








# On the face of it...



## March 2010 NEWSLETTER

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## **NEW ACAS DISCIPLINARY AND GRIEVANCE PROCEDURES**

The ACAS Code of Practice on Disciplinary and Grievance Procedures (the Code) came into force on 6<sup>th</sup> April 2009 to coincide with the coming into force of sections 1-3 of the Employment Act 2008. It was issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992. Prior to this, employers were forced to follow statutory dispute resolution procedures which have now been repealed.

Under the old statutory scheme the average cost to defend an employment grievance was £9,000 and the average compensation awarded was a further £8,000. A quicker and more cost effective way of resolving employment disputes is through mediation, the Code now encourages employers to use mediation to resolve such workplace grievances. Typically, mediation will only cost a few hundred pounds plus any settlement amount that is agreed upon. It may be even less than this if the mediation is run in house.

Although organisations may wish to consider dealing with issues involving bullying, harassment or whistle blowing under a separate procedure, mediation is a suitable form of dispute resolution for minor problems within the work place such as poor time keeping, as well as the more serious allegations of abuse or discrimination. It may also be viewed by the employee as a softer more friendly approach than rushing into a formal hearing. Where employers offer mediation the employee is less likely to claim stress related symptoms and take time off work in an attempt to derail the proceedings. Furthermore where the employee has taken stress related sick leave in response to a request for a formal disciplinary hearing they may ultimately seek additional compensation for alleged personal injury.

### **What is Mediation**

Mediation is the informal and yet confidential process by which an independent third party assists in amicably resolving a dispute between two parties. In so doing the parties are hopefully able to continue with a working relationship. Mediation is entirely voluntary and allows both parties to express their concerns and the effect the actions of the other party has had on them as well as the best way to resolve it.

The Code stopped short of making mediation mandatory although legal experts had recommended that it should be, however, despite the Code's non mandatory status Tribunals will be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code. This means that if the tribunal feels that an employer has unreasonably failed to follow the guidance set out in the Code they can increase any award they have made by up to 25 per cent. Conversely, if they feel an employee has unreasonably failed to

follow the guidance set out in the code they can reduce any award they have made by up to 25 per cent.

Mediation is not a legal process, that is to say it has no legal standing until an agreement has been reached and formalised in a written agreement that is signed by both parties, the mediator does not sign this agreement. The goal of a mediator is to bring together both parties to negotiate a mutually acceptable position. The mediator's role is to seek concessions from both parties to the mediation to reach an amicable settlement agreement. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.

Where legal proceedings or formal tribunal proceedings have already commenced it is possible to have them postponed pending the outcome of the mediation, alternatively where no such actions have been started a mediator can request that no such proceedings be started until the mediation process has been completed.

All discussions that take place within the mediation sessions are without prejudice which means that in the event the mediation fails, the discussion points can not be divulged at a subsequent tribunal hearing or in court, the only thing that can be mentioned is that mediation had been attempted. It can also be advantageous where the mediation has broken down through no fault of one of the parties, for this party to bring it to the attention of the tribunal.

ACAS has found that up to 80% of mediated cases are successfully settled and rather than endure the scrutiny of the press which will often follow a public tribunal hearing, mediation is held behind closed doors and out of the public eye.

## **Highlights of The ACAS Code of Practice on Disciplinary and Grievance Procedures**

### Introduction

- ⊗ The Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.
- ⊗ The Code does not apply to redundancy dismissals or the non renewal of fixed term contracts on their expiry

### Discipline

- ⊗ Keys to handling disciplinary issues in the workplace
- ⊗ Establish the facts of each case
- ⊗ Inform the employee of the problem
- ⊗ Hold a meeting with the employee to discuss the problem
- ⊗ Allow the employee to be accompanied at the meeting
- ⊗ Decide on appropriate action
- ⊗ Provide employees with an opportunity to appeal
- ⊗ Special cases

## Grievances

- 8 Let the employer know the nature of the grievance
- 8 Hold a meeting with the employee to discuss the grievance
- 8 Allow the employee to be accompanied at the meeting
- 8 Decide on appropriate action
- 8 Allow the employee to take the grievance further if not resolved
- 8 Overlapping grievance and disciplinary cases
- 8 Collective grievances

If you would like to download the full 16 page ACAS Code of Practice on Disciplinary and Grievance Procedures from the ACAS web site [click here](#).

