

Birmingham Law Society Employment Law Committee Meeting

Tuesday 11 October 2011

held at the offices of:

Pinsent Masons, 3 Colmore Circus, Birmingham B4 6BH

MINUTES

- 1 Attendance
 - 1.1 Those present were Mike Hibbs (Chair), Victoria Duddles, Linda Jones, Martin Chitty, Ranjit Dhindsa, Trevor Allsopp, Tracy Worthington, Fergal Dowling, Alan Jones and Tim Jones.
 - 1.2 Apologies had been received from Victoria Garrard, Richard Santy, Eileen Schofield, Andrew Cox and Jaspal Singh.
- 2 Minutes of the last meeting and matters arising
 - 2.1 Subject to the addition of Roger Sheppard as attendee the minutes of the meeting held on 13 September were approved. There were no matters arising not otherwise dealt with in the meeting.
- 3 Regional Employment Judge Fiona Monk
 - 3.1 Judge Monk thanked the committee for their invitation and it was agreed this part of the meeting would be subject to Chatham House Rules.
 - 3.2 Employment Judge Monk indicated that she had been in post since July having been a Practitioner in the Birmingham Tribunal when she was working for Coventry Law Centre before joining the Judiciary. She was always interested in hearing from practitioners in relation to any issues they had with the Birmingham Tribunal.
 - 3.3 In terms of the Employment Judiciary in Birmingham, Employment Judges McCarry & Crump were now back as fee paid judges and Employment Judge Tickle was expected shortly from Bristol. Seven new fee paid judges had entered the service in Birmingham in November but they were not yet trained in dealing with the discrimination claims since they needed 18 months experience before they were trained to handle such cases. Five other new fee paid judges had now been trained.
 - 3.4 In terms of salaried Judges, Employment Judge Hutchinson had left for Nottingham and Employment Judge Roper for Bristol. Employment Judge David Perry had arrived from Manchester, Employment Judge Sara Woffenden had come from London and Employment Judge Hilary Harding had also arrived. Some of the judges were on 80% and some on 60% contracts so sitting patterns would vary. Birmingham was still experiencing a considerable number of equal pay cases and other multiple day cases. However, with single day cases Birmingham was on course to meet its target of getting cases to hearing within 26 weeks. Multi day cases were at present being listed in March and April. Employment Judge Monk

reminded the committee that it was very helpful practitioners would always have available the dates of unavailability for themselves and their witnesses in dealing with Case Management Conference and any other hearing where a listing may be involved. It was extremely inconvenient where such information was not readily to hand.

- 3.5 There was significant reorganisation in the tribunals administration in Birmingham and it was anticipated that there would not be so much administrative resource in Birmingham as there had been in the past. Nonetheless Birmingham was managing to handle its correspondence in a timely fashion although there was a small backlog. Due to the fact that there were 14 or 15 judges sitting at any one time there were occasions where the Tribunal was short of clerks.
- 3.6 Employment Judge Monk reminded the committee of the new national protocol listing one day cases with automatic standard directions. The judges would try and pick up at ET3 stage any case that was likely to last more than one day, however practitioners were asked to contact the Tribunal as swiftly as possible if a one day listing was not appropriate. It was sometimes possible for the listing date to be retained and an additional day added before or afterwards especially if there was swift information to the Tribunal.
- 3.7 The focus of the Birmingham Tribunal was on the issues in dispute and some realistic timetabling. There would be much more proactive case management.
- 3.8 The Tribunal would consider listing PHR's-in appropriate cases.
- 3.9 In Birmingham they were looking at the possibility of hearing sample counts of discrimination where it might be appropriate to hear a small number of allegations on a preliminary basis and if those were not successful for the Claimant then listing the matter for a PHR. The aim of this was to whittle down the claim to the best points. This would only be considered where it was possible to save substantial periods of time and where there was agreement.
- 3.10 There was a plea from Employment Judge Monk to let the Tribunal know the cases settled or were close to achieving settlement. It was not always effective to leave that matter to ACAS
- 3.11 It was the policy of the Tribunal, if at all possible, to send cases away on the day before they were due for hearing and not to do so on the day itself, especially with long cases. If parties did have to be sent away on the day Regional Employment Judge Monk will endeavour to see the parties to explain what the situation was.
- 3.12 More cases were being listed for judicial mediation—So far this financial year 137 hearing days had been saved in Birmingham—with an 80% success rate. All jurisdictions could qualify for a judicial mediation if a hearing length was three days or more with the exception of equal pay cases. Priority would be given to those where employment was continuing and the Tribunal would continue to look at whether there were realistic prospects of settlement. Parties who came with unhelpful views on settlement would not be received warmly. There was one particular Claimant's representative who had served a schedule and then served a more inflated second schedule once the judicial mediation was approved to go ahead indicating that were the matter to go to Tribunal the figure would go up even further. This was not seen to be a realistic commitment to the principles of mediation.

