

# THE WORKFORCE SURVEY

## SMALL BUSINESSES

OCTOBER 2011



## About Us

The British Chambers of Commerce is the national body for a powerful and influential Network of Accredited Chambers of Commerce across the UK; a Network that directly serves not only its member businesses, but the wider business community.

Representing 100,000 businesses who together employ more than 5 million employees, the British Chambers of Commerce is The Ultimate Business Network. Every Chamber sits at the very heart of its local community working with businesses to grow and develop by sharing opportunities, knowledge and know-how.

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## Foreword



The majority of the UK's small businesses want to grow. They want to invest and take on more employees, but they are also pessimistic about the UK labour market's skill level and flexibility. Businesses tell us that their ambition to grow will be severely frustrated by the difficulties they face in doing so.

Dismissal rules are too complex, tribunal cases are endemic, and the vast majority of small firms are buying in extra external resource to ensure they are compliant with employment

regulation. The more staff they take on, the more likely they are to face claims – the risk is that one bad recruitment decision could wipe out a whole year's profit, or worse.

We recognise the Government has taken some steps towards improving the Tribunal system, but with new agency rules, parental rights and pensions changes all coming down the track before 2015, the net result for our small firms will be negative. The more flexible the employment market is the more jobs will be created. Business owners want to recruit – the Government must provide a simplified and stable regulatory environment to encourage them to do so.

**John Longworth**  
Director General  
British Chambers of Commerce

## Executive Summary

The British Chambers of Commerce (BCC) undertook research with businesspeople in Chamber membership who have between 10-49 employees to understand their views on their local labour market, the barriers to recruiting more employees

### SUMMARY OF MAIN FINDINGS:

- The UK's small firms are ambitious. Only 3% of firms surveyed want to decrease staffing levels in the next three years with the majority, 60%, wanting to take on more employees.
- There is a big jump in the use of atypical contracts once a business has more than ten employees. 31% of small firms have workers on zero-hour, temporary or fixed-term contracts compared to only 12% of micro firms.
- Over half of small firms see dismissal rules as extremely or fairly burdensome, more than double the amount that believe it is not at all burdensome.
- The majority of small firms believe both the EU and US have more flexible labour markets than the UK.
- One in five firms with 10 to 49 employees have been threatened with a Tribunal claim in the last three years.
- Over 80% of small firms use external expertise to help them to comply with employment regulation.

and growing their business, and what initiatives might encourage them to take on more staff members. This survey was undertaken between March 29th and April 15th 2011, and attracted 7,149 responses, of which 2,215 were small firms' responses.

### SUMMARY OF RECOMMENDATIONS:

- **Atypical workers are the norm – new laws and guidance must reflect this.**

For small firms without huge amounts of external resource for regulatory compliance, it is crucial that Government employment law guidance is timely, concise and meets their needs.

Several examples of lawmaking in recent years (perhaps most notably the Pensions Act 2008) have treated the administrative regime for atypical workers as an afterthought, increasing complexity for employers, and therefore increasing costs and risk. There is a danger that the proposals for shared parental leave will also be overly complex for those not on a standard permanent full time contract, and this must be addressed.

- **Employment Tribunals are a problem in reality, not just an issue with perception.**

That one in five small firms has been threatened with a Tribunal claim in the last three years is a shocking statistic. The Government's package of reforms proposed at the beginning of 2011 is welcome, but does not go far enough to tackle this systemic problem.

The proposal to introduce financial penalties for employers must be scrapped<sup>1</sup> and the plans to increase the amount that can be awarded to employers in costs extended. However, reforming the system itself will only solve part of the problem. The Government must commit to simplifying and then *stabilising* the employment law system in an effort to both reduce speculative claims and allow firms to divert their resources away from tick-box compliance and towards growth.

- **Dismissal rules are too onerous – and must be tackled.**

Dismissal rules are seen as extremely burdensome by nearly one in three small firms – the highest out of any of the size categories<sup>2</sup>. Increasing the unfair dismissal qualifying period is not, in itself, enough. There should be a root and branch reform of the whole dismissal system, including gross misconduct and redundancy regulation, and analysis of how dismissal rules operate in conjunction with other laws, such as discrimination.

1. BCC response to Tribunal Consultation "Financial penalties will not encourage compliance, just early financial settlements in weak claims. Penalties will not change the behaviour of employers who are already prepared to defend a claim and be faced with unlimited costs."

2. For micro firms it was 21%, firms with 50-249 employees it was 27% and for firms with more than 250 employees, it was 24.5%.

In some areas, the law may need re-codifying to remove the layers of complexity that differing employment tribunal judgements have added into the regulations; many of the problems with gross misconduct could be mitigated by enshrining the 'Burchell'<sup>3</sup> test in statute. The BCC's 2010 recommendation for a new dismissal route for employees should also be implemented<sup>4</sup>.

- **The removal of the Default Retirement Age (DRA) has been a blow to small firms – a replacement is necessary.**

One of the ways to mitigate the effect of the removal of the DRA would be to strengthen the objective

justification test<sup>5</sup> by putting into legislation some of the case law to make it clear that workforce planning would be enough to evidence objective justification. The ACAS guidance on this issue states that the 'test of objective justification is not an easy one to pass'<sup>6</sup>. The Government could amend the law so that businesses can be more certain of its applicability and more confident in its use. On a macro level, this would have positive impacts for job creation as there is anecdotal evidence that the uncertainty surrounding potential retirees is putting firms off taking on apprentices, or indeed hiring at all.