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## BLOWING THE WHISTLE

### EMPLOYERS TO FACE REGULATORY INVESTIGATION WITH THE TICK OF A BOX

From the 6<sup>th</sup> April 2010 an employment complaint submitted on an employment tribunal claim form (ET1) could result in the employer facing a full regulatory investigation all because the employee ticks a box on the form agreeing to the investigation. With this processes now involving such limited extra input from claimants / ex employees an increase in regulatory related claims is almost certain. Small to medium sized businesses will especially be at risk due to the fact that they are unlikely to have a comprehensive whistleblowing policy in place.

Since the Public Interest Disclosure Act (PIDA) came into force in 1998 Employment Tribunals have seen a continual rise in the number of claims that have a public interest element and thus fall within the jurisdiction of PIDA. Currently, employees can bring a claim for unfair dismissal even without the requisite one year period of employment, if they have suffered detrimentally because they have “blown the whistle” on their employer. The official name for whistleblowing is ‘making a disclosure in the public interest’.

Whistleblowing allegations against the employer can include reporting a criminal offence, failure to fulfil legal obligations, health and safety breaches, environmental damage, miscarriages of justice or fraudulent activities. In addition to bringing an Employment Tribunal claim employees who had complaints in relation to a PIDA qualifying disclosure could also contact the relevant regulatory body and inform them of their concerns over their employers business practices, for example an employee that has been dismissed after raising a health and safety issue with their employer could report this to the Health and Safety Executive who would then would investigate the complaint.

Employers need to be aware that from the 6<sup>th</sup> April 2010 the risk of investigation by a regulatory body is set to increase due to changes that are expected to be implemented through the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010 which will allow Employment Tribunals to refer claims for investigation by regulators if a Public Interest Disclosure is cited within the Employment Tribunal Claim.

This is an emerging and increasing threat to businesses which is highlighted when Employment Tribunal Statistics are considered. The statistics produced by the Employment Tribunal demonstrate that claims with a public interest disclosure element are steadily increasing and therefore it is likely that the majority of these employers will now face investigation on two fronts.

Public Concern at Work, the whistleblowing charity established in 1993, have noted the steady increase in PIDA related claims received by Employment Tribunals since 1999 when the act came into force. The table below summarises the annual increases and also shows how many of the cases are disposed of

in those same annual periods (the numbers of annual settlements differ because not all cases brought in a year are settled in the same annual period):

Year	Number of PIDA Applications*	Total Disposed
1999 / 2000	157	35
2000 / 2001	416	171
2001 / 2002	528	281
2002 / 2003	661	407
2003 / 2004	756	512
2004 / 2005	869	696
2005 / 2006	1,034	1,015
2006 / 2007	1,356	1,287
2007 / 2008	1,497	1,326
2008 / 2009	1,761	1,502

\*Source -Public Concern at Work Website

The Department for Business Innovation & Skills (BIS) (formerly the Department of Business Enterprise and Regulatory Reform (BERR) and before that the department of Trade and Industry (DTI)) stated that in 2009, employment tribunals received some 1,700 claims involving PIDA allegations. The majority of these cases are successful in that a settlement is reached with the assistance of ACAS, a private settlement is reached or the case is successful at full hearing, all at the cost of the respondents.

