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a word from the editor

Last month saw the annual Mental Health Awareness Week, which aims to tackle stigma and help people understand and prioritise their and others' mental health. The official theme for this year was 'anxiety'. ELA hosted a webinar 'Anxiety Explained: coping and beyond', which is well worth watching. I take this opportunity to remind our readers of LawCare; its details can be found on page 16 of this *Briefing*.

According to polling specialists, Censuswide, 1 in 10 people in the UK has never remained in employment with the same employer for more than a single year. The survey found that there are around 40,000 searches every single month in Google UK for 'resignation letter template' and thousands more for variants. It found: 20% of those aged 25 to 34 have never stayed with a single employer for more than a year; 12.8% of those aged 35 to 44; 0.68% for the 45 to 54 group; and just over 1% for the over 55s. The survey also found that the most frequently cited reasons for workers resigning are: feeling unmotivated (15%); overworked, that management don't care about wellbeing or that there was a poor atmosphere (all 14%); feeling that they weren't paid enough (13%); and feeling that their boss was rude or there was a lack of room to progress (both 11%).

'a belief in English nationalism could not be categorised as a philosophical belief worthy of protection'

An article published in *Personnel Today*, which reported on an employment tribunal case on whether English nationalism is a philosophical belief, caught my eye. Alec Cave brought a claim against his employer, the Open University, for discrimination on the ground of religion or belief following his summary dismissal from his post as acting project co-ordinator. There had been complaints about racist remarks made on Twitter and YouTube under the alias Renew Britannia; for example, he commented on a post by Dr Shola Mos-Shogbamimu, which celebrated her African heritage, with, 'F**k off and go home!'. Before the tribunal, the claimant described himself as an 'English nationalist' and said that that mass immigration had been 'destructive and unhealthy'. At a preliminary hearing, Employment Judge Isabel Manley dismissed the claim. She said his belief in English nationalism could not be categorised as a philosophical belief worthy of protection under the Equality Act 2010 as it was 'not worthy of respect in a democratic society' and 'incompatible with human dignity and conflicts with the fundamental rights of others'.

Another case that caught my eye was that of Karina Gasparova, an IT specialist who brought a tribunal claim against essDOCS EMEA Ltd for sexual harassment, direct sex discrimination, breach of contract and constructive dismissal. The claimant was successful, in part, in relation to complaints of direct discrimination and breach of contract (non-payment of her bonus). However, the media latched onto the sexual harassment complaint, because the claimant believed her boss's use of 'xx', 'yy', and '????' in an email asking for more information was code – '????' apparently meant he was 'ready to engage in sexual acts'. A file renamed 'ajg' (the manager's initials) was, she claimed, an abbreviation of 'a jumbo genital'. Employment Judge Emma Burns rejected her complaint of sexual harassment and said: 'Our primary reasons for rejecting her account of events were that we considered her perception of everyday events was skewed.' She added that the claimant: 'interpreted entirely innocent work-related conduct, some of it accidental … as having a sinister intent!'

I sign off this month with a quote from Swedish crime writer Henning Mankell: 'Many people make the mistake of confusing information with knowledge. They are not the same thing. Knowledge involves the interpretation of information. Knowledge involves listening.'

MARC JONES, Marjon Law

ela news

You will recall that in my last column I said that I felt that there was a relative lull in employment law and policy. Well, as ever, that did not last long as employment law and employment lawyers have been at the centre of public discourse, namely:

- Adam Tolley KC's report into allegations of bullying against the now former Justice Secretary, Dominic Raab;
- Adam Heppinstall KC's report on the appointment of Richard Sharp as BBC Chair; and
- a High Court ruling that the second day of a strike by the Royal College of Nursing was unlawful.

I am sure that many of these issues will have been the subject of discussion at our Annual Conference last month. Such reports and cases also have wider resonance as they often reflect issues we, as employment practitioners, have to advise our clients about on a regular basis. These reports and cases made me reflect on what drew me to become an employment lawyer? I can boil it down to three things:

- *it concerns people and what takes place in the world of work:* we all know that work is an important feature in personal and social identity. For me, the fact that issues in the workplace are relatable has made me able to sustain a career in employment law which is now into its third decade;
- *it is intellectually challenging and stimulating*: contrary to the view of many colleagues who practise other types of law such as commercial, tax and pensions, employment law often throws up knotty legal issues where there is no clear cut answer – consider *Uber BV v Aslam* [2021] UKSC 5 which went to the Supreme Court to decide whether Uber drivers were 'workers' within the meaning of s.230(3) of the Employment Rights Act 1996; and
- *comparatively speaking it is fast paced and constantly evolving:* this was certainly the case when I first started out when tribunals claims were dealt with between three to 12 months of the claim being presented.

'employment lawyers have been at the centre of public discourse'

Thank you to everyone who responded to the survey we sent to members in our regions. We are collating the data and will report on the findings. In the meantime, there are events in the regions. Please contact your regional representatives if there is an event that you would like them to put on. Our other committees are also busy laying on events – it is your organisation, so please get involved.

Recent activities

- **Training Committee**: the Annual Conference took place on 25 May; webinars included: 'Managing Termination of Employment on Grounds of SOSR' on 9 May.
- The **Pastoral Committee** ran a webinar, 'Anxiety Explained: Coping and beyond' on 17 May during Mental Health week, as part of ELA's Wellbeing for Employment Lawyers series.
- **The regions**: networking lunches took place in York, Sheffield, Hull and Leeds between 2 and 5 May for members in the Yorkshire and Humberside region.

Looking ahead

- **Training Committee**: the Introduction to Employment Law course will take place on 23 and 24 November in Birmingham.
- **International Committee**: ELA/ABA 8th Transatlantic Conference, 'The World of Work: Where next?' will be held in London on 22 September.
- **Pro Bono Committee**: a series of videos promoting the benefits of pro bono work, including ELIPs and beyond, will be released on the ELA website during volunteers week from 3 to 7 June.
- **The regions**: there is a Solent Training Day in Southampton on 9 June. Social events are taking place in the Upper South region in Oxford, Reading, Milton Keynes and Chelmsford between 19 and 22 June. The Wales region social dinner is planned for 29 June.

PAUL McFARLANE, Capsticks Solicitors LLP and ELA Chair

in brief

Smarter regulation?