## Introduction – who are the UK's small firms?

Not all small businesses in the UK have the potential to grow beyond 50 employees. However, once an employer has hired ten people, the business needs rapidly shift and become more complex than the needs of a micro business. As more staff join the payroll, the owner becomes further removed from the employees and their individual roles and objectives. New layers of management are created in

order to efficiently run the firm, and specialisms are sought in areas such as Human Resources, IT and Accounting. The use of external advisors also changes. Owners then face new challenges, to control costs, motivate employees and continue growing the business. This report explores these challenges and the barriers that businesses face as they enter this new phase in the growth cycle.

## Employment – A business issue and a Government objective

On a micro level, businesses take on an employee to satisfy demand for their goods or to aid expansion. The Government objective is to achieve full employment. Whilst these objectives clearly align, the public policy objective should not be mistaken for the motivation of the entrepreneur. However, full

employment does bring business benefits. 'Companies take on unemployed workers, who spend their new income on postponed purchases of consumer goods. This creates more demand and so companies employ more people, and so the process continues (the multiplier.)'<sup>7</sup>

## The importance of small businesses

There are 167,670 small businesses, defined as companies with between 10-49 employees, in the UK. They account for 14.6% of all turnover<sup>8</sup> and employ over three million people.

It is clear that small firms are crucial to UK economic success, but we know that those small businesses with the potential for growth are even more important in the long term.

3. BCC report 'Employment Law: Up to the Job' March 2010.

4. BCC report 'Employment Law: Up to the Job' March 2010.

5. Even without the DRA, it may still be possible to retire an employee lawfully at a set age provided that the retirement age can be objectively justified, which means that it is a proportionate response to a legitimate aim.

6. [http://www.acas.org.uk/media/pdf/d/4/Working\\_without\\_the\\_DRA\\_Employer\\_guidance\\_-\\_MARCH\\_2011.pdf](http://www.acas.org.uk/media/pdf/d/4/Working_without_the_DRA_Employer_guidance_-_MARCH_2011.pdf)

At Davos, David Cameron said that small businesses were the, “engine room<sup>9</sup>,” of the UK economy and that Government policies needed to encourage their growth in particular. Even the TUC says, “Of course we need small businesses in the UK. But what we need more are businesses that can grow from being small or medium sized into bigger businesses<sup>10</sup>.”

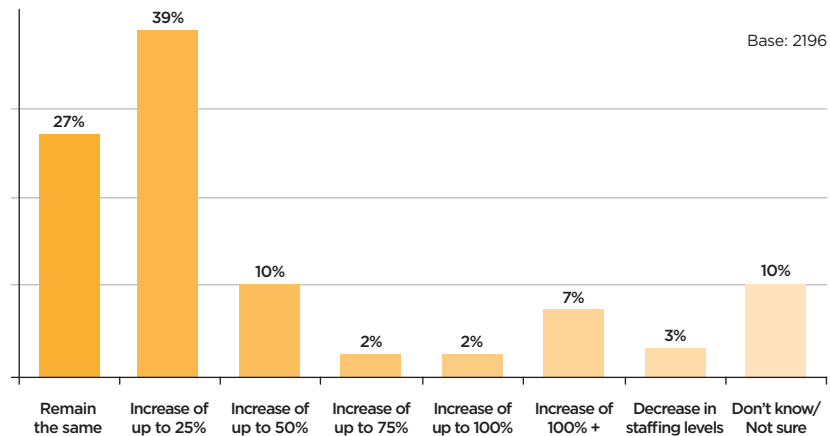
There are large regional variations. Small businesses employ on average 23.6% of private sector workers but there is a large regional variation. In London, only 14.8% of private sector workers are employed in these smaller businesses compared to 22.3% in the North West. For those areas in the North where there is currently a degree of reliance on the public sector for jobs, there

are also a larger percentage of small firms. Therefore, to achieve the public policy intentions of rebalancing the UK’s economy between regions and reducing the number of unemployed public sector workers becoming long term unemployed, small firms are key.

The UK’s small firms are ambitious and want to grow the number of employees in their business. Only 3% of firms want to decrease staffing levels in the next three years with the majority, 60%, wanting to take on more employees.

The majority of small firms that want to grow their staffing numbers are looking at an increase of up to 25%. 65% of firms that want to grow answered in this category.

**FIG 1. % OF SMALL FIRMS WANTING TO INCREASE THEIR STAFFING LEVELS**



9. <http://www.politics.co.uk/features/economy-and-finance/david-cameron-s-davos-speech-in-full-21386920.htm>  
10. <http://www.touchstoneblog.org.uk/2010/11/how-important-are-small-firms-for-employment/>