However, with the proposed 6<sup>th</sup> April 2010 amendments to the Employment Tribunals Regulations, the process of reporting will become much simpler for employees as referral will occur automatically when a claim is received by employment tribunals if it is deemed that the complaint involves a qualifying PIDA disclosure. Under the Public Interest Disclosure Act (January 2010) Employment Tribunals will be permitted to send ET1's (formal notice of an employment tribunal claim form) to the relevant regulator so they can investigate directly. All that would be required of claimants to agree to this investigation would be for them to tick a box on the ET1. Employment Tribunal's are reviewing their current forms with a view to amend them to reflect the changes and are expected to shortly be available on their website.

Key proposals in the 6<sup>th</sup> April amendment include:

- 8 ET1 claim forms used by the Employment Tribunal will be amended so that claimants will only have to tick a box for their Public Interest Disclosure related claim to be referred to the relevant regulatory body for investigation. In effect this will be a very easy opt in system that enables compliance with Data Protection principles and will increase regulatory investigation of companies.
- 8 Once it is established that there is a Public Interest Disclosure element to the claim and the claimant has ticked the box on the ET1 form to refer then copies of or extracts from the ET1 will be sent to the regulatory body for investigation.

- ⊗ To implement the changes there will be an amendment to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004.
- ⊗ There will be an Annex attached that lists the regulators to which a matter can be referred. It is expected that Government will phase in regulators to which matters can be referred, however, the number listed currently is in excess of 50 regulatory bodies.
- ⊗ The new policy will apply to any revised version of the ET1 with an accepted PIDA claim received by the Tribunals Service on or after commencement in April 2010.

Government has said that the process of reviewing the PIDA aspect of claims will not delay the process of the employment tribunal claim. This is probably due to the fact that the decision of what is considered qualifying will be left for administrative staff of the Employment Tribunal for assessment.

An example of the regulatory bodies to whom an ET1 form can be referred include:

- ⊗ Director of the Serious Fraud Office
- ⊗ Environment Agency
- ⊗ Food Standards Agency
- ⊗ Financial Services Authority
- ⊗ General Social Care Council
- ⊗ Health and Safety Executive
- ⊗ Regulator of Social Housing
- ⊗ Local Authorities
- ⊗ Information Commissioner
- ⊗ Pensions Regulator
- ⊗ Office of Fair Trading
- ⊗ Treasury
- ⊗ Secretary of State for Business, Innovation and Skills
- ⊗ Secretary of State for Transport

The ease with which employees can refer matters to regulators has raised concerns that an employer may have to defend two processes at the same time which in turn, potentially gives additional bargaining powers to the claimant. However, both of these situations can already arise as a claimant can send information directly to a regulator; the new policy does not change that position in principle although, in practice, more cases may be referred to the regulators than might otherwise have been the case as the claimants can trigger referral through the employment tribunal process rather than having to take separate action.

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## NEW EQUALITY BILL

Pope Benedict XVI recently used a speech in the Vatican to 35 British Roman Catholic bishops to attack Labour's equal rights policies as an assault on "natural law", in effect claiming they were sinful. His Remarks coincided with the tricky passage of the bill through the House of Lords championed by Harriet Harman.

Church leaders had long been expressing concern that recent Labour legislation had placed unfair restrictions on, for example, Catholic adoption agencies, which would like to exclude gay couples from adopting.

In his attack The Pope claimed the government had acted to "impose unjust limitations on the freedom of religious communities to act in accordance with their beliefs".

Harman moved quickly to drop a planned amendment that church leaders from all denominations feared might undermine their freedom to continue barring gays and women, in the case of the Catholics, from the priesthood.

The Pope's intervention raised the profile of the legislation and threatened to wreck the bill but Harman's climb down seemed to be enough to calm a potentially explosive situation.

The Bill itself has been viewed by many as a mere tidying up exercise adding a few common sense measures to sort out the jumble of equal rights laws dating back thirty years, Harman however, has promised it will herald nothing less than a "new social order".

MOST previous legislation in this field has concentrated on particular groups likely to suffer discrimination, such as women, disabled people or ethnic minorities.

The new bill introduces the concept of the "protected characteristic", namely age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religious belief (including lack of belief) and sexual orientation.

