garden leave;**
- (7) appeals from the country court in claims for discrimination in goods and services; and
- (8) appeals from the county court in employment-related cases

Conclusion

The recommendation for a specialist "Employment and Equalities List" for employee competition cases in the High Court is a welcome development. It is likely that the list would be supervised by a High Court Judge who is a recognised specialist in the field. In light of recent appointments to the High Court Bench from the employment bar, there will be no shortage of suitable candidates for that role.

The Report and Summary can be found [here](#).

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