## Who works in the UK’s small firms?

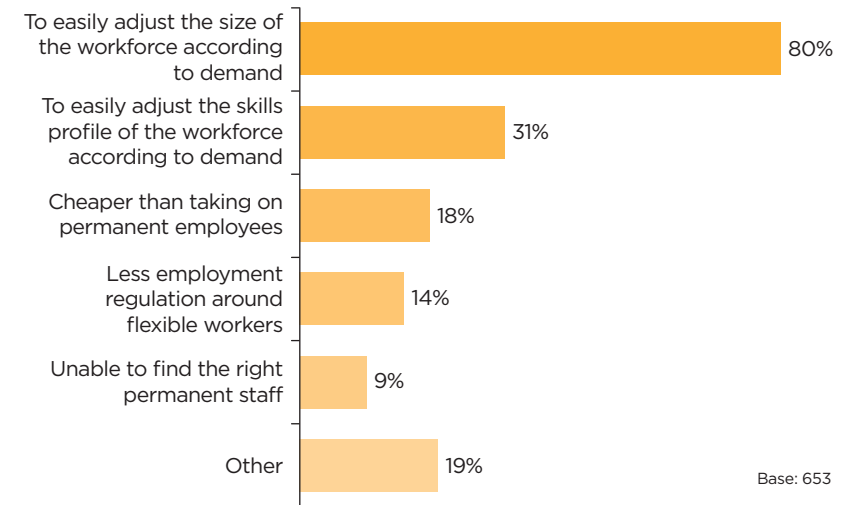
All of the small employers had full time staff, with just over three quarters also employing some part time staff. Atypical workers on zero-hour, fixed term or temporary contracts could be found in nearly a third of small firms. There is a big jump in the use of these atypical staff once firms reach ten employees; only 12% of micro firms utilise workers on these types of contracts<sup>11</sup>. This could imply that awareness of these arrangements increases as firms grow – or that the flexibility that they afford is more valued. However, only a minority of staff in small firms are hired

using these atypical contracts; for 80% of firms using these contracts, they are only used for between 1-9 staff members.

The reason for using atypical contracts is overwhelmingly to provide the firm with flexibility to respond to demand.

Other answers included using atypical contracts for a probationary period ‘To test their suitability for permanent roles’ or ‘To cover maternity or long term sickness.’

**FIG 2. WHY FIRMS TAKE ON WORKERS USING TEMPORARY/FIXED TERM OR ZERO-HOUR CONTRACTS**



One in four small firms use temporary agency workers, typically for short term staff cover (70%) or to improve the flexibility of their workforce (44%). Only 5% thought that agency workers were cheaper than permanent

staff, however a fifth will use less agency workers as a result of the introduction of the Agency Workers Directive, which will increase both the direct and indirect cost of such hires.

### How do small firms recruit?

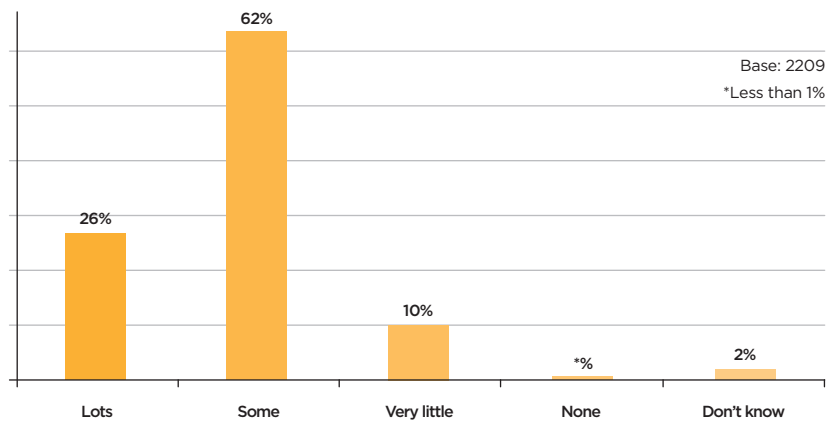
The majority of small firms still use networking/recommendations/word of mouth to find employees - but once a firm reaches ten employees, the use of recruitment agencies becomes much more common. 46% of small firms use a recruitment agency, as opposed to 22% of firms with less than ten employees<sup>12</sup>.

a further 23% finding it quite easy. Firms wanting to grow their number of employees by more than 50% are also slightly more likely to find it difficult to find the staff they require than those with weaker growth plans. The majority of firms also claim there is competition for the skills they require.

More than one in two small firms find it difficult to recruit the right staff to fill a vacancy, with only 4% finding it very easy, and

37% of firms find it difficult to navigate employment law surrounding recruitment, with only 27% finding it very/quite easy<sup>13</sup>.

**FIG 3. % OF SMALL FIRMS WHO BELIEVE THERE IS COMPETITION FOR THE SKILLS THEY REQUIRE IN THEIR BUSINESS**



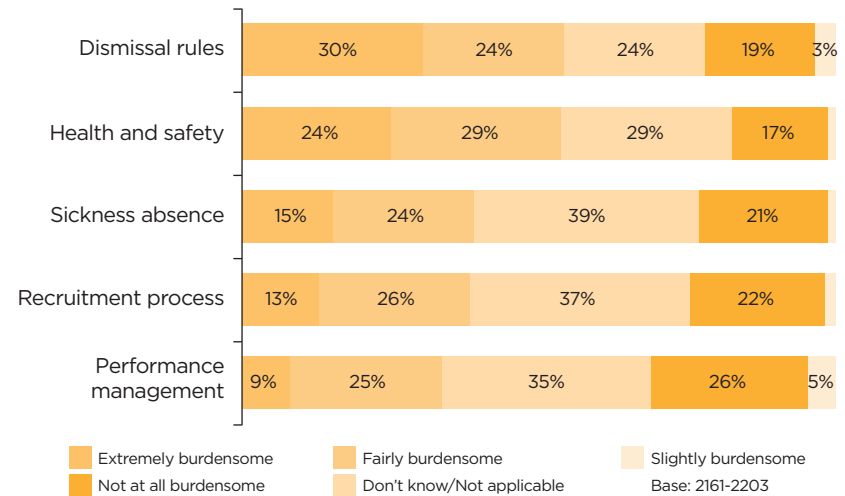
<sup>12</sup>BCC Micros report.  
<sup>13</sup>36% found navigating employment law surrounding recruitment neither easy or difficult.