In theory the bill protects men as well as women and straight people as well as gays. In other words, potentially everybody can be a "victim" and have recourse to the law.

It is expected that the new Bill will cost up to £310m, mainly in extra tribunal and court cases, with the burden borne principally by businesses, according to the Government Equalities Office.

Buried within the six hundred page document are provisions that may sound innocuous but could have a revolutionary impact. The idea of "positive action" is introduced for the first time. This would allow employers to choose to appoint a person from an under-represented group over another candidate where both were "equally suitable". Such schemes in the US have proved to be divisive.

There are also measures to ban age discrimination, something that will be welcome to older people who are rejected for jobs because of their date of birth.

It has also been noted that as a consequence of the new Bill insurance companies could withdraw certain products aimed at older people and even Saga holidays may be forced to open its cheap deals to the under fifties.

Compulsory gender pay audits could also be introduced, looking at relative pay between males and females in companies with over 250 people.

Critics believe that trade offs are inevitable, claiming that new rights for employees will become a burden for their bosses. A new right given to the elderly may have to be paid for by the working-age population.

Critics also claim that the measures would inevitably influence the way public servants make policy decisions, with potentially huge consequences, particularly for middle England, in a period where the country is recovering gingerly from recession.

Addressing the Popes concerns Harman insisted that her bill never intended to attack the exemptions enjoyed by faith groups, and moved to heal the rift with the church.

"We said in relation to non-religious jobs that the general law applies to faith organisations like it applies to any other jobs, but with religious jobs there was this exemption," she said. "We need to reassure religious organisations that we are not intending to change the situation of their exemption."

### **THE BILL'S MAIN PROVISIONS**

- 8 Public bodies face a new "socio-economic duty" to reduce inequality
- 8 The government will have the power to force firms employing 250 or more people to produce "gender pay audits". Public sector bodies with 150 or more staff will have to publish similar pay gap reports
- 8 Employers can take "positive action" to appoint someone from an under-represented group where there are two equally qualified candidates
- 8 The public sector will be forced to consider equality when deciding on purchasing or outsourcing
- 8 Employment tribunals will be strengthened with new powers to make "wider recommendations" to companies, with the aim of preventing discrimination
- 8 Private members' clubs will be banned from discriminating between members for example, golf clubs will not be able to treat women members differently from men
- 8 Carers for the disabled or elderly will be protected from discrimination

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## **DIRECTORS IN THE DOCK**

### Docks 'dumped toxic waste'

TWO companies and four men are facing possible heavy fines and jail sentences over the alleged illegal dumping of toxic sediment during the development of a luxurious marina in Cornwall.

Falmouth Docks owner A&P, a waste management company and four named individuals are being prosecuted under tough environmental laws.

The charges, the result of an investigation lasting more than two years, relate to silt and sediment said to contain highly poisonous chemicals shifted from the seabed during the development of Falmouth Marina. This sediment is said to have been contaminated with poisons, including a now banned marine paint containing the biocide TBT, which experts say is the most toxic substance ever deliberately introduced into the marine environment.

The charges have been brought by the Marine and Fisheries Agency (MFA), an agency of the Department for Food and Rural Affairs (Defra) under the Food and Environmental Protection Act (FEPA).

According to papers seen by a local newspaper, A&P Ports and Properties, the arm of the firm developing Falmouth Marina, is charged with allowing contaminated silt to be dumped without a licence between March and December 2007.

Steven Lewis, then A&P site manager at Falmouth Docks, Michael Reynolds, then port operation director at Falmouth Docks for Falmouth Dock and Engineering Company Ltd, Jonathan Thomas, of JT Project Management Ltd, and Dorset-based hazardous waste management specialist Oil and Water Ltd together with its operations director David Cobern have also been charged.

A&P is also charged with failing to declare a number of vital issues when applying for a licence in November that year, including providing an environmental impact assessment with elements it knew to be false.

Projects permitted under FEPA are subject to regular inspections by officers from the MFA. According to the MFA website, punishments for breaches are fines of up to £50,000 or two years imprisonment.