In its policy paper 'Smarter regulation to grow the economy', published on 10 May, the Government put forward a number of proposals to reduce regulation to take advantage of Brexit opportunities (ahem!). Although there is little to get the heart racing, the Government claims its proposals will save businesses £1bn while safeguarding the rights of workers. The main proposals of interest to employment lawyers are:

- working time records – reducing the requirement to keep working hour records for almost all members of the workforce, a regulation that won't be missed but which is already probably more honoured in the breach than observed;
- holiday pay – the ability to pay rolled-up holiday pay will be reintroduced, and the calculation of holiday pay will be made simpler by merging the two different types of statutory holiday. It does not state how rolled-up holiday pay safeguards the rights of workers to be paid for holiday if the pay rate already includes the holiday pay;
- TUPE – removing the requirement to consult with elected representatives for businesses with fewer than 50 people and transfers affecting fewer than 10 employees; and
- restrictive covenants – although nothing to do with leaving the EU, the Government has said it will consult on proposals to limit non-compete periods to three months in order to support employers to grow their businesses, without interfering with non-solicitation clauses or confidentiality obligations. This is perhaps the most interesting proposal but will only be legislated when there is parliamentary time. The interesting thing about it is that no-one is quite sure whether the existence of post-termination restrictions is a boost to innovation or a hindrance. As many commentators have suggested, one likely impact of this will be to increase the length of notice periods and the use of garden leave, which will at least mean that employees will be paid while being kept out of the market.

The paper states that it is to be the first in a series of similar regulatory reforms to be announced. Given the excitement generated by these changes, I bet you can't wait for the next one!

Shortly before the *Briefing* went to press, the Government issued a consultation paper on the above changes (apart from the restrictive covenants), closing on 7 July.

'no-one is quite sure whether the existence of post-termination restrictions is a boost to innovation or a hindrance'

Sunset, sunrise

You cannot have missed the fact that the Government has removed the controversial sunset clause from its EU Retained Law Bill. No longer will a whole raft of laws fall away by 31 December 2023, unless explicitly preserved. Brexit ultras were rather upset about what they see as a betrayal, but most people will welcome this change of heart by the Government. Removing all EU-derived legislation, even if the consequences of its removal had not been properly considered, was always a rather blunt weapon which was likely to create, at best, uncertainty and, at worst, chaos, so we can be thankful a modicum of common sense has returned to our legislative process.

However, that is not quite the end of the story, as the Government still plans on removing the supremacy of EU law. So, if the effect of EU law is being removed, how does that affect, for example, the ability to pay rolled-up holiday pay, when so much of the law on holiday pay is contained in just the case law that will no longer be binding; for example, the right to take sick leave during periods of holiday and

what must be included in the calculation of holiday pay such as regular overtime? One hopes that the Government will take care to ensure that matters dealt with by EU case law are properly addressed in any new regulations that are passed. However, the consultation paper issued referred to above makes no mention of any of those issues.

Useful tip

The Employment (Allocation of Tips) Act 2023 received Royal Assent on 2 May and is expected to come into force in May 2024. This will undoubtedly assist many low paid workers in the hospitality sector who will now recover the benefit of their good service without the employer being able to use tips to increase its own profits. There will be an obligation to allocate tips fairly between the staff and a statutory code of practice will be introduced – the Department for Business and Trade will issue a formal consultation on a code of practice later this year.

The additional record keeping obligations will not be a welcome imposition for small businesses, but it is a necessary burden to give teeth to the Act. From a purely selfish perspective, however, I wonder whether one side effect of the Act will be a trend away from restaurants adding 12.5% or even 15% service on top of the bill rather than the traditional 10%. Given that employers will no longer be able to use tips towards profits, and already cannot use them towards calculating the national minimum wage, there would be little incentive in doing so.

Long-term effect of an impairment

When determining whether someone is disabled for the purposes of the Equality Act 2010, para 2(1) of Schedule 1 states that a person's physical or mental impairment is long term if it has lasted or is likely to last 12 months or the rest of the person's life. In *Morris v Lauren Richards Ltd* [2023] EAT 19, M suffered from anxiety for three and a half months up to her dismissal, but did not have a significant history of mental health issues. Her anxiety began when she suffered a loss of confidence and became overwhelmed at work. The employment tribunal concluded that the cause of the claimant's anxiety centred on issues with her workplace and there was nothing to suggest that her anxiety was likely to persist once she left the employer's work environment and therefore would not last 12 months.

The EAT held that the reasoning was impermissible as it referred to events taking place after the alleged act of discrimination. Upholding the appeal, the EAT ruled that the tribunal should have focused on whether the effect of M's anxiety could well have lasted a further eight and a half months without reference to the dismissal. As insufficient evidence had been provided in order to make that judgment, it was remitted for a rehearing on that issue.

RICHARD LINSKELL, Gunnercooke LLP

Duty to protect an employee's economic wellbeing?

MUKHTIAR SINGH and LAMEESA IQBAL, Doughty Street Chambers

Either in tort or in contract, courts have been reluctant to confer on employers a duty to protect their employees' economic wellbeing. Below, we outline the developments of the case law, culminating in an analysis of Benyatov.

Overview

In *Scally*, four doctors claimed that a contractual and/or tortious duty existed and had been breached by the employer failing to inform them of changes to their pension rights. Lord Bridge stated that if no contractual duty existed, then 'I do not see how it could possibly be derived from the tort of negligence'; and, given the strong trend of authority to narrow economic loss claims, such a duty would not be recognised.

However, this was a novel problem, thus, the House of Lords held it was necessary to construct a very narrow implied obligation. It held that, where a particular contractual term exists that (i) has not been negotiated with the employee; (ii) confers a valuable right contingent upon the employee taking action to obtain the benefits; and (iii) which the employee could not be expected to know about without it being brought to their attention, then there will be an implied obligation to take reasonable steps to publicise that term. Accordingly, the failure to notify was a breach of contract.

In *Spring*, the House of Lords held that an employer providing a reference owed the ex-employee a duty to take reasonable care in its preparations, otherwise it would be liable in negligence for any loss thereby suffered. Broadly speaking, this was done by extension of the *Hedley Byrne* principles and therefore was a move away from Lord Bridge's 'contract only' approach, albeit some of the justices were able to imply a contractual term.

The House of Lords in *Malik* held that there existed an implied contractual term not to conduct a dishonest business which would adversely affect an employee's reputation, recoverable in damages, including future loss. Lord Slynn referred to *Scally* as the 'change in legal culture which made possible the evolution of the implied term of trust and confidence'.

Despite this pronounced change in legal culture, there remained judicial reluctance to extend the duties identified beyond *Scally*: for example, *Eyett, Outram* and *Crossley*.

In *Hagen*, Elias J rejected the existence of a wider contractual duty to notify or a '*Malik*-type' term, stating that it would be rare that negligence would reach the 'seriously' standard expressed in *Malik*. However, it was just, fair and reasonable to impose a common law duty of care in making statements to employees in a transfer situation notwithstanding TUPE obligations.

