

## **Business and Trade Committee — Make Work Pay: Employment Rights Bill Inquiry**

Written evidence submitted by Edapt

### **Introduction**

Edapt is the UK's leading provider of employment dispute support services for teachers and staff in schools. Our qualified staff offer assistance to teachers in thousands of schools across the country when they face disciplinary and grievance proceedings — ensuring fairer outcomes that benefit staff retention, school performance and pupils' learning and development.

We are grateful for the opportunity to respond to the Business and Trade Committee's inquiry into the Employment Rights Bill. We have focused our response on the questions where we feel we can add the most value and insight (protecting workers, impact on businesses), based on our frontline experience helping employees deal with disputes and allegations.

Overall, Edapt welcomes the introduction of the Employment Rights Bill as a landmark moment for the UK to set new global standards for workers' rights. We especially welcome the intention behind measures in the Bill to promote fairness and equality at work.<sup>1</sup> The Bill provides a once-in-a-generation opportunity to take stock of the efficacy of existing employment rights, and ensure all employees benefit from — as far as practicable — equal rights under the law.

### **Protecting Workers**

The committee has posed important questions about the Employment Rights Bill, especially in respect of the below:

- *Does the Employment Rights Bill adequately safeguard the workers it seeks to protect?*
- *Are there weaknesses or loopholes in the Bill that could be exploited or have unintended consequences?*
- *Are there areas of employment law not covered by the Bill that weaken workers' protections?*

In response to these initial questions, we believe there is a simple opportunity for the Bill to go further in guaranteeing basic rights, while simultaneously reducing some of the bureaucratic burdens that fall on businesses — especially SMEs. This can be achieved by extending the existing statutory right for workers to be accompanied during workplace disputes so that it includes “certified companions,” not just colleagues or trade union representatives.

It is the government's stated objective that “all workers should be able to enjoy fair rights and benefits no matter who they work for” and the Bill represents the principal route to achieve this.<sup>2</sup> One of the most important components of the current employment rights landscape is the right for workers to be accompanied at a disciplinary or grievance hearing by a companion.<sup>3</sup> Edapt

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<sup>1</sup> [Explanatory Notes to the Employment Rights Bill, paragraph 20 \(October 2024\).](#)

<sup>2</sup> [Department for Business and Trade, Next Steps to Make Work Pay \(October 2024\), Section 2 para 36.](#)

has extensive firsthand experience of the positive role that accompaniment by an appropriately trained professional can play in boosting the quality, efficiency and outcomes of disciplinary and grievance hearings.

Professional companions are trained to offer informed and balanced advice, and to help employees understand and effectively respond to the case against them. They ensure that procedural rules are followed, reducing the likelihood of unfair treatment. They often help parties reach a fair resolution faster, avoiding the need for drawn-out legal processes.

While the law goes some way to recognising the role of trained and certified companions, the current framework is in need of an urgent update. At present, only a fully certified trade union representative or a colleague has the statutory right to accompany an employee to a hearing. This creates differentiated access to accompaniment based solely on whether workers are members of a trade union.

The effect is that the vast majority of the UK's employees (77.7%) who have chosen not to be members of a trade union are, in practice, denied accompaniment by a certified companion. This clearly frustrates the spirit of a modern workers rights framework, and goes against the basic principle that everyone should have equal employment rights under the law — both in principle and effect.<sup>4</sup>

The Bill presents an easy opportunity to remedy this, through a sensible and proportionate fix that expands the rights of workers to be accompanied, while protecting the hard-fought and hard-won rights of trade union representatives to support their members.

### *Increasing safeguards for workers*

The positive value of experienced companions is already recognised in law, therefore a simple amendment to the Bill to extend the type and availability of these companions would resolve the existing equality deficit and increase safeguards and protections for workers. This is based on two key principles:

- Increasing fairness: Certified and professional companions offer competent, informed support and create fairer outcomes across the board. Amending the law would mean no workers need be left unsupported in complex hearings or, worse, accompanied by inappropriate companions who may frustrate the process or even cause inadvertent detriment to the workers' case. It would also help clear up legal uncertainties that fall out from the existing law's interaction with Article 6 of the European Convention on Human Rights ("the right to a fair trial"). Currently, disparities between the access that individual workers have to resources during a disciplinary or grievance hearing can create more

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<sup>3</sup> [Section 10 of the 1999 Employment Relations Act \(as amended\)](#).