A&P, Oil and Water Ltd and the four men have been summoned to appear before Camborne magistrates on March 11. A&P managing director Peter Child said: "We are surprised there is a (court) date because we have not seen any evidence." An Oil and Water Ltd spokesman said the firm would vigorously defend the claims.

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## Former CEO to be extradited

Former chief executive Ian Norris, the former head of engineering group Morgan Crucible has failed in a last-ditch attempt to avoid extradition to the US, where he faces charges of obstructing justice.

The Supreme Court, the highest court in the UK, unanimously dismissed an appeal by 67 year old Norris, who is suffering from poor health, that an extradition would breach his human rights.

US prosecutors, have described Mr Norris as one of the main targets of a high-profile crackdown on international crime and have been pursuing him for more than six years. He is to be indicted and face charges of obstruction of justice.

The ruling is likely to send a shiver through the UK business community, which has become increasingly concerned that the extradition agreement signed with the US after the attacks of September 11 2001 is being used to target alleged white-collar suspects as well as terrorist suspects.

Lawyers also believe this judgment could encourage US regulators to become more aggressive in their use of extradition.

His failed appeal has left Norris with a week to decide whether to appeal to the European Court of Human Rights in Strasbourg. He could also examine other options such as applying for a judicial review.

Lawyers for Mr Norris, who denies shredding documents to cover up a price-fixing cartel, argued in the Supreme Court that handing him over to the US authorities breached his rights to private and family life under the European Convention on Human Rights.

His lawyers had said that the extradition of Mr Norris, who has battled prostate cancer, would cause "disproportionate damage" to his physical and mental well being and that of his increasingly frail wife.

However, Lord Phillips, president of the Supreme Court, and eight other justices dismissed these arguments saying that the consequences of any interference with human rights would have to be exceptionally serious to avoid extradition.

"It is for this reason that only the gravest effects of interference with family life will be capable of rendering extradition disproportionate to the public interest that it serves. This is not such a case," Lord Phillips said in the judgment.

Angela Hayes, partner at law firm Mayer Brown, said on Wednesday that the case would have wider implications.

She said: "The US prosecutors are using increasingly aggressive tactics in corruption prosecutions and in relation to fraud and insider trading in the financial services sector."

## Glasgow Company and director fined

A Glasgow-registered recycling company and a director have been fined a total of £145,000 for exposing workers to toxic mercury fumes at a site in West Yorkshire.

Twenty employees had levels of mercury in their system above UK guidance levels, and five of them showed extremely high levels following the exposure between October 2007 and August 2008.

Electrical Waste Recycling Group Ltd, registered to 400 Denmark Street in Glasgow, and formerly known as Matrix Direct Recycle Ltd, recycles electrical equipment, including fluorescent light tubes containing mercury and TV sets and monitors containing lead.

The court heard that ventilation problems at a plant on School Lane, Kirkheaton, Huddersfield, meant employees were being exposed to potentially harmful emissions from both substances.

EWR was fined £140,000 and ordered to pay £35,127 costs at Bradford Crown Court after pleading guilty to breaching Section 2(1) of the Health and Safety at Work Act 1974, three separate breaches of the Control of Substances Hazardous to Health Regulations 2002, and one breach of the Control of Lead at Work Regulations 2002.

Company director Craig Thompson, aged 38, of Reinwood, Huddersfield, was also fined £5,000 after pleading guilty to breaching Regulation 7(1) of the Control of Substances Hazardous to Health Regulations 2002.

Several workers had reported ill health as a result of the exposure, including a pregnant worker who was concerned that her unborn baby was at risk.

HSE issued five Improvement Notices and one Prohibition Notice to the company in relation to the incident.

After the hearing HSE Inspector Jeanne Morton said:

“This is a shocking case involving a large number of employees, many of them young and vulnerable, who were suddenly faced with the worrying possibility of damage to their long-term health.