In *Lennon*, the Court of Appeal held that the Commissioner owed (and breached) a duty in relation to rights of a housing allowance on transfer. The situation was analogous to a contractual one and a 'striking feature' of the case was the assumption of responsibility undertaken.

Reputation and wrongdoing cases

The law remained fairly settled, albeit restrictive, in relation to notifications of contractual benefits such as pension and allowances. However, it laid the foundations for three cases in the past five years which required a revisiting of the principles due to somewhat rare circumstances.

James-Bowen was a negligence claim (among others) brought by police officers alleging that the Commissioner owed them a duty of care in tort in respect of the handling of a claim made against them by a third party. They sought compensation for reputational and economic damage caused by the Commissioner's decision to settle the claim and publicly condemn the officers. The Supreme Court held that the relationship between the parties was analogous to that of employment and, therefore, it was just in principle to consider by analogy the implied terms of mutual trust and confidence.

However, the Supreme Court held that the novel implied term alleged (to conduct litigation in a manner to protect

'the High Court had found on the facts that a criminal conviction was not foreseeable and so the bank was under no such duty'

its officers) would be too far of an extension of previously established duties and contrary to the analogous and incremental 'fair, just and reasonable' requirement of *Caparo*.

Rihan involved very unusual facts noted by the court as an 'outlier'. The claimant discovered that a client was participating in activities suggestive of money laundering. His company failed to take action, so the claimant made a protected disclosure, following which he was unable to obtain alternative employment. He brought a claim in negligence alleging breach of two duties of care owed to him: a duty to take reasonable steps to keep him safe ('safety duty'); and a duty to address the claimant's concerns about the audit client in an ethical and professional manner ('audit duty').

The High Court rejected the existence of the safety duty as an illegitimate extension of the general duty to protect against personal injury to pure economic loss. However, the audit duty was recognised as a novel duty justified by an incremental development of existing duties, based on *Caparo* principles. The court cautioned that this was a very narrow duty, existing where whistleblowing protections could not apply (such a claim was not available to the claimant as he was based in the Middle East). The employer was in breach of the audit duty and ordered to pay significant sums to the claimant for past and future loss of earnings.

Benyatov: background

A former banker sought to recover more than £65 million in lost earnings following his criminal conviction in Romania in 2007. He was working for the defendant when he was arrested and charged for 'economic or commercial espionage'. The defendant supported him and paid for his defence. Upon conviction, the defendant had to inform the FCA, effectively debarring him from the industry.

The claimant alleged the existence of an implied term that the defendant would indemnify him for all losses, including lost earnings, arising from, or in consequence of, diligently performing his contractual duties irrespective of any fault on the part of the defendant (the contractual indemnity claim); and that the defendant was in breach of their duty to take reasonable care to avoid the claimant being convicted in consequence of performing his duties for the company (the negligence claim).

The High Court had found on the facts that a criminal conviction was not foreseeable and so the bank was under no such duty (and this would have been out of time in any event). In support of this conclusion, the High Court found (para 226) that:

- Romania was not a high-risk country at the relevant time;
- the transaction itself was not high-risk;
- the bank had not been put on notice via any flag;
- that political or other detailed risk assessments were not standard practice; and
- there were no other circumstances that made it inappropriate to appoint the claimant on the transaction.

Court of Appeal

The court upheld the decision of the High Court dismissing the existence of either duty. It restated the three *Caparo* factors to consider when deciding whether a tortious duty of care should be recognised in a novel situation; that is foreseeability, proximity and fairness, justice and reasonableness. As was explained in *Robinson*, the court restated not to apply these three factors as a single test, but to adopt an incremental approach analogous to the established authorities.

The Court of Appeal rejected that a duty could be identified by analogy from *Rihan*. It noted that the safety duty rejected in *Rihan* had 'some resonances for the present claim' (para 58, p.23). However, the audit duty in *Rihan* had no application as the loss was not foreseeable, and the bank was not accused of wrongdoing. The analogous duty argument accordingly failed. It was also made clear that the Court of Appeal was not expressing a view as to the correctness of *Rihan*.

The court considered assumption of responsibility and its limitations. It concluded that it was a useful analytical tool in some circumstances, but not a decisive factor. The Court of Appeal also dismissed the ground that the High Court had applied a subjective approach to foreseeability: an objective approach had rightly been taken. It also rejected grounds of errors of fact; and upheld that the negligence claim was time-barred.

Following a 'regrettably prolonged trawl through the case-law'(para 129, p.44), there was no support in English authorities, by a statement of principle or by analogy, of an implied general indemnity duty. To imply such an indemnity now would not be reasonable, fair or properly balance the competing policy considerations. The principal reason was that

'employers can breathe a sigh of relief that they are not liable for all losses their employees may suffer as a result of doing their job'

this would subvert the way in which the law had addressed the obligations of employers, which is broadly fault-based. It would open up an employer to any number of claims arising from the acts of third parties.

Application for permission to appeal to the Supreme Court was lodged on 16 March 2023.

What can we take away from these cases?

Employers can breathe a sigh of relief that they are not liable for all losses their employees may suffer as a result of doing their job. The courts continue to keep the extent of tortious and contractual duties relating to economic wellbeing closely aligned; and extremely limited beyond *Scally* principles.

Given that the courts start their analysis by identifying contractual terms, it is important that claimants plead claims primarily relying on implied terms where possible. Employers should be aware that claims that have been successful tend to be those where an employer has actively provided advice (*Lennon, Spring* and *Hagen*) or has breached the implied term of trust and confidence, and only then in very fact-specific circumstances as is required by *Malik*.

There is scope for expansion: per *Malik*, the implied term of trust and confidence can be breached in many ways. The duty identified in *Rihan* demonstrates that where an employee has knowledge of wrongdoing, a court is more likely to accept the existence of a duty.

Benyatov failed factually on foreseeability, so employers should be aware that a court will focus on what the business should have objectively known. The theme of actual or constructive employer knowledge may well pave the way for further expansion of employers' duties, which underscores the importance of whistleblowers, risk assessments, audits and other methods of bringing wrongdoing (and risks of wrongdoing) to the attention of employers, particularly when engaged in regulated work abroad.

