

# Analysis: What the Beecroft report means for employers and their staff

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By Jane Klauber

The 16-page Beecroft report has been controversial for a number of reasons, including the fact that some employer organisations doubt whether the proposals would actually increase new hires. After the media attention dims, employers large and small can benefit from looking at their options for dismissal and workplace changes under the current law which does allow them to take action and dismiss where there are problems relating to poor performance, misconduct or other substantial reasons. Employees dismissed within the first year of employment cannot claim unfair dismissal. For employees employed after April 6th 2012, this increases to two years.

The most high profile recommendation is the introduction of compensated no-fault dismissal, whereby an employer could pay a sum equivalent to a statutory redundancy payment to terminate an employee's employment without a reason. According to the report, the process would involve some consultation but employers would not be obliged to accept alternative proposals put forward by an employee. The Beecroft report also refers to considering other jobs for an employee but with no obligation to maintain their old salary.

Under the current redundancy law, employers need to have a genuine business reason for proposed redundancies or restructuring. However, a tribunal will not assess how the reason stacks up against suggested alternatives; the only substantive requirement is that the reason for the changes is genuine and coherent. Employers are required to consult with employees about proposed redundancies but are not compelled to accept alternatives or alterations put forward by employees. Suitable alternative employment should be considered for employees at risk of redundancy but there is no obligation to maintain the employee's old salary if an alternative role is available.

If an employee is underperforming, an employer should give the employee prior warnings and a reasonable opportunity to improve but can then dismiss (without the obligation to pay a statutory redundancy payment) on grounds of capability/misconduct. The premise of no-fault compensated dismissals appears to be that employers need an option that allows them to end employment and pay compensation to avoid any risk of employment tribunal litigation. However, employers are currently using without prejudice discussions and compromise agreements to achieve the same result. Employees must receive independent legal advice before signing a compromise agreement and once signed, the agreement prevents the employee from pursuing a claim in the Tribunal. This mechanism is tried and tested and employers do get effective protection from litigation.

A new option of no-fault dismissal is unlikely to create more certainty for employers, particularly as employees who do not receive a reason for their dismissal may well suspect it is due to discriminatory reasons or reasons linked to whistleblowing, trade union activity or the raising of health and safety concerns and will still be free to pursue claims on those grounds. Discrimination and whistleblowing claims also tend to be more complex and often require far longer tribunal hearings than unfair dismissal claims and therefore changes may well result in increased litigation costs.

Other proposals include removal of the third party harassment provisions from the Equality Act 2010 and the reintroduction of the default retirement age if its removal has had a negative impact. Adrian Beecroft also recommends changes to the TUPE Regulations and that small employers should be exempt from a number of regulations including unfair dismissal; pensions auto-enrolment; flexible parental leave; licensing for employers of children and gangmaster licensing.

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**Unite: "Beecroft is a venture capitalist who profits from sub prime loans to needy people. He hasn't got a single idea how to create jobs"**  
Unite has branded the Beecroft report 'the worst attack on our employment rights in a generation' and has urged the Business Secretary, Vincent Cable, to do everything in his power to stop the recommendations ever becoming law.

**NASUWT: Employers given licence to discriminate**  
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