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Employment Law Cases Update and Newsletter

September 2012

A recent advertisement by a set of Bristol chambers in the legal press referred to itself as "standing head and shoulders above the others in Bristol". Here at Frederick Place Chambers, we tend to avoid anatomical comparisons.

Since we are now approaching the twentieth anniversary of our founding, we would take this opportunity to remind readers of the range of matters in which we have represented clients to a successful conclusion since 1993.

From the unwinnable cases to the "feel good" victories, we at Frederick Place Chambers are proud of our consistently successful results for clients who would struggle to find alternative support in seeking legal redress.

We hope you enjoy reading about them, as much as we enjoyed working for them.

R.H. Spicer

Head of Chambers

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Coping with... giving evidence

In all cases that progress to Tribunal or Court, you as claimant or respondent are likely to give evidence. This will come from the witness statement which you will have drafted earlier on in the proceedings.
This is for many the most nerv-racking part of litigation. There are two rules which we always tell our clients, in order of importance:

1. Tell the truth. If you are telling the truth, you are less likely to get confused or panic.
2. It is the barrister or solicitor's job to question you. Don't be put off by this. It is unlikely that they will know how their manner appears to you. Do not take it personally.

The critical thing to remember about giving evidence is that it is your time to tell your story. The months of procedures and litigation are now gone, and here is your time to speak out. Make sure you have a friend with you, and try and get to see a Tribunal case before yours. You will then see that tribunals operate relatively informally and it is unlikely that you will be subjected to a cross examination worthy of Kavanagh QC...

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Employment Law Cases

"The Unwinnable cases"

In the summer of 2007 I received an email from a young Slovakian woman telling me, in acceptable English, that she had recently returned home after working in England for a month. She had been working night shifts as an office cleaner and had not been paid by her temporary employer. Her sister was working in England and would contact me to see if I could help. This was a case where the client was abroad, had no money, and there was no documentation. For the mainstream, it was a non-starter.

For an alternative practice, the case was difficult but not impossible. Starting with the theoretical view that this could be described as a case of modern day slavery, and as such must be fought with the utmost determination, the first step was to identify the migrant worker's employer. This was achieved after lengthy inquiries at the Job Centre which had found work for the young woman. Details of the company involved were found via the Internet.

A grievance letter sent to the employing company on behalf of the girl did not succeed in recovering the wages due. With the help of the woman's sister we lodged a claim for unlawful deduction from wages in the employment tribunal. Shortly after this, the money was paid into the client's sister's English bank account. No fee was charged.

Unusually, justice was done and was seen to be done – mainstream issues of hourly billing and cost analysis were wholly irrelevant.
I was invited to visit Slovakia where the woman's family treated me as an honoured guest.

It seemed to me, and to others with whom I discussed the case (lawyers and non-lawyers) that we were indeed looking at a form of modern-day slavery. This was a young woman, highly intelligent and well-educated, who had come to England to earn money because wages were low and jobs were few in her own country. She also wanted to improve her English. She had worked hard in a menial job, for long hours, and had not been paid. There was a suspicion that she had been treated in this way because she was a migrant worker with a poor grasp of English.

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Applying the traditional and dominant model of the English legal system, she had no chance whatever of recovering her unpaid wages. She would be denied justice because she was poor.
Through collective action, with the help of the Haldane Society, we were able to achieve some sort of justice. Money for us did not enter into the calculation. Justice was done without a financial incentive.

“The Feel Good Factor”
At the end of last year, a number of students who worked in the same part-time employment came to Chambers stating that their wages had been withheld. Each individual was owed for a few shifts, holiday pay or a combination of both. None of the amounts considered were huge, a £100 here and there. Collectively, however it was a sizeable amount of money to be claimed from the Respondent.

Their financial positions would leave individual representation untenable – a few hours lawyering would use up all that they were claiming. Thus, we charged and treated them as a collective, and managed to secure a default judgment against the respondents, ensuring that each individual received their money without spending it all on legal fees.