“The risks associated with handling toxic substances like mercury have been known for generations, so it is all the more unacceptable that something like this has happened.

“The company failed to see the risks created by their recycling work and failed to develop effective plans for safe working. They also did nothing to check their workers’ health after exposure.

“Workers have a right to expect a reasonable level of protection in the workplace, and employers have a legal duty to provide it.”

Max Folkett, site inspector for the Environment Agency, added: “We have worked closely with HSE and other organisations during the investigation which led to this prosecution.

“Electrical Waste Recycling Group Limited requires an environmental permit from us for the recovery and processing of hazardous waste and we routinely inspect the site to check the company is complying with the permit.

“We suspended the permit following this incident in August 2008, removing the risk of mercury escaping from the site, because of our concerns the operation posed a serious risk of pollution from mercury. Our soil monitoring around the site to check for long-term contamination showed metal levels not unusual for urban areas”.

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### **Landlord prosecuted 'for not having boiler service'**

According to the Health and Safety Executive (HSE), landlord Graham Barnes, 49, from Bicester Road in Kidlington was fined £8,000 and ordered to pay £1,957.70 in costs after carbon monoxide flooded the kitchen of a property. He was found guilty for not having the gas appliances of the home he rented out checked for safety or correctly maintained, despite warnings.

By law, UK landlords must schedule at least one gas appliance and boiler service a year with a boiler engineer from the Gas Safety Register, a gas safety certificate must then be given to the tenants.

HSE inspector Dozie Azubike said the incident was a clear case of a property professional putting people at risk by ignoring his responsibilities.

"As a result of the boiler not being serviced, carbon monoxide leaked into the kitchen creating a very dangerous environment," he added.

The HSE has also reported an unregistered boiler engineer has been prosecuted for installing gas appliances at a caravan park.

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### **Tribunal Awards Sports reporter almost £800,000**

A News of the World reporter who suffered from a culture of bullying led by former editor Andy Coulson, who is now David Cameron's head of communications, has been awarded almost £800,000 for unfair dismissal and disability discrimination.

Matt Driscoll, a sports reporter sacked in April 2007 while on long-term sick leave for stress-related depression, was awarded £792,736 by the east London employment tribunal. It is believed to be the highest payout of its kind in the media, and legal costs could take News International's total bill well over the £1m mark.

Driscoll, who has not been in a full-time job since his dismissal, said the award reflected the severity of the case. "I was subjected to unprecedented bullying and he (Coulson) did nothing to stop it, if anything he accelerated it. I didn't do anything wrong."

He added: "I was in the top 30 sports writers in the country. I then came up against the venom of Andy Coulson,

which I found very hard to take. It has taken an incredible amount of strength to take on the richest news group in the world and win. I don't think anyone has ever done that before with the success that I have."

The tribunal found in December 2008 that Driscoll had fallen victim to "a consistent pattern of bullying behaviour". "The original source of the hostility towards the claimant [Driscoll] was Mr Coulson, the editor; although other senior managers either took their lead from Mr Coulson and continued with his motivation after Mr Coulson's departure; or shared his views themselves. Mr Coulson did not attend the tribunal to explain why he wanted the claimant dismissed."

The News of the World, which defended the case, said the main reason for Driscoll's dismissal was his capability or qualifications for performing his work.

Before going on sick leave in July 2006, Driscoll was subject to disciplinary proceedings and issued with formal warnings starting from November 2005 over alleged inaccuracies in his reporting and for failing to turn up punctually on one occasion.

The tribunal found that was merely a pretext and the real reason for the disciplinary proceedings was simply that Coulson wanted to "get shot" of him. In July 2006, Coulson wrote in an email to the deputy editor, Neil Wallis, that he wanted Driscoll "out as quickly and cheaply as possible".

Driscoll, who joined the paper in 1997 and was promoted twice, was initially highly regarded, according to the tribunal ruling. That changed in August 2005 when Coulson turned against him for failing to stand up a tip that Arsenal were planning to play in purple shirts, a story that later appeared in sister paper, the Sun.