### How does employment law and the flexible labour market affect small firms?

Dismissal rules, health and safety and sickness absence are the top three burdensome areas identified by small firms. One of the most interesting changes from the views of micro firms is

that only 24% of micros see performance management as extremely or fairly burdensome, compared to 34% of firms with between 10-49 staff.

**FIG 4. % OF SMALL FIRMS WHO BELIEVE TYPES OF EMPLOYMENT REGULATION ARE BURDENSOME**



Over one in two small firms see dismissal rules as extremely or fairly burdensome, more than double the amount that believe it is not at all burdensome. The Government is consulting on extending the unfair dismissal qualifying period to two years

and planning on using the Employment Law Review to consult on collective redundancy processes. However, these results make it clear that full scale radical reform is needed in this area, rather than merely incremental change.

‘Employment laws mean that it is very difficult to get rid of incompetent staff, they seem to have all the rights and whatever the outcome the employer has to pay one way or another!’

‘Cannot emphasize enough how burdensome and draining it is to dismiss people who are performing very poorly or are abusing rules.’

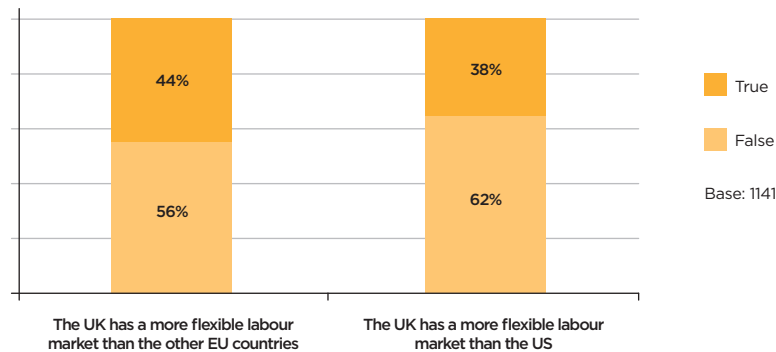
For health and safety, over one in two firms believe the rules are extremely or fairly burdensome. As expected, there is a large sectoral variation also with 63% of firms in the manufacturing/construction/electrical industries finding health and safety extremely or fairly burdensome compared to 39% in media/marketing/research. These variations do point to some proportionality based on risk, but not enough<sup>14</sup>.

Concern about pensions also remains quite high, with only one

in three finding the requirements not at all burdensome. The 2012 pension reforms will apply to all firms and add both direct costs (through compulsory pension contributions) and indirect costs (through set up of schemes, external advice and ongoing administrative costs).

Small firms are pessimistic about the UK’s labour market regulation in comparison to the EU and US. In each case, the minority thought that the UK has a more flexible labour market than its competitor does.

**FIG 5. % FIRMS WHO BELIEVE THE UK HAS A MORE FLEXIBLE LABOUR MARKET THAN THE US/EU**



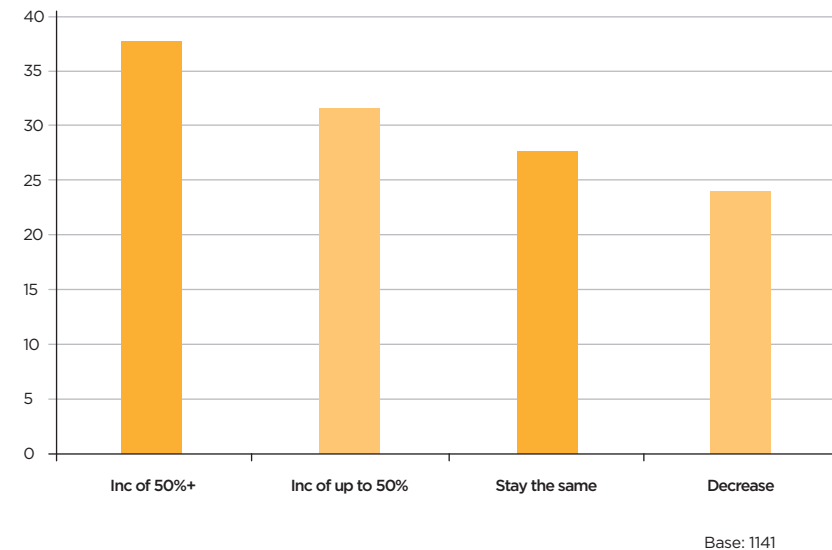
<sup>14</sup>. BCC 'Health and Safety: A risky business' May 2011.

The UK’s labour market flexibility has been seen as one of our major competitive advantages and some studies link the flexibility of the labour market with the ability to leverage foreign direct investment (FDI). A 2006 BIS survey showed that for 60% of transnational corporations labour market flexibility was either of moderate or high importance to them<sup>15</sup>. If the UK’s small firms take the view that our competitive advantage in labour flexibility has been damaged, then this could impact on the wider views of the business community when making investment decisions.