KEY:

Benyatov	*Benyatov v Credit Suisse Securities (Europe) Ltd* [2023] EWCA Civ 140
Scally	*Scally v Southern Health and Social Services Board* [1991] ICR 771 HL
Spring	*Spring v Guardian Assurance Plc* [1994] ICR 596 HL
Hedley Byrne	*Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] A.C. 465 HL
Malik	*Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* [1997] ICR 606 HL
Eyett	*University of Nottingham v Eyett* [1999] IRLR 87 Ch D
Outram	*Outram v Academy Plastics* [2000] IRLR 499 CA
Crossley	*Crossley v Faithful and Gould Holdings Ltd* [2004] ICR 1615 CA
Hagen	*Hagen v ICI Chemicals & Polymers Ltd* [2002] IRLR 31 QBD
Lennon	*Lennon v Commissioner of Police of the Metropolis* [2004] IRLR 385 CA
James-Bowen	*James-Bowen v Commissioner of Police of the Metropolis* [2018] ICR 1353 SC
Caparo	*Caparo Industries Plc v Dickman* [1990] 1 A.C 605 HL
Rihan	*Rihan v Ernst and Young Global Ltd* [2020] EWHC 901 (QB)
Robinson	*Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4

Bringing down the backlog

KATE NOWICKI and SAMANTHA CLARK, Acas

The latest data on tribunal backlogs (December 2022) makes for concerning reading: there are more than 50,000 outstanding cases, an increase of 7% in just a year – with the backlog rising steadily. Waiting times are often 12 months-plus, rising to over two years to get a judgment for more complex claims.

The Law Society President Lubna Shuja recently noted: 'This means people and businesses are facing prolonged periods of uncertainty, which is likely to take a high toll both personally and financially, with the cost-of-living crisis hitting individuals and businesses hard.'

The cost to business

Shuja is right. Recent Acas research (*www.acas.org.uk/costs-of-conflict*) underlines the stark financial cost of workplace conflict. It showed that British employers are facing costs of £28.5 billion every year, an average of over £1,000 for every employee. This covers formal and informal workplace conflict, as well as cases that go on to litigation. This is reinforced by CIPD research, which shows an average of 1.8 hours lost per week per employee in conflict; an annual loss of 370 million days. It won't surprise anybody to find that a significant amount of those costs occur when a dispute becomes legal.

Why earlier is better

This is why Acas works with all parties to every potential case – claimant, respondent and any representatives – to explore whether it is possible to resolve the dispute faster, less formally, and without the need to go to a tribunal hearing. We know our work has benefits: in 2022–23, 74% of cases were resolved without the need for a hearing.

As the courts look to address backlogs, there is a real sense of movement towards a system focused on resolution of disputes at an earlier stage, using mediation and conciliation across a wider number of jurisdictions. Not only is this faster and cheaper, it means that more people feel more in control of an outcome which is reached by agreement, mitigating the uncertainty and stress of the judicial process.

Acas's expertise and experience are firmly at the heart of this movement. We not only offer our conciliation service in every potential tribunal case, but we have also been working alongside other experts to build the evidence base to identify effective, strategic approaches to conflict management in the workplace that really make a difference at the earliest stages of conflict and can help avoid the need for costly and lengthy litigation.

What we know works

Better skills on informal dispute resolution

Acas has long been exploring the most impactful and fair ways that organisations can address conflict early. We have published new research which looks at the innovative approach of the East Lancashire Hospitals NHS Trust to create a less adversarial, more compassionate dispute resolution process (*www.acas.org.uk/early-resolution-in-east-lancs-hospitals-NHS-trust*). The Trust has renewed its commitment to internal workplace mediation, invested in management training, and introduced a new early resolution policy that focusses on the benefits of alternative approaches to dealing with problems at an early stage, actively encouraging individuals to raise concerns and complaints with managers, rather than defaulting to formal approaches.

The research shows that three-quarters of cases referred to the Trust's new process have been resolved informally; while mediation has seen an increase in use, and a resolution rate of over 90%. Key to success has been the strengthening and clarification of the informal stages of dispute resolution, and the benefits of having a range of stakeholders who work together to seek solutions (including occupational health, HR and trade unions). One key finding was that a lack of 'conflict

'we are seeing an increase in the number of cases being resolved within the early conciliation window'

confidence' and capability among line managers were the main barrier to success, pointing to the importance of line management training.

Improving 'conflict confidence' in line managers
Poor line management skills can have a devastating effect on good workplaces. Conversely, good line management skills underpin a raft of benefits for organisations (improved innovation, job satisfaction and willingness to go beyond what is required).

Acas has long been focused on enhancing management skills and competency as well as improving conflict confidence amongst line managers to deal with problems sooner. In our experience, training should never be a one-off but an investment in on-going learning, mentoring and support.

We are working with the University of Sheffield and University of Westminster on an Economic and Social Research Council-funded initiative to test the impact of skilled line managers on productivity and conflict resolution in their organisations. If you want to find out more or get involved in the pilot training available for first line and senior managers, see *https://skilledmanagers.org*

What's happening in Acas?

Over the past two years we have also delivered an ongoing programme of modernisation around the delivery of our individual conciliation service: Early Conciliation, working in partnership with the Department of Business and Trade and the Ministry of Justice.

We have improved web content and introduced new videos to help users gain a greater understanding of the service and be able to understand the laws that may apply to their situation.

As part of this work we have developed a more intuitive early conciliation (EC) notification form which aims to get the right information from users from their very first interaction with the process, and to smoothly automate the process of allocation to a conciliator. The system is able to see who is available and has the skills to handle the case, meaning we can start the process of conciliation quicker, and parties can benefit from the whole of the six-week EC period.

Although it is very early days, we are seeing an increase in the number of cases being resolved within the EC window.

We have also made changes to how group cases can be notified, which is helping us to get those cases to the specialist teams quicker. Using that group form rather than lots of individual forms allows us to get all of the relevant cases to the same conciliator and avoids you getting multiple conciliators assigned to the same group of cases.

Alongside our process changes, we have put a significant amount of focus on enhancing the skills and knowledge of our people to ensure that they can help parties navigate the complexities of the law, understand their options and can move with confidence towards a resolution that works for them.

We are particularly proud of the outputs for 2022–23, which saw an increased number of EC notifications received (just under 106,000 notifications, up 14% on 2021–22), with more people choosing to work with us to resolve their cases through conciliation, and fewer cases (just 26%) proceeding into the employment tribunal system after early conciliation. Volumes of tribunal cases received have increased to over 32,000 (up 3% on 2021–22); though a much smaller number reach full hearing (77% are resolved ahead of hearing). This saves the taxpayer, as well as business and individuals, time and money.

And we don't want to stop here …

Connecting with our customers
We are continuing our work to establish new ways to engage with our services and interact with conciliators, and will be exploring whether there are additional ways that we can do that during their case, adding value and helping parties understand where their case is up to.

Connecting with the Employment Tribunal Service (ETS)
We are creating a digital link between the two services which will see relevant correspondence about cases within the ETS transferred directly into the case management system that our conciliators use. This will provide conciliators with a real time view of what is happening on the case and provide prompts for further useful and timely conciliation discussions.

