



The business people – an extension to your team

Red Tape Panel Report

November 2010

Introduction

The Forum of Private Business is a proactive, not-for-profit organisation, providing comprehensive support, protection and reassurance to small businesses. We add value to businesses through the collective voice for members in local, central and European government, and the provision of tailored solutions that promote business success.

Our Red Tape Member Panel comprises approximately 90 members who have volunteered to provide feedback to us on red tape matters, however numbers on this panel were limited to 50 as some of the respondents had already been asked to complete similar panel questions for the Health and Safety or Employment Law Panel. Traditionally, we have contacted panel members on an *ad hoc* basis to gather feedback on specific issues, however, we now engage more regularly with the business owners on our Member Panels to better understand and collect evidence of their real life experiences, to more effectively reinforce our policy and campaigns activities.

Note: as panel figures refer to just 50 businesses, they should be treated as indicative rather than as representative of all small and medium-sized businesses.

Summary

Business owners feel that their elected representatives in London and Brussels have been too quick to use legislation to deal with issues that often were designed for larger businesses and did not benefit smaller employees.

The administrative burden on businesses is felt to be out of kilter with the benefits that the regulatory framework can bring and some areas of employment law and the Equality Act are seen to be balanced in favour of a single employee rather than all employees and the business. The administrative burden is seen as a big part of this as employers are often concerned in case they have mislaid some paperwork or have missed out one of the (perceived) requirements of the law.

The negativity about red tape can be seen by some of the quotes from our members about how trying to comply is often used against them and the comparatively high score given to the red tape burden compared to the operational framework that employment law and health and safety legislation provide.

There does not seem to be an easy fix in terms of changing laws into best practice, but our panel members would like an acceptance that a more informal way of meeting compliance needs to be accepted, with requirements minimised on a case-by-case basis.

The majority of businesses are so confused by regulatory requirements that they adopt what they see as the best practice for their business rather than following the details from legislation. Businesses on this panel see the public sector cuts as more influential in terms of improving legislation than the reviews themselves as it indicates the overriding economic need to get smaller employers employing rather than following legislation.

Understanding of the impact of red tape on smaller employers

Just under 90% of panel members felt that legislators do not understand the needs of small employers in terms of the regulatory framework. Respondents felt that legislators were detached from the needs of smaller employers and there were not enough restraints to prevent them introducing legislation that would only help a smaller proportion of businesses. Often, those benefitting are larger businesses or those who are exempt (if those businesses are able to work out that they are).

"[Legislators] live in a detached world from actual reality in the real world of work." Member response

"I don't think they really think it through. They are paid to create new legislation and need to justify their jobs." Member response

"The self-employed are exempt from much of the most troublesome legislation in the workplace. We compete with a largely self employed workforce with employed workers - there is no level playing field and we're sick of banging our heads up against pointless requests." Member response

Improvements members wanted to see

Members of the panel were asked about where they felt improvements could be made to the regulatory framework. Simplicity in employment regulation was the cited by over 85% of respondents with around 70% wanting greater simplicity in health and safety regulation and 75% looking for simplicity in environmental legislation.

Figure 1: Need for improvements

	More certainty	More consistency	Simplicity	Proportionality	Reducing cost	Reducing time
Employment regulation	Yellow	Yellow	Red	Orange	Yellow	Orange
Environmental legislation	Green	Yellow	Red	Yellow	Yellow	Yellow
Tax regulation	Yellow	Orange	Orange	Yellow	Yellow	Yellow
Health and safety regulation	Orange	Orange	Red	Yellow	Orange	Orange

Red represents 67%+ of panel members, Orange 33% to 67%, Yellow 10% to 33% and Green below 10%.

Source Red Tape Panel 2010

"H&S rules need to be simplified and proportionate. VAT rules need to be made more simple." Member response