A more direct impact could be on domestic investment. Only 32% of the UK’s small firms believe that the UK workforce is more skilled than other EU countries. Coupled with the negative perception of the flexibility of the labour market, there is a concern that UK’s small firms may, as they grow, seek to grow their staff numbers abroad.

There is some correlation between the views of small firms on the skill level in the labour market and their desire to grow their business.

**FIG 6. % OF FIRMS WHO BELIEVE THE UK HAS A MORE SKILLED WORKFORCE THAN THE EU**



<sup>15</sup>. <http://www.bis.gov.uk/files/file33254.pdf>

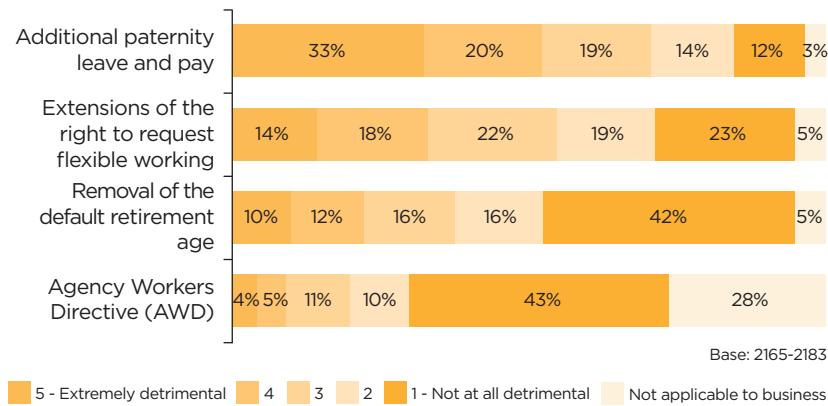
Although firms looking to grow their staffing numbers by more than 50% were the most positive about the comparative skill level of the UK workforce against the EU, the majority still believed that EU workers were more skilled. However, there is a clear pattern with the least ambitious firms having the worst view of the UK skills base. This could suggest that this is at least one of the drivers for their decision to reduce staffing numbers, or remain at the same levels.

When asked about new employment regulation, implemented either in April 2011 or later<sup>16</sup>, the majority of firms thought the new rules were burdensome to some degree.

The first two questions refer to regulations, which affect all UK firms whereas the last two questions only apply to some firms, dependant on their staffing structure.

It is unsurprising that for AWD and the DRA there are larger percentages that believe the regulations will be not at all detrimental, as they only apply to firms using agency workers and with a compulsory retirement age respectively. However, from another survey question, one fifth of small firms who use agency workers said that they would use them less because of the regulations. This fits with the 20% of firms who ranked AWD as between 3-5 on our scale.

**FIG 7. % OF SMALL FIRMS WHO BELIEVE EACH NEW LAW WILL BE DETRIMENTAL TO THEIR BUSINESS**



<sup>16</sup> This survey took place at the time when the April 2011 legislation was implemented so we asked firms for a forward look at whether they thought it might be detrimental rather than whether it was detrimental.

For the DRA, Government research indicates that 30% of private sector firms use a compulsory retirement age, and larger firms are more likely to use one than smaller employers<sup>17</sup>. Against this backdrop, the 22% who ranked the removal of the DRA as either 4 or 5 (in terms of how detrimental it would be to their firm) may represent a large number of the firms actually making use of the legal provision.

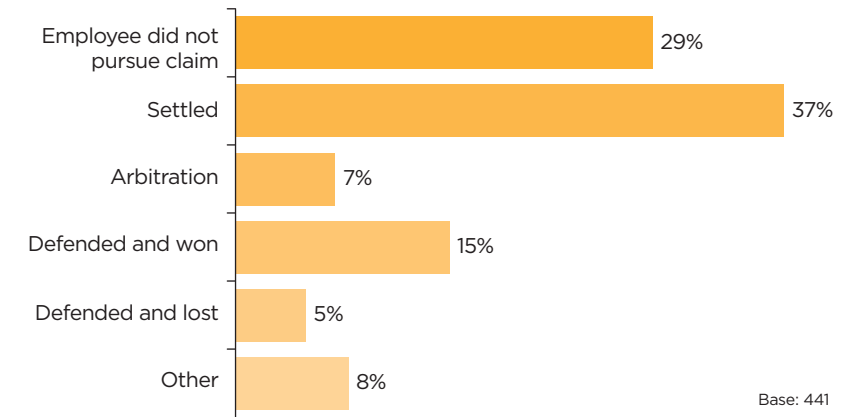
It is very worrying that one in three small firms believes APLP will be extremely detrimental to their business, given that the Government consulted in summer 2011 on an entirely new and complex system of flexible parental leave. Barely any small firms - only 12% - believe APLP will not be at all detrimental to their firm. Similarly, for the right to request flexible working extension, only a minority believe it will be not at all detrimental to their firm.

### Small businesses and the Employment Tribunal system

A staggering one in five firms with between 10-49 employees have been threatened with a tribunal claim in the last three years. This rose to one in three firms out of the small number of businesses with 10-49 employees looking to

decrease staffing levels in the next three years. Some of these claims were not pursued - but may still have resulted in business costs from external advice and reduced productivity of all those involved in the dispute.