Further focus on the backlog in the tribunals
In the last year, we have established a specialist team to focus on resolving some of the long-standing cases in the tribunal system. By the end of the year, Acas had made a significant contribution to the reduction of the backlog. The team has handled over 8,000 cases and successfully helped parties to resolve over 80% of those. It has generated additional savings to the ETS and saved significant costs for those businesses and individuals involved.

What can you do to improve the system?

If you have a case where resolution discussions have stalled, reach out to your conciliator.

Expect to see further improvements in how we engage with and support users in the coming months and years. You can subscribe to our newsletter for further information about our work (*https://obs.acas.org.uk/subscription*).

Kate Nowicki is the Director of Dispute Resolution and Samantha Clark is the Head of Individual Dispute Resolution.

Reasonable adjustments for mental health

CÉLINE WINHAM and DEBORAH CASALE, Irwin Mitchell

The Briefing considers the duty on employers to make reasonable adjustments for disabled individuals with mental health conditions and the tricky issues to be aware of in light of the recent Acas guidance on reasonable adjustments for mental health at work.

New Acas guidance: reasonable adjustments for mental health

As we know, mental health can have a significant impact on an individual's ability to perform well in their job. With an estimated one in four people experiencing a mental health problem at some point in their life, there is more need than ever for employers to understand how to best support their staff.

Last month, Acas published new non-statutory guidance on reasonable adjustments for mental health at work in conjunction with Affinity Health at Work. It covers what reasonable adjustments for mental health are, provides examples of such adjustments and sets out the benefits for making these adjustments. It also provides simple guidance for employees to request reasonable adjustments for mental health and for employers in responding to those requests, as well as template request and response letters. The guidance goes on to recommend good practice for having conversations about mental health adjustments in the workplace and reviewing policies and procedures with mental health adjustments in mind.

A reminder of the law

Section 20 of the EqA 2010 sets out the duty on employers to make reasonable adjustments to ensure that individuals with a disability (which include mental health disabilities) are not placed at a disadvantage in the workplace. Deciding whether or not such adjustments are reasonable will include taking into account factors such as the cost, practicability and effectiveness of the adjustment.

To successfully claim for a failure to comply with the duty to make reasonable adjustments under s.21 of the EqA 2010, a claimant must demonstrate the following:

- the individual must be a disabled person: they must have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The impairment must have lasted or be likely to last for at least 12 months;
- the employer must know, or ought to know, that the individual is disabled: the individual should have disclosed their disability to the employer, or it should be apparent to the employer from the individual's behaviour or circumstances;
- the individual must be placed at a substantial disadvantage by a provision, criterion or practice (PCP) in comparison to persons who are not disabled. This could be in relation to access to employment, training, facilities or services;
- there must be a reasonable adjustment that the employer could have made: that would remove or reduce the disadvantage suffered by the individual. The adjustment must be reasonable in the circumstances; and
- the employer must have failed to make the reasonable adjustment or that the adjustment made was not effective in removing or reducing the disadvantage.

It is usual to plead indirect disability discrimination together with a failure to make reasonable adjustments claim as an additional or alternative claim, due to the overlap in the statutory drafting whereby it is necessary to identify the PCP which has either failed to be adjusted in the workplace or has been applied in a discriminatory manner.

The burden of proof shifts to the employer once the individual has established a *prima facie* case of discrimination to show either that they did make the reasonable adjustments required, or that the adjustment was not reasonable in the circumstances.

Reasonable adjustments: examples

Flexible working arrangements

These can take the form of adjustments to working hours, such as allowing an individual to work part-time, flexible hours or working from home. For example, in *Dunn*, the claimant suffered depression and anxiety and his request for flexible working arrangements was denied, which was held to be a failure to make reasonable adjustments.

In *Carreras,* Ms Carreras requested to work from home two days per week due to her chronic fatigue syndrome. Her request was denied and she was later dismissed. The

'every mental health condition will be experienced differently and employees' needs for adjustments will vary'

employer's refusal to allow Ms Carreras to work from home amounted to a failure to make reasonable adjustments.

Changes to the physical work environment
These could include adjustments to lighting, noise levels, temperature controls or providing a quiet space for the individual to work. In *Lamb*, the claimant was a teacher who suffered from post-traumatic stress disorder (PTSD) and requested to teach in a classroom with more natural light and ventilation. Her request was denied. By not considering Ms Lamb's request for a better working environment, the tribunal found that the employer failed to make reasonable adjustments.

In *Preston*, the claimant had primary reading epilepsy which meant he was at risk of suffering tonic-clonic seizures when reading. The relevant reasonable adjustment was to conduct permitted breaks away from his computer screen which the employer was successful in demonstrating.

Reallocation of duties or relocation
Where an individual is struggling with a certain task or responsibility, employers may be able to reallocate these duties to another member of staff or change the job responsibilities to better suit the employee's abilities.

In *Brangwyn*, the claimant worked as an occupational therapy technician and suffered from a phobia of blood, injections and needles. Adjustments were made to ensure he was not required to work on or near the hospital wards. On the facts of the case, no PCP was found in any event.

In *Hurle*, Mr Hurle was a fire station manager whose daughter was experiencing mental health issues. He was then diagnosed with depression himself and prescribed medication. Due to these circumstances, he applied for an urgent transfer to a station closer to his home. The occupational health report supported the transfer for a shorter commute. The employer denied the transfer and dismissed him for poor attendance which was found to be a failure to make reasonable adjustments.

Training and support
Employers can offer training and support to help individuals manage their mental health conditions, such as offering access to a counsellor or employee assistance programme, providing mental health awareness training, training mental health first aiders, providing unconscious bias training and appointing mental health or disability champions to gently open up the wider conversation.

Adjustments to work expectations and pay rates
This could include reducing workloads, adapting targets or adjusting deadlines for completing tasks, as well as extending a period of full sick pay or maintaining existing pay rates upon reallocation to another role for a trial period. In *Knightley*, the employer was found to have failed to make a reasonable adjustment by not allowing the claimant additional time to appeal against her dismissal.

Tricky issues

Identifying the need for adjustments: disclosure and employer's knowledge
While the legal obligation falls upon the employer to make adjustments, it is expected that the employee communicates their mental health condition to their employer in an identifiable way for the duty to make reasonable adjustments to arise. We refer back to Simon Clark and Clare Fletcher's excellent article in the April 2023 *ELA Briefing* ('Neurodiversity: awareness or knowledge'), which set out a number of useful cases on this point.

One such case included *Fabian* where the claimant ticked 'no' to disability on his medical questionnaire upon recruitment and never mentioned his autism during employment, beyond once vaguely comparing himself to Greta Thunberg, which was not understood or taken to mean a reference to autism at the time, meaning that his claim failed.

