



Employment tribunals: ELA survey results revealed

RICHARD FOX, Kingsley Napley LLP

Delays are severely hindering the work of employment tribunals, according to a new ELA survey of its members that highlights a lack of judicial and administrative resources.

Following the Supreme Court's decision last July to abolish tribunal fees, we initially did not know how many new claims would enter the system. Then evidence began to emerge suggesting the number of claims was increasing significantly. This has since been confirmed by the statistics released by the Ministry of Justice on 8 March 2018.

The question then changed to one of whether tribunals have the judicial and administrative resources to cope. To better understand the emerging picture, ELA surveyed its members from 22 February to 21 March 2018 and received 320 responses. When one takes into account the group responding on behalf of their team or Chambers, we heard from almost 10% of our membership. The survey revealed that:

- more than 75% of respondents are experiencing an increase in the time tribunals are taking to deal with the service of claims;
- 90% of respondents are experiencing more delays in dealing with interim paper applications and other correspondence;
- 53% report delays in telephone calls being answered;
- 57% are experiencing delays in receiving reserved judgments; and
- 45% report postponements of a hearing due to a lack of judicial resources.

Particular tribunals seem to be most affected, such as those in London (London Central, London South, London East and Watford).

But it was the individual comments we received that are particularly devastating; members report delays of many weeks and in some cases, even months, before tribunals dealt with claims. The problem is even worse in relation to interim applications; many employment judges are handling the correspondence themselves, including typing up their own orders and distributing them to parties directly. It is clear that some applications or letters are not being read properly. Some correspondence, such as in relation to strike-out orders, is being rendered meaningless because of delays.

Judgments are taking inordinately long to come through. We received regular reports of delays of two or three months, even for simple unfair dismissal cases. But some delays are even longer than that – in one case, 14 months. There are obvious implications in terms of the delivery of justice.

At the end of the survey, we left room for comments. Many respondents did not hold back. One thought we should employ 'mystery shoppers' to sit in on hearings. Another noted: 'I'm not sure I have seen the tribunal system in such a sorry state since I began practising employment law in 2005.'

Conclusions

These findings are deeply worrying. We have written to the Presidents of the Employment Tribunals in England & Wales and in Scotland (Judge Brian Doyle and Judge Shona Simon) to make them aware of our members' views. We know they are concerned and we believe the Ministry of Justice is too. Clearly, some of these issues are down to a lack of judicial resource; others to the lack of support at an administrative level.

We are still far short of the number of claims being brought before tribunal fees were introduced in summer 2013. So, in all likelihood, the pressures on the system are only going to get worse before they get better. One issue is that although part of the solution lies in more adequately resourcing the system from an administrative perspective, training (or retraining) judges to hear employment cases and appointing judges on a full-time salaried, rather than fee-paid basis, takes time (see Judge Brian Doyle's article on pages 6-8). As I understand it, new employment judges should start to come on stream in the spring / summer of next year. Indeed, we are currently being told it may take as long as 18 months before we will see significantly more judges in place. The problem seems to have been tackled more swiftly in Scotland. However this was, I believe, because there was already a recruitment exercise underway before the *Unison* decision. The system for appointments is also different in that Scottish employment judges are supported by the Lord President rather than the Judicial Appointments Committee.