<sup>4</sup> During the passage of the 1999 Employment Relations Bill, ministers intended that the right to accompaniment should mean "individuals are free to choose the most appropriate companion" within reasonable limits. Unfortunately, for the majority of workers, no practical choice exists. (House of Commons, deposited paper 99/560).

serious problems where cases are elevated to the employment tribunal. This is because evidence gathered during antecedent (non-judicial) hearings is usually relied upon to build or defend a case. Clearly any unfairness in this antecedent process will undermine a defendant's right to a fair trial.<sup>5</sup>

- Better quality hearings: Certified companions are trained to navigate the complexities of employment law and disciplinary procedures, and their presence leads to demonstrably more efficient and effective hearings. As a result, trained companions can reduce employees' anxiety and stress, mitigating the mental health challenges that formal processes can cause. This creates benefits in kind in terms of wider employee wellbeing and satisfaction, but also productivity and retention.

### Impact on businesses

A major consequence of the Bill's ambition to extend basic day-one rights at work is the necessary formalisation of the disciplinary options available to employers during the new statutory probationary period. It is an understandable concern that this will place an additional procedural burden on smaller businesses, and potentially lead to an increase in the number of cases that will be referred to the Employment Tribunal. This is because the avenues for referral will become easier — a consequence of granting fuller rights from day one — and also because the options for employers to deal with matters internally will be diminished. It is crucial to underline that without proper consideration, a blanket increase in the right to take a case to the Tribunal (however welcome this is in isolation) will *necessarily* entail an increase in the volume of cases escalated to an already overburdened tribunal system, which is currently experiencing delays of two years.<sup>6</sup>

In this respect, extending the right to accompaniment is a simple and proportional option for alleviating this costly risk, by reducing the number of cases where referrals to the Tribunal are required. This is due to higher quality hearings where both parties are able to work more constructively and benefit from the professional advice of the trained companion. In short, by granting all workers sensible accompaniment in the form of an experienced companion, the potentially negative impact of some of the Bill's existing measures will be mitigated.

Finally, the extension of the right to accompaniment would end legal uncertainty in sectors where accompaniment by non-union companions is the norm, giving businesses the clarity to standardise their disciplinary procedures. For example, there is currently a well-established informal arrangement between the British Medical Association, a trade union, and the Medical Protection Society (MPS). If a doctor is a member of both organisations, the MPS provides casework support and representation in professional conduct issues, including in grievance and disciplinary hearings. This arrangement operates to the benefit of the profession and the wider

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<sup>5</sup> [Talon Engineering Ltd v Smith \[2018\] IRLR 1104 EAT](#), supports the general principle that having companionship earlier on in the procedure helps prevent poor practice and challenges later on.

<sup>6</sup> [Ministry of Justice Tribunal Statistics Quarterly Bulletin \(October 2024\)](#).

health sector, but there have been cases where it has been robustly contested by employers.<sup>7</sup> Expanding the statutory right to access an experienced companion would resolve this issue.

## Conclusion

Given the reasons above, we urge the committee to recommend that the Bill be amended to extend provisions on right to accompaniment, and a text of the suggested amendment is copied below (appendix). While the changes amount to a minor, tidying up amendment, they would have a lasting, positive impact on the UK's employment rights regime. Above all, they would help to realise the government's intention that all workers should be able to enjoy fair rights and benefits.

## APPENDIX

### Suggested New Clause

#### “Right to be accompanied

- (1) Section 10 of the Employment Relations Act 1999 (right to be accompanied) is amended as follows.
- (2) In subsection (3), after paragraph (b) insert —
  - “(ba) a person who has been reasonably certified in writing by a Professional Body as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings, or”
- (3) After subsection (7) insert —
  - “(8) In this section, “Professional Body” means any organisation, which is authorised by a regulation made by the Secretary of State pursuant to subsection (9).
  - (9) The Secretary of State may make a regulation or regulations authorising any organisation as a Professional Body for the purposes of this section.” ”

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<sup>7</sup> Most notably, [Stevens v University of Birmingham \[2015\] EWHC 2300 \(QB\)](#).