**FIG 8. WHAT HAPPENED WHEN AN EMPLOYEE THREATENED AN EMPLOYMENT TRIBUNAL CLAIM (IN LAST THREE YEARS)**



<sup>17</sup> <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/p/11-634-phasing-out-default-retirement-age-impact-assessment.pdf>

The top response is settlement, by nearly two in five firms. It is entirely understandable why small firms decide to make an economic calculation here (cost of settlement vs cost of defence), and a proportion of these firms may have settled to mitigate an error made on their part. However, a culture of settlement is driving more claims, propagating the UK's litigation culture, and stymieing economic growth with activity that distracts from the core business. 20% of firms defended the claim, although this rises to 27% when the claims that were not pursued are removed.

Some employers commented that it was unfair that these baseless claims were being brought, and costing them money.

‘Clearly this was a try on by someone fairly rejected when they applied to work here and we called their bluff.’

‘Common corporate blackmail. Easier to settle even when false allegation.’

‘Employee falsified a claim were afraid to defend ourselves and it cost us £10k.’

These cases undermine the employees who have a fair claim to compensation. That 20% of small firms have been threatened with a claim in the last three years indicates there is a problem with both the system of law and the process used to claim a remedy. Tribunal reforms will not be enough – it is also the volume and complexity of the law that allows these claims to be brought. However, it is clear there is a problem with the system when employers are paying out to claimants just to avoid hearings.

‘Agreed payment to avoid going’.

‘Advised to pay up and shut up!’

One employer also pointed to the non-monetary impacts of vexatious Tribunal claims.

We won our claim, however the stress was off the scale. It cost our company over £20,000 for something that was never our fault.

The Government has consulted on some changes to the Tribunal system, including extending the costs awards that judges can make against the claimant and introducing employee fees. One employer asked,

‘Why does the law not compensate the employer? If this was the case most of the cases would never come to court.’

Whilst the current Government proposals recognise this as an issue, the BCC does not believe it will result in many more cost awards being made in the employers favour<sup>18</sup>.

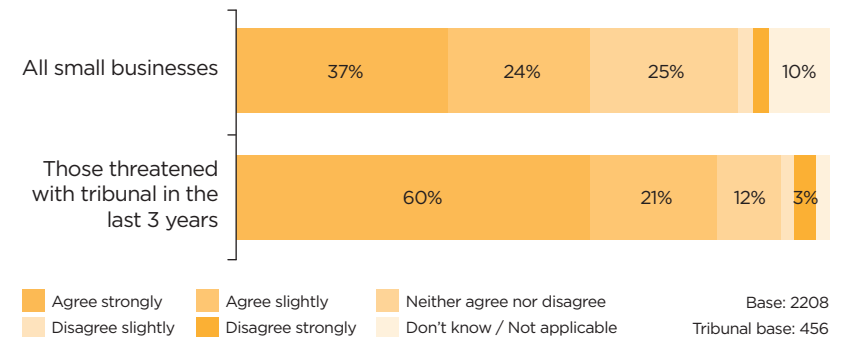
The majority of small firms (61%) believe that employment tribunals are weighted unfairly against the employer. However, this rises to 81% for firms who have been threatened with a claim in the

last three years, suggesting that the reality of the system is even worse than its broad perception.

Firms that are looking to grow their staffing numbers by more than 50% are the most likely to agree strongly that employment tribunals are weighted against the employer – 44.5% believe this as opposed to 34% of firms who want to keep their staffing levels the same.

These results suggest that the employment tribunal system is a barrier to job creation and remedying the issues should be a priority to boost growth for these size firms. However, given the number of small firms that see dismissal rules as burdensome (and sickness absence, two areas closely linked), problems with tribunals cannot be addressed without some reform of the law on which the cases are based.

FIG 9. % OF SMALL FIRMS THAT BELIEVE EMPLOYMENT TRIBUNALS ARE WEIGHTED AGAINST THE EMPLOYER



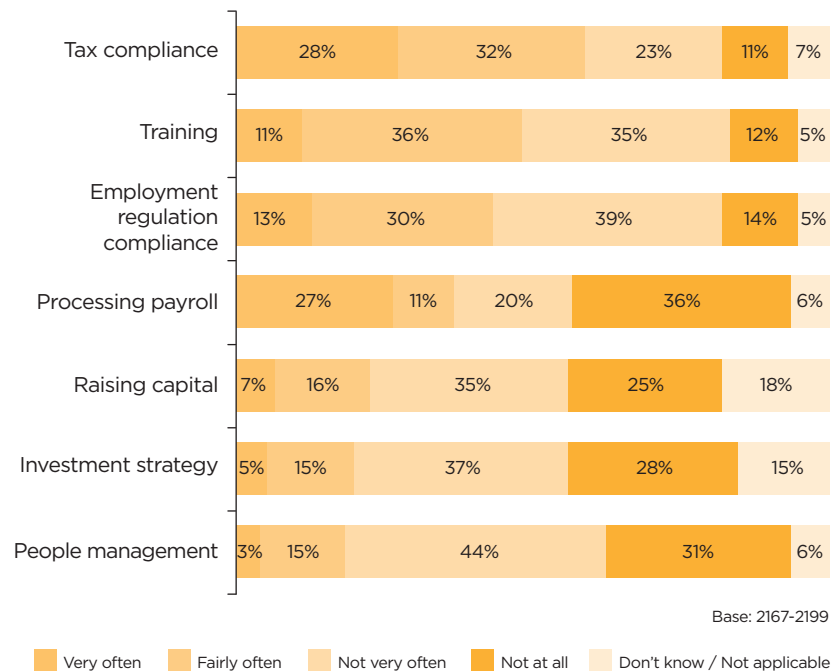
18. BCC response to BIS Disputes consultation. Against this backdrop, we are unsure why a doubling of the costs cap to £20k would increase the use that judges make of cost orders – which we believe is necessary as a deterrent against claimants making weak and vexatious claims. Government policy must provide stronger direction to Tribunal judges, perhaps even automation, as to when these costs should be awarded.