Balancing the needs of the business with the individual's needs: reasonableness
Employers are entitled to assess whether the adjustments required negatively impact the business's operations or the work of other employees. The employer in *Aleem* was found not to have breached its duty to make reasonable adjustments, as it was not a reasonable adjustment for the claimant, who was a teacher, to be paid at a higher rate during sickness absence indefinitely where the employer was already facing financial difficulties.

Considering the nature of the individual mental health condition: occupational health involvement
Every mental health condition will be experienced differently and employees' needs for adjustments will vary. Employers should be advised not to make assumptions based on previous experiences of a mental health condition or searching online, as this is fertile ground for unconscious bias and stigma to creep in. Line managers should be trained on how to handle conversations about adjustments to ensure they keep an open mind.

Employers should always consult with the employee to identify the most appropriate and effective reasonable adjustments and seek occupational health input at an early stage. The employer in *Jandu* was criticised for failing to refer the employee to occupational health and not making further enquiries to understand the claimant's dyslexia and make appropriate adjustments.

'even where a mental health condition may not constitute a disability as defined in the legislation, employers should be advised to take a proactive approach to promoting mental wellbeing'

However, where the employee refuses an occupational health referral, an employer can clearly only act on limited knowledge. The claimant in *Morgan* refused occupational health input and all but one of her claims, including failure to make reasonable adjustments, were struck out at tribunal.

Identifying the PCP

The duty to make reasonable adjustments is not infinite and, outside of adjustments to physical features and auxiliary aids, applies to making adjustments to PCPs only. The claim of failure to make reasonable adjustments was not made out in the aforementioned case of *Brangwyn* because the interactions between the employer and the employee as a whole did not impose a PCP, which caused the employee a substantial disadvantage in the circumstances.

Considering risk of other related claims

Where a failure to make reasonable adjustments issue arises involving a disabled individual, if dealt with poorly, it may lead to other types of legal claims beyond indirect disability discrimination. The development of the initial failure to make reasonable adjustments might result in harassment related to disability, breaches of health and safety obligations, whistleblowing detriment for disclosures made about the alleged discrimination and related health and safety breaches and breaches of mutual trust and confidence.

For example, in the case of *Morgan*, one single act of harassment related to disability was established due to the employer's criticism in the disciplinary proceedings that the claimant had been consciously masking her autism.

Data protection and anonymity orders

Employees' health information is considered 'special category data', previously referred to as 'sensitive personal data' pre-DPA 2018, which requires more protection.

Employers must be advised to be careful about who the employees' disability information is disclosed to and how it is processed to comply with data protection legislation. Although direct consent is not required, where possible, employers should be encouraged to allow the individual to guide what is disclosed and to whom.

Should litigation arise, claimants may be advised to apply for restricted reporting orders and/or anonymisation orders to protect their private medical and health information which tips the reputational risk scales more heavily towards the employer.

Conclusion

The law has not changed in that employers continue to have a legal obligation to make reasonable adjustments to support employees with mental health conditions where they fall under the EqA 2010 definition of disability. The case law demonstrates the importance of employers making reasonable adjustments for employees with a wide range of mental health conditions, as failing to do so could result in costly tribunal claims and reputational damage.

Even where a mental health condition may not constitute a disability as defined in the legislation, employers should be advised to take a proactive approach to promoting mental wellbeing in the workplace from an employee relations perspective as well to manage litigation risk. The recent Acas guidance clearly encourages this approach.

This in turn can improve workplace culture, whereby wellbeing becomes more than a box to tick, resulting in increased equality, diversity and inclusion, a more positive and productive workforce and better talent retention and progression.

KEY:

EqA 2010	Equality Act 2010
Dunn	*Dunn v Secretary of State for Justice* [2018] EWCA Civ 1998
Carreras	*Carreras v United First Partners Research* UKEAT/0266/15/RN
Lamb	*Lamb v Garrard Academy* UKEAT/0042/18/RN
Preston	*Mr K Preston v E.on Energy Solutions Ltd* [2022] EAT 192
Brangwyn	*Brangwyn v South Warwickshire NHS Foundation Trust* [2018] EWCA Civ 2235
Hurle	*London Fire Commissioner v Mr A Hurle* [2022] EAT 55
Knightley	*Knightley v Chelsea and Westminster Hospital NHS Foundation Trust* [2022] EAT 63
Fabian	*Fabian v City Plumbing Supplies Holdings Ltd* ET 3321633/2019
Aleem	*Aleem v E-Act Academy Trust Ltd* [2021] 7 WLUK 538
Jandu	*Jandu v Marks & Spencer Plc* ET 2200275/2021
Morgan	*Morgan v Buckinghamshire Council* [2022] EAT 160
DPA 2018	Data Protection Act 2018

Shout out for pro bono!

ELIZA NASH, ELA Pro Bono Committee

It's National Volunteers Week from 1 to 7 June and the Pro Bono Committee is celebrating by releasing a series of short videos, explaining who we are, what we are doing and highlighting the various opportunities for ELA members to get involved.

If you have ever thought about doing pro bono work, now is the time to put that thought into action. Pro bono offers the opportunity to genuinely improve the position of those in need of legal assistance.

As well as the feelgood factor of helping people who really need legal representation but can't pay for it, there are plenty of other benefits in carrying out pro bono work, including:

- providing experience in areas outside of your daily practice;
- acting for litigants on the other side of the fence – if you generally do respondent work, this can be invaluable;
- sharpening your analytical skills and the ability to 'think on your feet'; and
- expanding your professional networks and raising your profile, to name just a few.

From your firm's point of view, the social impact of carrying out pro bono work will no doubt assist their environmental, social and governance rating.

The level of time commitment required varies hugely and can be tailored to suit you; from answering emailed queries and providing telephone support for a few hours every couple of months to more substantial input.

The Pro Bono Committee is in the process of compiling a directory of volunteering opportunities available to employment lawyers, which will be posted on the ELA website and kept updated.

In the meantime, the following are among the options available:

- the *Employment Tribunal Litigants in Person Support Scheme* (ELIPS). This is an online scheme, advising claimants with claims in the London Central Employment Tribunal and regional tribunals across the country. For more details, contact: *elips@elaweb.org.uk*
- *Mumsnet/Maternity Action* provides free online legal advice on maternity and parental rights; contact: *elips@elaweb.org.uk*
- the *Free Representation Unit* is looking for ELA members to help with the supervision of its volunteers;
- the *LawWorks* charity offers volunteering opportunities and partnerships with local law centres; and
- the *National* Pro Bono Centre lists volunteering opportunities.

We hope you feel motivated to get involved in some shape or form. Please feel free to contact me directly if you have any questions or just want to know a bit more.

Eliza Nash the is Chair of ELA's Pro Bono Committee.