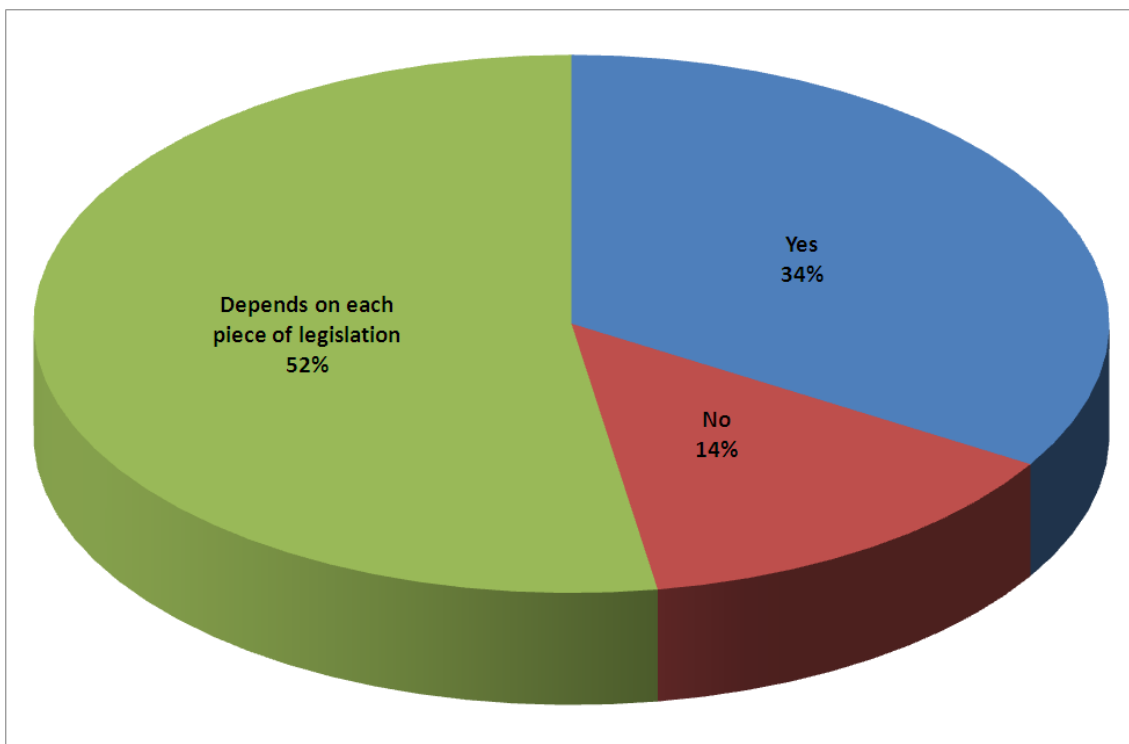
After simplicity, time and proportionality were key issues that could be improved. The two are intrinsically linked as smaller firms in particular felt that the time spent in complying with employment law put them at a disadvantage compared to larger organisations with specialist human resources staff and the self employed who do not have to spend time on such issues. As non-employers grow as a proportion of enterprises in the UK (74% of enterprises now do not employ) this inequality is growing.

Environmental legislation was overly complex but overall less problematic than other areas of legislation. Few businesses saw certainty as being an issue as in key areas such as planning there is a clear chain of command or in the case of green compliance the certainty is effectively provided by the level of usage. More certainty of enforcement was key for health and safety legislation as the level of health and safety required often varied according to the enforcement officer who was spoken to. Again many businesses felt that simplicity was an issue.

Greater consistency was wanted from HMRC and a simplification of taxation. One business owner felt that the tax system should be centred around the needs of the taxpayer rather than HMRC or other government institution. The recent issues surrounding and additional time spent on having to provide VAT returns online, did nothing to reverse this opinion.

We asked members if they would get as much benefit if regulations were turned into best practice rather than being part of the legal process. 34% stated that in general this was the main point of legislation and that they would maintain their current process even if was not required, pointing out that the administrative burden was often the issue. Businesses believed that establishing basic principles on record keeping, frequency of checks, clarification of what needed to be done and in extreme cases opting out of EU directives could help streamline the burden of red tape. 14% felt that there would be no point to the process without legal process and 52% indicated that it depended on the legislation, with some aspects of employment law requiring a paper trail to support the employer in the case of a tribunal.

Figure 2: Would you get the same benefits from the current legislative framework if it were made into best practice guidelines rather than a legal framework?



