

# Editorial

## Industrial Tribunals

Last December, the Government published its green paper on the industrial tribunal system (see BLR, March 1995, pp 88-9), against the background of increasing case-loads and mounting backlogs. Most of its proposals relate to the organisation and procedure of tribunals: a proposed statutory duty on tribunals to consider whether the employee had attempted to resolve the matter in dispute with the employer before bringing the case before the tribunal; a right to the parties to go to arbitration in lieu of a tribunal hearing; a strengthening of the chairman's powers to strike out hopeless cases, following a pre-hearing review; new powers to enable the chairman to set time limits for the presentation of evidence.

One particularly controversial proposal is that legally qualified chairmen, who sit at present with two lay members, drawn respectively from an employers' panel and an employees' panel, should in future be empowered to sit alone in all cases, and should be required to do so in cases other than ones involving discrimination and unfair dismissal. Given the legitimating force of having representatives of both sides visibly participating in the decision, the virtues of preserving the procedural informality which is supposed to be a *raison d'être* of tribunals, and the substantive advantages of having management and shop-floor wisdom on hand to complement the legal

expertise of the chair, this seems a seriously retrograde proposal.

Even more controversial is what the green paper does *not* say about compensation limits. In a recent editorial, the *New Law Journal* (7 April 1995) endorsed the long-held view of the Law Society, re-stated in its response to the green paper, that the statutory £11,000 limit on awards for unfair dismissal, redundancy and wrongful dismissal should be raised – at least to £46,000, in line with the inflation that has occurred since the present limit was set in 1971. The case for so doing is even stronger given that, following the *Marshall* ruling by the ECJ in 1993, the statutory limit has been removed in discrimination cases. There is indeed a very strong case for removing the limit altogether.

The present limit effectively encourages bad employment practice by enabling hard-nosed employers to dismiss staff on the cheap. The best way to rein back the growing pressures on the tribunal system is to encourage employers to behave decently in the first place. We join the Law Society and the *New Law Journal* in calling for an end to the statutory limit on compensation – in the interests both of justice and of the efficient operation of the industrial tribunal system.

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