When absence from work is presumed to constitute resignation

JESSICA IP TING WAH, In Extenso Avocats

Both the UK and France are confronted with employees who are absent from work without the employer knowing why. Should it be construed on the facts as a repudiation of the contract by the employee; should the employer commence a dismissal procedure; or has the employee, by his or her action of failing to come to work, in fact resigned?

Rules applicable before 19 April 2023 in France

Until very recently in France, an employee who was absent from work and did not provide any evidence to justify absence was normally subject to a step-by-step procedure, involving a letter of first demand from the employer to resume work, followed by a meeting and dismissal measure for serious misconduct in order to terminate the employment contract. In such circumstances, the employee was able to benefit from unemployment benefits. An abandonment of position did not constitute a resignation as a resignation must be clear and non-ambiguous according to French case law.

According to the French Government agency on employment market statistics (DARES), there are circa 123,000 cases of abandonment of position per year and during the first half of 2022, 71% of dismissals for serious misconduct were on that ground. That said, this DARES survey should be put into perspective as it was based on a small sample survey and was intended to support the reform.

To thwart this pernicious problem, the 'Labour Market' law, dated 21 December 2022, has introduced a rebuttable presumption of resignation. The presumption applies to cases where employees are voluntarily and continuously absent without providing any justification for their absenteeism. Moreover, the new law deprives the employee of unemployment benefits. Many legal professionals have expressed criticism in respect of these new rules, considering them to be a legal aberration on the basis that a resignation cannot be presumed.

That said, the terms and conditions of the new rules had to be detailed in secondary legislation. A 'décret' has now been published which means that the new rules are now applicable from 19 April 2023.

The French Ministry of Employment has also simultaneously published question/answer guidelines, specifying that such clarifications constitute soft law and that the courts are not bound by them.

The new applicable provisions: Article L.1237-1-1 and R.1237-13 of the French Employment Code

According to article L.1237-1-1 of the Employment Code, an employee who has abandoned his or her position on a voluntary basis and who does not resume work after having received a letter of first demand to resume work, and give reasons for the absence within a certain period set out by the employer, is deemed to have resigned upon expiry of the time allotted to return to work and justify the absence.

It constitutes a simple presumption which can be rebutted thereafter by the employee before the employment tribunal. The tribunal should then examine and decide on the nature of the termination and its consequences within one month from the moment that the case is brought.

A compulsory letter of first demand

The steps to be taken depend on whether the employer wishes to terminate the employment contract or not. If the employer wants to terminate the employment contract by invoking a presumption of resignation, the employer should either send a letter of first demand by registered post or hand it over in person to the employee, with a request that the employee justifies his or her absence and resumes work. The letter should specify that, in the absence of a response within the allotted timeframe, the employee would be deemed to have resigned upon expiry of such period and the employee

'the abandonment of position is thus, prima facie, no longer an attractive option for those who wish to quit their position without losing their rights to unemployment'

will not perceive any unemployment benefits. The letter should be detailed in order to provide the employee the main items of information which would allow him or her to be aware of the consequences of a refusal to resume within the set timeframe.

If the employer does not want to terminate the contract, the employer does not have to send a letter of first demand. In this case, the employee simply remains in the workforce without pay and the employment contract is deemed to be suspended.

A minimum of 15 calendar days from presentation of the letter of first demand

The decree has set out a minimum 15 calendar days in which the employee has to justify their absence and return to work. The 15 calendar days constitute a minimum such that the employer could provide for a longer period in the letter of demand. The 15-day period starts from the presentation of the registered letter at the employee's domicile address such that if the employee does not accept or collect the letter, the letter will be deemed to have been correctly notified.

Employees who have a legitimate ground to be absent from work should reply to the employer's letter of first demand

The secondary legislation sets out examples of legitimate grounds that could be used by the employee to rebut the presumption of resignation. Those legitimate grounds are, notably, medical reasons, the right to refuse unsafe work or the right for strike, refusal to perform duties which are contrary to laws and regulations or modifications of the employment contract at the initiative of the employer. The list is not exhaustive, and it would be for the courts thereafter to assess whether the grounds provided by the employee constitute legitimate grounds.

If the employee justifies absence by providing a legitimate ground, the procedure of presumption of a resignation should not be continued. If the employer has a doubt about the legitimacy of the ground provided by the employee, it should abandon the procedure of a presumption of resignation if it does not want to take the risk of the termination being reclassified as an unfair dismissal.

Consequences of the presumption of resignation

The employee should receive his or her termination documents such as a work certificate, an unemployment certificate and a final statement of sums due.

The employee remains subject to notice which, if it is not worked, is not paid unless the employer decides to release the employee from the performance. It is recommended that employers should not release the employee from the performance of notice, failing which the employer would have to pay compensation for notice. If there is an agreement between the parties that notice will not be performed, the compensation for notice is not due.

If the employee does not work notice while he or she has not been released, the employer can bring the matter before the employment tribunal to claim payment of notice (which, in practice, is quite rare).

Conclusion

The aim of these new rules is to deter the abandonment of positions that force employers into a position where they have to take the risk of a termination, and allow employees who have abandoned their positions to receive unemployment benefits. Someone who clearly expresses the intention to resign would not, in principle, receive unemployment benefits.

With the new rules, the fact of abandoning a position would deprive the employee of unemployment benefits by placing such employees in the same position as someone who clearly expresses the intention to resign. The purpose of such provisions is also to reduce the financial burden on unemployment insurance.

The abandonment of position is thus, *prima facie*, no longer an attractive option for those who wish to quit their position without losing their rights to unemployment.

Other alternatives remain open to employees who wish to receive unemployment benefits such as a mutual termination agreement (in French 'rupture conventionnelle du contrat de travail'), provided the employer agrees to a termination on that basis, a resignation for a career change or resignation for legitimate grounds subject to the conditions set out clearly by the French unemployment authorities.

In respect to employers, the option of going through a dismissal on grounds of serious misconduct remains possible as there is no obligation to adopt the new process of presumption of resignation. Employers should thus seek advice in respect to whether the absence of the employee would constitute voluntary or unvoluntary absence on a case-by-case basis in order to decide the strategy to be adopted.

LawCare: supporting the legal community

Managing your time

Many lawyers who contact LawCare find time management difficult. They can often have so much on their plate that they don't know where to start and can often feel overwhelmed. Here are LawCare's top tips for time management to help you deal with competing demands.

Make a list

Start by making a list of everything you have to do. Break big tasks into smaller manageable chunks so they don't feel overwhelming and set realistic deadlines for each task.

Task blocking

Estimate how long certain tasks will take and block out time in your calendar to complete them. Work out what times of day suit you to complete certain tasks, you might be better at drafting a document first thing and want to save admin for the afternoon.