The judgment singled out Coulson for making "bullying" remarks in an email to Driscoll after the first formal warning, letting him know that he thought he should have been sacked.

According to the tribunal, the bullying continued after Driscoll went on sick leave. Senior management at the paper sent Driscoll a barrage of emails, phone calls and visited his home to demand that he see a company doctor, despite Driscoll's GP advising him to "distance" himself from the source of his stress.

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## SERIAL CLAIMANT'S BONANZA FROM 'AGEIST' JOB ADS

A serial litigant is believed to have earned thousands of pounds by bombarding employers with claims of ageism simply because they used the words “school leaver” or “recent graduate” in job advertisements.

John Berry, 54, has initiated actions against at least 60 firms over three years even though he does not apply for the jobs. He uses the government’s tribunal service website to lodge age discrimination claims against recruitment agencies and other businesses.

Lawyers say they have complained to the Ministry of Justice that the online system, which allows numerous actions to be lodged free and with minimal evidence, needs changing.

Once the firm becomes aware of the action, Berry emails his targets to warn them they can avoid an employment tribunal only by making him a “settlement” payment of up to £3,500.

One small trader said: “I am not prepared to be bullied by this man. I cannot afford to pay him. We’re in a recession and I am struggling to keep the business afloat.”

To encourage companies to settle, Berry usually opts to hold the tribunal far away from where the business is based.

He made a similar claim of age discrimination against a woman running a small business in the Midlands last year. He demanded £2,500, but lowered his price by £1,000 after she wrote back saying it would leave her struggling to pay her mortgage or feed her family.

He wrote: “I will arrange all legal closing formalities with the tribunal in time for you to have an enjoyable Xmas without this hanging over you.”

Audrey Williams, partner and head of discrimination law at the international law firm Eversheds, said: “Under current UK law a claimant will have to show that they have actually been a victim of discrimination. Simply seeing an advert is not enough.”

Berry’s claims are consistently struck out by tribunal chairmen as “misconceived” and “vexatious” but businesses can still be left with legal bills of about £9,000 because Berry ignores orders to pay costs.

He has had claims struck out in London, Exeter, Bedford, Ashford, Birmingham, Bristol, Liverpool, Watford and Southampton in the past two years.

Gordon Turner, a solicitor at Partners Employment Lawyers, said: "We have found 57 such court decisions with Mr Berry's name on them, but that could be just the tip of the iceberg as it does not take account of all those people who chose to settle and not fight."

Berry, who is married and lives in a semi-detached house in Downend, Bristol, repeatedly declined to answer questions put to him but later he commented in an email: "I, like many other older job seekers are suffering age discrimination here in all these issues. You are grossly misinformed about the facts."

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## UNFAIR REDUNDANCY

Abbey National was recently ordered to pay an ex-employee £2.8 million for discriminating against him during its redundancy selection process. The award may be reduced on appeal.

Mr Chagger is of Indian origin. He was employed by Abbey National plc (now part of the Santander Group) as one of two trading risk controllers. He did not see eye-to-eye with his manager, Mr Hopkins, and redundancy was seen as a good way to get rid of him.

To facilitate this, Hopkins placed both Chagger and his white, female counterpart into a redundancy selection pool of two. Hopkins then dismissed Chagger, whilst his colleague kept her job.

Chagger claimed unfair dismissal on the basis that the redundancy selection pool and criteria were a sham. He argued that the real reason for his redundancy was discrimination on the grounds of his race. The tribunal found in his favour and awarded him £2.8 million - one of the largest awards for this type of claim.

### **The amount a tribunal can award in discrimination claims is unlimited.**

Abbey challenged the level of compensation and went to the Court of Appeal. It said that an employee can't "*unduly profit*" from an act of discrimination committed by an employer.

So when assessing the level of damages in this type of claim a tribunal must always ask itself if the individual would have been dismissed in any event. As this question had not been considered by the original tribunal, the case was referred back to it, along with a recommendation that the level of Chagger's compensation be reconsidered. It's widely believed that it will be reduced following this hearing.