## What external support do small firms use to aid growth?

Most small companies use a lot of external support on an ad hoc basis to support their firm. Depending on the type of expertise required, some firms

use the external support regularly or in a more ad hoc way, but for each of the categories below, the majority of firms do use external advice in some capacity.

**FIG 10. HOW OFTEN DO SMALL FIRMS USE EXTERNAL EXPERTS TO ASSIST IN THE RUNNING OF THE FIRM**



Payroll processing is used 'very often' by one in four small firms, suggesting they may use an external payroll provider to process their wages. This is 8% less than the number of micro firms who use payroll processing 'very often', indicating that when a firm grows to over ten employees they are more likely to do such processing inhouse. Just over one third do not use one at all (the highest level). There is a difference here between the most ambitious small firms and the others. For those firms wanting to increase their staffing level by over 50%, only 29% did not use external payroll support at all, whereas for firms with more moderate growth plans (of up to 50% staffing increase) or those wanting to stay the same, 38% did not. The most popular support used regularly is for tax compliance, with only 11% of small firms doing without entirely and more than one in four using external help very often. This adds credence to the Government using accountants as a way to inform small businesses of changes to the law, not just in tax, but also areas such as pension reform and employment law compliance.

Over 80% of firms use external expertise to help them to comply with employment regulation.

This should inform Government assessments of how much new regulation will cost business both to implement (a one off cost) and as a recurring burden. Most firms (69%) use this support in an ad hoc way, perhaps when new regulation comes into force or when a circumstance within their firm dictates its need (eg a maternity leave or dismissal situation). Only 14% of small firms do not use external support here at all, 10% lower than micro firms, suggesting that once a firm reaches ten employees, employment regulation is more of a risk, and so more resource needs to be put into handling compliance.

Double the numbers of small firms do not use 'people management' external support as opposed to employment regulation support. Help managing staff is most likely to be used 'not very often', although the majority of firms (63%) still use some external support in this area.

The three top areas for external support (tax compliance, training and employment regulation compliance) indicate where the gaps in internal expertise are in the UK's small firms - and perhaps where they see the biggest risks/opportunities, if not tackled properly.

## Recommendations

### 1. THE PREVALENCE OF ATYPICAL WORKERS MUST BE FACTORED INTO REGULATION AND GUIDANCE.

For small firms without huge amounts of external resource for regulatory compliance, it is crucial that Government employment law guidance is timely, concise and meets their needs. This survey shows that once a company hits ten employees, the use of atypical contracts increases markedly. They are clearly no longer the 'niche' arrangements they once were.

1.28m part time workers are looking for full time work<sup>19</sup> (the highest since records began in 1992) and the number of Employment Tribunal cases involving the part time work regulations has risen dramatically this year. New employment regulation needs to be more responsive to these changes by making law and guidance that is easily applied to these kinds of workers. Several examples of lawmaking in recent years (perhaps most notably the Pensions Act 2008) have treated the administrative regime for atypical workers as an afterthought, increasing complexity for employers, and therefore increasing costs and risk. There is a danger that the proposals for shared parental leave will also be overly complex for those not on a standard permanent full time contract, and this must be addressed.

### 2. EMPLOYMENT TRIBUNALS ARE A PROBLEM IN REALITY, NOT JUST AN ISSUE WITH PERCEPTION.

The fact that one in five small firms has been threatened with a Tribunal claim in the last three years is a shocking statistic. It shows just how much time and resource small firms have had to divert to deal with the litigious culture amongst some employees. The Government's package of reforms proposed at the beginning of 2011 is welcome, but does not go far enough to tackle such a systemic problem.

The proposal to introduce financial penalties for employers must be scrapped<sup>20</sup> and the plans to increase the amount that can be awarded to employers in costs extended. This will ensure that judges make these awards more regularly where appropriate.

However, reforming the system itself will only solve part of the problem. Without a large volume of ever changing and complex regulation, there would be less litigation. This breeds uncertainty, encouraging firms to pay for expensive external advice at every turn, and encouraging employees to try and 'catch out' well-meaning employers with new rules and new interpretations. The Government must commit to simplifying and then stabilising the employment law system in an effort to both

reduce speculative claims and allow firms to divert their resources away from tick-box compliance and towards growth.

### 3. DISMISSAL RULES ARE TOO ONEROUS - AND MUST BE TACKLED.

Dismissal rules are seen as extremely burdensome by nearly one in three small firms - the highest out of any of the size categories<sup>21</sup>. This must be taken seriously by the Government and reform must be undertaken. Increasing the unfair dismissal qualifying period is not, in itself, enough. There should be a root and branch reform of the whole dismissal system, including gross misconduct and redundancy regulation, and analysis of how dismissal rules operate in conjunction with other laws, such as discrimination.