Prioritise: eat the frog first

Decide what's most important and do it first. If there's a difficult, unpleasant task, or one you've been putting it off, just do it – and do it right away.

Work on one task at a time

We're all guilty of flitting between tasks then ending the day with lots of tabs open and nothing completed. Try to focus on one thing at a time.

Remove distraction

Turn off your phone and email notifications so you don't get distracted when completing certain tasks. You can also block your access to social media on your phone during certain times of day. Be tidy and organised – only keep on your desk what is really important for that day.

Turn key tasks into habits

We are all creatures of habit. If you have a regular task you struggle to complete, try doing it at the same time for three to four weeks. It will soon become a habit and you will do it without even thinking about it.

Make a start

It's easy to say just do it – but sometimes exactly what you need to do is just make a start on something. It doesn't have to be perfect.

Build in rewards

Reward yourself for meeting deadlines. Perhaps make a deal with yourself that you'll get a coffee after you've completed a certain task, or you'll go for a walk after clearing your inbox. Short breaks and time away from your desk improve your energy and focus.

Learn to say no

Often we feel overwhelmed because we have just taken too much on, making it very difficult to manage our time. You don't have to say yes to everything, and if you cannot do something within a particular time frame then don't be afraid to say so.

Look after yourself

Exercise, a good diet, sleep, social interaction are all essential to our mental health as well as our physical health. Remember you can't pour from an empty cup, no matter how well you manage your time.

If you need emotional support call LawCare on 0800 279 6888, email support@lawcare.org.uk , or visit *www.lawcare.org.uk* for webchat and other resources.

contributor guidelines

The purpose of these guidelines is to minimise the need to edit submissions to conform to the *ELA Briefing* style. As the guidelines may be updated from time to time, it is important that contributors follow the latest version, available from the editor or on the ELA website. It is a condition of publication that *ELA Briefing* has First British Publication Rights. Do not submit articles printed elsewhere (in identical or similar form) or being considered for publication elsewhere. Authors may provide a link to their article as it appears in *ELA Briefing* (not the complete issue of *ELA Briefing*) on their firm/company website, provided they clearly acknowledge that the article was first published in *ELA Briefing* (© Employment Lawyers Association).
Please ensure that any contributions will not expose ELA or IDS to civil or criminal proceedings.

SUBMISSION: articles should be emailed as a Microsoft® Word attachment to *marc@marjonlaw.co.uk* by the copy deadline (details on the website or from the editor) in order to be considered for that month's issue. Articles may be held over to a subsequent month if there are space constraints.

PHOTO: all submitted articles should be accompanied by a high-resolution portrait 'headshot' photograph of the author(s) in jpeg or tiff format (a minimum of 5cms at a quality of 300dpi).

REFERENCES: at the end of the article, list the short form and full name (with un-italicised case reference) of all cases and legislation, in the order in which they appear in the article. Please provide a hyperlink in the key to any case report cited, and for any reports and legislation you mention (for the digital edition).

CONTENT: articles should examine recent case law developments or legislative proposals, providing succinct analysis and practical tips and keeping the facts to a minimum (for example, there is often no need to summarise the decision of a lower tribunal). Submissions can also be opinion pieces, checklists, overviews of a topic suitable for more recently qualified readers, overviews of foreign laws or discussions of topics related to employment law, such as HR practice. ET decisions are rarely suitable. Articles should be balanced and address both employer and employee viewpoints where possible. They should be written in an accessible style, with short sentences and paragraphs, sub-headings to signpost underlying content, a conclusion and no footnotes.

WORD COUNT: for all articles must be either 600-650, 1,100-1,200 or 1,800-1,900 words (reflecting the page length).

TITLES: should be no more than 50 characters, followed by the author's name and firm/chambers. The topic should be clear from the title.

INTRODUCTION: begin with a 'standfirst' paragraph of 30-40 words, which should introduce the subject covered in the article.

EXTRACTS: suggest a phrase or short sentence for each page, to be extracted as quotes.

SUB-HEADINGS: only use initial capitals for the first word.

BULLETED LISTS: use bulleted lists rather than numbered or lettered paragraphs. Short lists should be introduced with a colon, begin with a lower case letter (unless, for example, there is a name) and have no punctuation at the end. Longer bulleted paragraphs should be punctuated at the end with semi-colons and with a full stop on the final bullet.

ABBREVIATIONS:

- use symbols (%, US$,€); do not use ampersand unless it is part of a name
- use numerals for all numbers except one to nine and million/billion
- do not use stops for abbreviations such as etc, ie, eg
- use acronyms where they exist, but with initial capital only: Acas, Ofcom, Nato, Defra
- use standard abbreviations for organisations and the like (CBI, ECJ, EAT, MoJ, BIS, ELA)
- if no standard abbreviation exists, first use its full name, then a short form
- only define short forms (in brackets without quote marks) if not doing so would be confusing
- refer to all legislation and cases (italicised) using an abbreviated form taken from the key
- sections of legislation should appear as follows: s.94 ERA (ERA s.94 at the start of a sentence), ss.94-95 ERA

CAPITALS: use initial capitals for languages, personal titles, names of places, institutions (such as the current Government) and publications, statutory provisions (other than section and paragraph), months and public holidays. Use lower case for job titles (such as director, editor) and legal descriptors such as claimant, defendant, judge, counsel, court, tribunal, etc.

DATES: display in the following format: 24 July 2012.

ITALICS: italicise case names and names of publications.

QUOTES: use single quote marks where quoting from judgments or legislation (except for quotes within quotes). Do not italicise. Include paragraph and page references in brackets after the quote mark (para 12, p.12).

diary

BOOKINGS Email: ela@elaweb.org.uk Telephone: 01895 256972 Online: www.elaweb.org.uk

Live events

Event	Cost	Date	Location
ELA Drinks Party for Junior and Mid-level Members	Free	8 June	London
Solent Training Day	£150 + VAT	9 June	Southampton
Cambridge Social Event	Free	15 June	Cambridge
Oxford Social Event	Free	19 June	Oxford
Reading Social Event	Free	20 June	Reading
Milton Keynes Social Event	Free	21 June	Milton Keynes
Nottingham Social Event	Free	21 June	Nottingham
Chelmsford Social Event	Free	22 June	Chelmsford
Norwich Social Event	Free	27 June	Norwich
Ipswich Social Event	Free	28 June	Ipswich
Wales Social Dinner at La Monde	£10 + VAT	29 June	Cardiff
ELA/ABA 8thTtransatlantic Conference: The world of work – where next?	£325 + VAT	22 September	London
Introduction to Employment Law	Residential, £625 + VAT; non-residential, £500 +VAT	23 September	Birmingham