- 3.13 The Tribunal would continue to seek compliance with its directions and would be unimpressed if matters were to reach a hearing without directions having been complied with.
- 3.14 In response to questions asked by the committee, Judge Monk indicated that she was unable to give a view on the Conservative party's proposals to introduce fees and qualification issues save to say that it would be regrettable if the Claimants were deterred from bringing Wages Act claims and the like by the size of the fee to bring the claim. It was thought that, as she understood it, both practitioners and others felt that increasing the qualification period for an unfair dismissal claim to two years could very well to increase the number of Public Interest Disclosure Act and discrimination claims.
- 3.15 There was a question from the committee about whether Wasted Costs Orders could be made more often in relation to poor representation and Employment Judge Monk indicated that such Orders were made. There was concern amongst the judiciary about poor quality representation.
- 3.16 The question was asked about the front loading of case directions and Employment Judge Monk believed that that was a practice worth continuing with because it tended to help with settlement, she was however more than prepared to listen if there were exceptional reasons, for example, continuing internal process, as a result of which the Tribunal ought to consider delaying some directions.
- 3.17 In relation to judicial mediation this was always listed for a single day. There were some cases that went on into the evening. Judges often found that cases that didn't settle on the day settled at a later stage. It would be appreciated if there could be an email to confirm to the Tribunal that settlement had been reached. Mediations could take place at Stoke but they would rarely take place off site because there were some fairly strict rules on where judicial mediations could occur.
- 3.18 Employment Judge Monk was asked about the box on the form for references to regulators in relation to Public Interest Disclosure Act claims and whether this was often used. She indicated that her understanding was that the ticking of the box could sometimes be done by accident and she was not aware of any particular references to regulators in recent months.
- 3.19 There was a concern expressed by the committee that sometimes in mediations there was a focus on legislative provisions and the potential outcome of such questions; in Employment Judge Monk's view that should be a rare occasions as normally mediation by the judiciary would be non-directional and facilitative.
- 3.20 In terms of judicial resource there were 16 salaried judges together with the Regional Employment Judge which amounted to 14.7 full time equivalents and 27 fee paid judges. This was a complement which was one salaried judge down on last year.
- 3.21 The committee asked about floating cases and whilst Employment Judge Monk felt that this was regrettable it was nonetheless necessary because the alternative would be to stretch the list out unacceptably. Usually the parties would be informed by 10.30a.m. or 11.00a.m., certainly by midday if there was a problem of whether the case was going to be heard that day or not.
- 3.22 The committee asked whether there could be more Deposit Orders made and were told that more cases were listed for PHR and Deposit than had been done previously and it was likely that more Orders were being issued than previously. The Tribunal

would also issue such Orders of its own volition. It was not however appreciated where one particular Respondent's representative applied for Deposit or Strike Out Order on every case where that particular client was a Respondent. In general the Employment Appeal Tribunal appeared to be taking a more robust line in relation to Deposit Order and PHR--It was also the case that the Birmingham Tribunal would use Unless Orders more than they had in the past. This was especially so when one party was persistently defaulting in their obligations to abide by particular Orders.

3.23 Regional Employment Judge Monk was thanked for her attendance. She thanked the committee in turn for its approach to the meeting.

4 Consultation papers

4.1 The committee were not aware of any relevant consultation papers for which a response was required.

5 Legislative changes

5.1 The committee noted that proposals of the Conservative party in particular and were in a position to respond to legislative changes as and when they were developed further by the government.

6 Birmingham Post Employment Law Supplement

6.1 The committee debated the synopsis for the previous supplement (2010) and added religious discrimination, retirement, self-dismissal (following the recent case on that subject), legal representation at internal hearings and references. Alan Jones volunteered his services to be interviewed in connection with the editorial on behalf of the committee. It was agreed that Michael Hibbs would circulate the previous list of topics and the current proposed additional list so that members of the committee could add their further suggestions. Under each item all that was looked for was three or four lines synopsis which would be passed to a firm seeking to advertise in the supplement for them to produce a page or half a page of editorial.

7 Next meeting

7.1 On 8 November 2011.

7.2 Victoria Garrard kindly offered that Gateleys would host the next meeting and that was accepted with thanks by the committee.

8 Any other business

8.1 There was a brief discussion about the committee's experiences, those of their colleagues in various Tribunals around the country. It was noted that particularly London and Southampton Tribunals had significant backlogs of correspondence.

8.2 There would be no meeting in December unless an urgent issue of government consultation arose.