Source Red Tape Panel 2010

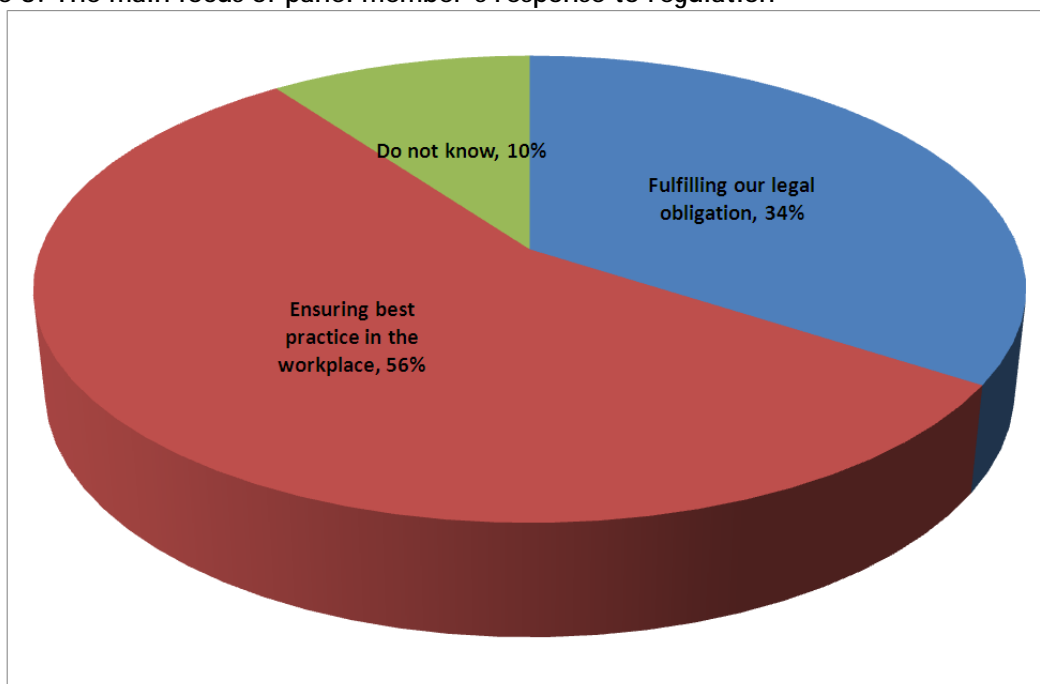
“Cut as much regulation as possible and just issue companies with a book of best practice so managers and owners are aware of their responsibilities but do not have to operate under such a threatening atmosphere.” Member response

Businesses on the panel generally looked at ensuring best practice in the workplace rather than fulfilling their legal obligations as they viewed retaining key staff as an important function of their major compliance burdens. Local reputation was also considered important by a number of panel members particularly in areas where the business needed to demonstrate some expertise e.g. health and safety by construction firms. Some businesses pointed out that with large sections of the legal framework untested in a court of law, the only option for a small business owner was to ensure that they achieved what they considered to be best practice.

‘Fulfilling legal obligations does not necessary result in best practice and when cumbersome, expensive and time-consuming, is not carried out for the benefit of the company or its staff but with reluctance simply because “we have to”’ Member response

Some businesses disagreed, pointing out that some legislation would be ignored because it is too difficult to follow.

Figure 3: The main focus of panel member's response to regulation



Source Red Tape Panel 2010

"First to not re-enact legislation already in place. If need be adapt to changes. To do more realistic trial runs not just lip service ... You need to take actual examples and see why the legislation does not work not generalisations. You need specific facts." Member response

Summary of ways suggested by panel members to improve legislation

Suggestions for improvements to legislation tended to fall into a small number of categories

- Change of culture, using more common sense and less criminalisation over slight mistakes. One business mentioned that the new equality laws made their employees scared of saying anything fearing it would cause offence, whilst another organisation complained that they were being made to pay for over-engineered systems because the main contractor was uncertain as to what the original legislation meant.
- Greater rigour in understanding the implications of legislation on smaller businesses, an issue reflected in the employment law panel where two thirds of business owners felt that were issues with the current impact assessments.
- Limit legislation as much as possible and minimise the administrative element, owners pointed out that increased legislative requirements were cumulative rather than a one-off exercise as the number of laws that the business has to comply with and the conflicting nature of some legislation meant businesses could not hone their internal processes
- Show greater balance in respect to the business owner, too often the system in practice favours HMRC (in tax compliance) or a single employee (in a tribunal situation) rather than the business and its dependent employees. In employment law and health and safety, some business owners felt that the state should have far less involvement as the overriding legal document should be the contract between the employer and employee and the state should respect this.
- Accept that, due to their size, smaller businesses can undertake actions informally with more success than more formal methods. The need for formal processes (too readily taken as best practice) comes from larger businesses who need to formalise systems to deal with the size or multiple locations of their organisation

- Incentivisation of the take up of best practice models rather than the one-size-fits-all model.
- A significant reduction in regulatory requirements so that businesses and enforcement officers have much more time to grow their business and the economy. One respondent estimated that there should be a 50% reduction in red tape, and feedback from our health and safety guide put the figure at a 41% reduction between what businesses currently spend on it and what they would be prepared to.
- Clarify what is expected by business owners and what is not. One business owner mentioned the issues of eye sight tests for all their courier drivers needed to be paid for by the employer. The owner felt that this is another case that would increase their competitive costs against self employed contractors.

“There is too much legislation, too little common sense. Courts exist to interpret and take a view on every case presented. We do not need overpaid legislators to try and second guess every eventuality.” Member response

Impact of Coalition policy on red tape

There was greater scepticism about whether the Coalition would make any impact on the level of regulation was shown by the red tape panel than the employment law panel although the responses were broadly similar, with around a third in each category.