In some areas, the law may need re-codifying to remove the layers of complexity that differing employment tribunal judgements have added into the regulations. In BCC's 2010 report 'Employment Law: Up to the Job?', we suggested that many of the problems with gross misconduct could be mitigated by enshrining the Burchell<sup>22</sup> test in statute. The BCC's 2010 recommendation for a new dismissal route for employees should also be implemented<sup>23</sup>. For redundancy rules, the natural evolution of the law has complicated the rules to the detriment of employers and employees. One example of this

is 'bumping', where firms and often their legal advisers struggle to identify in which circumstances they have to consider moving the employee whose role has been made redundant into a role currently filled by another employee.

### 4. THE REMOVAL OF THE DEFAULT RETIREMENT AGE (DRA) HAS BEEN A BLOW TO SMALL FIRMS - A REPLACEMENT IS NECESSARY.

One of the ways to mitigate the effect of the removal of the DRA would be to strengthen the objective justification test<sup>24</sup> by putting into legislation some of the case law to make it clear that workforce planning would be enough to evidence objective justification. The ACAS guidance on this issue states that the 'test of objective justification is not an easy one to pass<sup>25</sup>'. The Government could amend the law so that businesses can be more certain of its applicability and more confident in its use. On a macro level, this would have positive impacts for job creation as there is anecdotal evidence that the uncertainty surrounding potential retirees is putting firms off taking on apprentices, or indeed hiring at all.

19. [http://www.ons.gov.uk/ons/dcp171778\\_232238.pdf](http://www.ons.gov.uk/ons/dcp171778_232238.pdf)

20. BCC response to Tribunal Consultation 'Financial penalties will not encourage compliance, just early financial settlements in weak claims. Penalties will not change the behaviour of employers who are already prepared to defend a claim and be faced with unlimited costs.'

21. For micro firms it was 21%, firms with 50-249 employees it was 27% and for firms with more than 250 employees, it was 24.5%.

22 & 23. BCC report 'Employment Law: Up to the Job' March 2010.

24. Even without the DRA, it may still be possible to retire an employee lawfully at a set age provided that the retirement age can be objectively justified, which means that it is a proportionate response to a legitimate aim.

25. [http://www.acas.org.uk/media/pdf/d/4/Working\\_without\\_the\\_DRA\\_Employer\\_guidance\\_-\\_MARCH\\_2011.pdf](http://www.acas.org.uk/media/pdf/d/4/Working_without_the_DRA_Employer_guidance_-_MARCH_2011.pdf)

## Chambers Participating in the Survey

Businesses that participated in the survey are members of the following 53 Chambers.

Aberdeen and Grampian Chamber of Commerce  
 Ayrshire Chamber of Commerce & industry  
 Barnsley and Rotherham Chamber of Commerce  
 Bedfordshire & Luton Chamber of Commerce  
 Birmingham Chamber of Commerce Group  
 Black Country Chamber of Commerce  
 Bradford Chamber of Commerce  
 Cambridgeshire Chamber of Commerce  
 Channel Chamber of Commerce  
 Cornwall Chamber of Commerce  
 Coventry & Warwickshire Chamber of Commerce  
 Cumbria Chamber of Commerce & Industry  
 Derbyshire and Nottinghamshire Chamber of Commerce  
 Doncaster Chamber of Commerce & Enterprise  
 Dorset Chamber of Commerce & Industry  
 East Cheshire Chamber of Commerce & Industry  
 East Lancashire Chamber of Commerce & Industry  
 Edinburgh Chamber of Commerce & Enterprise  
 Essex Chamber of Commerce  
 Fife Chamber of Commerce  
 Glasgow Chamber of Commerce  
 Greater Manchester Chamber of Commerce  
 GWE Business West (West of England)  
 Herefordshire & Worcestershire Chamber of Commerce  
 Hertfordshire Chamber of Commerce & Industry  
 Hull & Humber Chamber of Commerce Industry & Shipping  
 Isle of Wight Chamber of Commerce  
 Kent Invicta Chamber of Commerce  
 Leeds, York and North Yorkshire Chamber of Commerce  
 Leicestershire Chamber of Commerce & Industry  
 Lincolnshire Chamber of Commerce & Industry  
 Liverpool Chamber of Commerce & Industry  
 London Chamber of Commerce & Industry  
 Mid-Yorkshire Chamber  
 Milton Keynes & North Bucks Chamber of Commerce

Norfolk Chamber of Commerce & Industry  
 North and Western Lancashire Chamber of Commerce & Industry  
 North East Chamber of Commerce  
 North Staffordshire Chamber of Commerce and Industry  
 Northamptonshire Chamber of Commerce, Training & Enterprise  
 Northern Ireland Chamber  
 Portsmouth & South East Hampshire Chamber of Commerce  
 and Industry  
 Renfrewshire Chamber of Commerce  
 Sheffield Chamber of Commerce & Industry  
 Shropshire Chamber of Commerce, Training & Enterprise  
 Somerset Chamber  
 South Wales Chamber of Commerce  
 St Helens Chamber  
 Suffolk Chamber of Commerce  
 Surrey Chambers of Commerce  
 Sussex Chamber of Commerce & Enterprise  
 Thames Valley Chamber of Commerce  
 West Cheshire and North Wales Chamber of Commerce



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