This all sounds promising for employers, but what has gone largely unnoticed is the court's further ruling on "stigma". Employees who mount claims have a duty to "mitigate their losses", i.e. by finding further employment. But many who try, encounter problems securing alternative work. This is because by suing their ex-employer they are often viewed as "troublemakers" and a "bad risk".

This happened in Chagger's case. After making 111 unsuccessful job applications for work in the financial sector he was forced to retrain as a maths teacher, losing him around £80,000 p.a. This is why his award was so high, the tribunal multiplied that amount by his remaining years of work (around 26). The court felt the stigma of his claim made it harder for Chagger to mitigate his losses. So, as this must still be considered, his award could stay at the higher end of the scale.

Any selection for redundancy should be based on objective and appropriate criteria. These must be applied fairly to all the redundancy pool. Disliking an employee should never be used to influence a redundancy decision - it can prove fatal.

Many employees who mount tribunal claims can't secure further employment as they are seen as "troublemakers" and the Court of Appeal has ruled that ex-employers can be liable for this "stigma", so compensatory awards can still be on the high side. All employment and redundancy selection criteria must be fair and consistently applied.

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On the face of it...

# WIN £500

## IN TRAVEL VOUCHERS

### ANGEL JUTE BAG COMPETITION

With Spring just around the corner you might be planning your summer holiday, if so don't forget to take your Angel Jute bag with you and take a picture of you with it so you can enter our "I use Just One Bag" competition and have the chance to win £500 worth of travel vouchers.

To enter the competition, all you have to do is take an Angel eco friendly jute shopping bag somewhere "special," take a photograph there including both you and the bag, and send the picture to us.

The picture needn't be somewhere exotic or far away it just needs to be something "special", so it could be you and the bag posing with a famous person, or on top of a mountain, in a submarine, at a concert, or on the London Eye. The most "special" in the opinion of our judge will be the lucky winner!

Launched at the Angel Underwriting Broker Forum in Exeter, the new jute bag has been designed with this competition in mind. They will next be available in May at the Excel centre in London for the 2010 BIBA conference on 19<sup>th</sup> and 20<sup>th</sup> May. We will also have them at the Angel broker forums that we will be hosting around the country during 2010.



If you are not able to make it to any of these events then Gary Green, Angel's Business Development Director will be happy to arrange a visit and deliver one to you in person.

To give you an example of what we are looking for, there are some examples on our web site, to see them, visit our website competition pages at

[www.angelunderwriting.com/uk/Media/JuteBagCompetition/JuteBagCompetitionGallery.aspx](http://www.angelunderwriting.com/uk/Media/JuteBagCompetition/JuteBagCompetitionGallery.aspx)

"It was the fact that one of our brokers told us they took their Angel Jute Bag everywhere – even on holiday – that was the inspiration for the competition," said Angel Business Development Director Gary Green.

The competition is open to agents registered with Angel Underwriting and is free to enter. There is no limit to the number of pictures you can submit. Entering is easy, all you have to do is go to

<http://www.angelunderwriting.com/uk/Media/JuteBagCompetition.aspx> from where you can upload your pictures, there is no limit to the number of entries per person.

All pictures will be judged by Mark Shreeve, CEO of Angel Underwriting, whose decision will be final. All entries must reach Angel Underwriting by 30<sup>th</sup> September 2010 and must include the entrants name

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and contact details. The winner will be notified shortly afterwards and announced in the October 2010 Angel Newsletter.

If you are not already registered as an Angel agent you can call 01206 215500, email [gg@angelunderwriting.com](mailto:gg@angelunderwriting.com), or go to [www.angelunderwriting.com](http://www.angelunderwriting.com) and register on line to be able to take part in the competition.

Entries can be emailed to Angel at [gg@angelunderwriting.com](mailto:gg@angelunderwriting.com).

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