Figure 4 Do you think that the review will lead to any improvement to the regulatory framework for smaller employers

	Red tape panel	Employment law panel
Yes	28%	34%
No	40%	31%
Do not know	32%	35%

Source Employment Law and Red Tape Panels2010

One reason why the red tape panel was less likely to believe the panel could make a difference was due to the belief that civil servants and legislators do not understand how smaller employers work. One business also felt that legislation was based on the needs of larger corporations rather than more close-knit organisations where a less formal approach could be used.

“I have learnt that it doesn't matter how much you say regulations are going to hurt or change employers behaviour, they don't listen. They use your arguments against you and make things more onerous so its best to keep your mouth shut.” Member response

In contrast to the Health and Safety panel and the Employment Law panel who were more focussed in their analysis of the cuts and indicated the lack of support as a result of the cuts from areas such as Business Link, councils and authoritative institutions like the fire brigade, the panel were more focussed on reducing the number of quangoes and influences generally on legislative change.

“The current Conservative Government, before being diluted by Liberals, promised to make a bonfire of onerous and pointless legislation. This needs to happen to free up companies in this country.” Member response

Figure 5 Impact of the public sector cuts will have on the regulatory environment

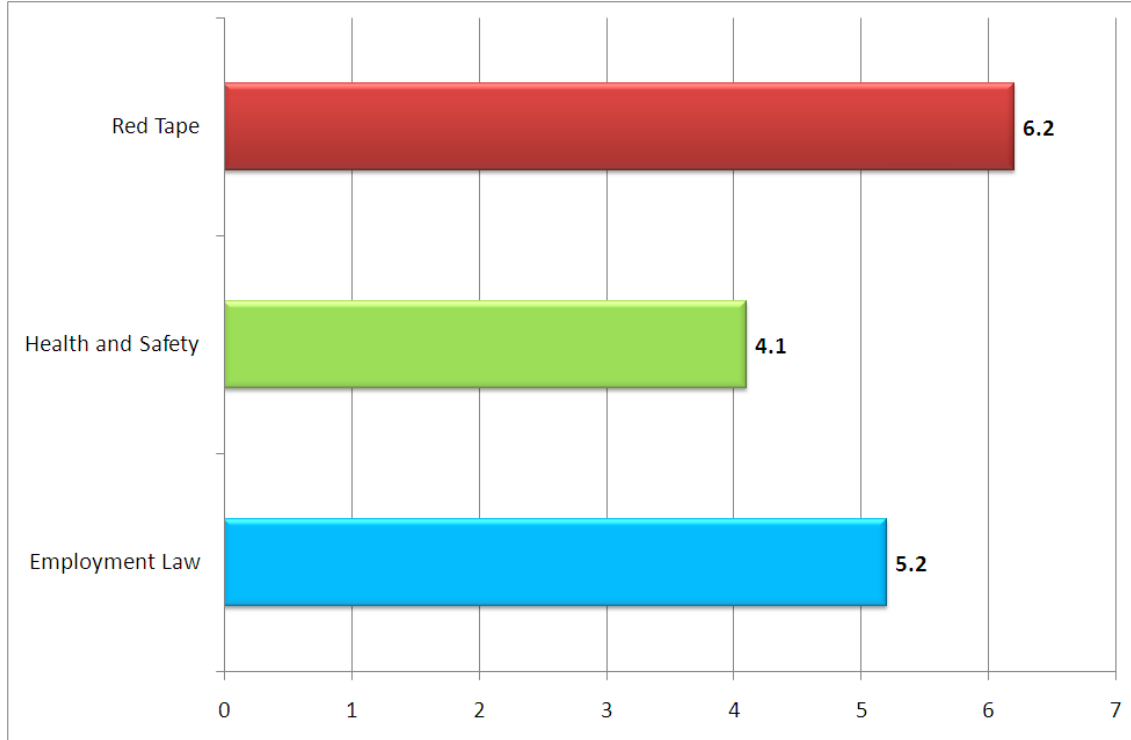
	Improve it	Make it worse	No impact
Red tape panel	46%	20%	34%
Health and safety panel	22%	56%	22%
Employment law	17%	56%	27%

Source Employment Law, Health and Safety and Red Tape Panels2010

Comparative level of the burden of red tape

Members of the panel also generally place the burdens of red tape as more onerous than the panels on Health and Safety or Employment Law, indicating that many business owners see the benefits of a compliance framework but not the paperwork that goes with it.

Figure 6: Staff understanding of H&S procedures and employers belief about compliance



Source Employment Law, Health and Safety and Red Tape Panels 2010

The health and safety panel indicated that when business owners felt that the legislation helped them they were less likely to see it as a burden as those panel members with qualifications themselves were more appreciative of what the legislation was trying to do and therefore saw greater benefits.

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