image in my hands’ – Tony Blair.

19: Upon an Iranian bank. The Treasury imposed an anti-terrorist sanction imposed against Bank Mellat and said that the was ordered to remove sanctions accounted for their banks' secret intelligence was irrelevant. The bank was said to have been financing groups involved in Iran's nuclear programme.

24: A former undercover police officer reveals how the Metropolitan police ran an operation designed to 'smeared' the family of Stephen Lawrence as well as his friend DuWayne Brooks and campaigners who supported them. Peter Francis claims he was told to find ‘dirt’ which could be used against them.

On the picket line

A retrograde step

One of the worst known of the Government’s proposals for the employment tribunal is its plan to remove the tribunal’s power to make recommendations in discrimination claims. In theory, where a claimant succeeds, the tribunal may make a recommendation that within a period the respondent takes some specified steps related to discrimination revealed in the proceedings. This is an important part of the total powers of a tribunal. It is usual for the recommendations to consist of the adoption of an equality policy if the employer lacks one, or specific training for a team if more than one person has been involved in acts of discrimination.

From the point of view of workplace equality, the step is clearly retrograde. It reduces pressure on employers and reduces the choices open to claimants and to tribunals where some kind of discrimination has been uncovered. There is no ‘balancing’ reform to make up for the way in which a useful power which points towards equality is being lost.

In policy circles, various attempts are being made to defend the Government’s repeal plans. It is said for example that the purpose of these provisions is to punish employers for discrimination, and that employers can just as well be punished by groups of employees bringing serial cases, with the compensation rising, as each employee succeeds.

This is to misunderstand the purpose of compensation in discrimination claims: it is not to punish the absent employer but to compensate the employee for her loss. But her loss, meaning the acts she suffers and their impact on her, is not any greater where she is also the second or the third employee to bring a claim. Compensation does not rise merely because the employer has a bad history of discrimination.

In most successful cases there is no mechanism by which an employee can confirm that there have been previous claims. There is a poorly administered paper archive of tribunal decisions from which claimants may seek previous cases. There is usually a lengthy delay between judgments being given in court and a paper copy deposited there. Without someone making the enquiry, there is no way of getting access to previous criticisms of the respondent.

Few tribunals would be willing to consider previous decisions against the same respondent, but would assume they were irrelevant to the case in hand. Even where respondents find themselves losing in court, they often offer a compromise agreement, with confidentiality clauses to protect them from bad publicity, before a hostile decision is made. There is no ‘transmission mechanism’ to enable serial claims.

Another idea being floated is the possibility of claimants circumventing the problems of the repeal of the power to make recommendations by somebody, quite who is not specified, encouraging workers not directly involved in discrimination claims bringing ‘indirect victim’ claims.

Again, the proposal is impractical. There have in the past been claims of this sort, for example, where a worker is instructed by their employer to discriminate, declines, and is dismissed. There will never be very many of them. The relatively tight tribunal time-limit of three months, combined with typical delays of about a year between claim and hearing, makes it impossible for a claimant to wait and see what happens with another worker’s claim before launching their own ‘piggy-back’ case.

Our common law principles of compensation again reduce awards for those who can say no more than that they objected vicariously to their employer’s discrimination against someone else.

Finally, it has been suggested that the loss of the power to make recommendations causes no harm because the tribunal has no powers to monitor the implementation of the recommendations it makes. This is true, up to a point. Tribunals have no power to monitor, but a determined claimant could probably seek enforcement through the civil courts. The general compliance of employers with tribunal powers is in general shockingly poor, with only around a half paying any amount of tribunal judgments at all within two years of a successful claim.

However no one says that because tribunals have difficulty enforcing judgments their power to order compensation should be taken away from them. If tribunal recommendations are ignored then there would be a much simpler and better answer to deal with this problem: not to protect the discriminators, but to require reporting and compliance with these recommendations and to grant the tribunal the powers it needs to punish the employers who do not comply.

David Renton

July

3: The Metropolitan police officer Alex MacFarlane is sacked following his being secretly recorded using racist language towards a man he had arrested. MacFarlane twice stood trial for racially aggravated public disorder but on both occasions the juries were unable to agree a verdict.

3: The police and crime commissioner for West Yorkshire, Mark Burns-Williamson, refers the former Chief Constable of the West Yorkshire force Sir Norman Bettison to the IPCC following allegations that he tried to intervene in the Lawrence Inquiry. Bettison had earlier resigned from the force over allegations about his role in the Hillsborough disaster.

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