It was a case indicative of the clients we try and help – those who fall outside of the remit of the mainstream and who otherwise would have to give up on pursuing their legal entitlement.

“The Large amounts of compensation”
Not so long ago, we were approached by siblings who were administering their father’s estate. Not only did the siblings have the trauma involved of losing their father, and the stress involved during estate administration, the quality of the lawyer originally engaged to deal with probate was questionable at best. His failures led to the estate incurring further charges and tax which were unnecessary.

Thus, the siblings came to us at Chambers, with a healthy distrust in lawyers. On the strength of our letter before action, the lawyer conceded he had been professionally negligent and agreed to pay our clients the full sum which we had claimed from him, resulting in a sizeable settlement. Through focusing on written advocacy, and meticulously following procedures, we were able to streamline the process for the siblings and enable them to receive their money with the minimum amount of contact with lawyers.

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Employment Law Cases cont.

Other matters have included:

- A maximum award in the employment tribunal for a client who had been placed on indefinite suspension by his employer without any reason being given. He had resigned and complained of unfair constructive dismissal.
- Compensation for racial harassment in the county court, following a serious and vicious series of incidents of racial abuse.
- A significant sum negotiated as a settlement of a personal injury claim following an incident in which the client suffered a broken leg when he slipped on ice on a pavement outside a shop. The shop owner's insurers initially denied liability but later offered a realistic sum in compensation, following lengthy correspondence.
- Successful claims for criminal injuries compensation.

Most of our work is undertaken on a public access basis, but we also have a good working professional relationship with firms of solicitors.

We specialise in employment law and we have also acted in cases in the following areas:

- Probate and administration
- Consumer contracts
- Planning
- Recording contracts
- Landlord and tenant (we have recovered deposits from tenants whose landlords have failed to make refunds on termination of the tenancy).

Reverting, with apologies, to an anatomical metaphor, we have been ankle-deep in published material since 1993. For example:

- Croner's Health and Safety Case Law: a looseleaf selection of summaries of health and safety cases, updated on a quarterly basis. Robert was the editor of this work.
- Regular monthly contributions to a wide range of newsletters in the area of health and safety and employment law.
- Tribunal Awards and Remedies in Employment, CLT Professional Publishing: summaries of statutory material and a series of case digests covering awards and remedies ordered by the employment tribunal.
- Work-related stress: the legal essentials. This was a self-published work which received a favourable review in the Times. The print run sold out.
- Robert's new book – LAW – is now published as an ebook. It is available from the Amazon Kindle store.

Opinion

The Mythical Art of Advocacy

My own view is that the "Art of Advocacy" is essentially mythical. The reality is that, so far as civil matters are concerned, successful tribunal and courtroom advocacy depends upon the following factors:

- Detailed preparation, including efficient documentation.
- A thorough knowledge of the relevant court or tribunal procedure
- A good knowledge of the law of evidence
- Experience of the relevant members of the judiciary
- A clear speaking voice.

The "art" of the advocate is often seen to be the asking of questions of such detail and complexity, endlessly repeated with hardly noticeable variations, until everyone has lost track of reality and any answer can be challenged.

I reject the terminology of "winning" or "losing" cases. This approach reinforces the adversarial nature of the English legal system and can lead to the snooker term, not unknown in the legal profession, of "potting" an opponent. I prefer the use of phrases such as "successful" or "unsuccessful" applications.

The Woolf reforms of English civil procedure concluded, for a number of reasons, that litigation should be a last resort. I take this conclusion seriously. In my experience, cases can be brought to a successful conclusion by written advocacy of the highest standard without recourse to the expense, drama and stress of oral advocacy in courts and/or tribunals. Civil procedure has seen significant movement towards written advocacy, with proactive case management and detailed directions for written material to be submitted in advance of hearings.

Current moves towards a quality assessment scheme for advocates are reportedly based on the statistic that 70 per cent of court and tribunal oral advocacy is below an acceptable standard. This shocking statistic could be dealt with by applying the five factors set out above, particularly that of detailed preparation. It is well-known that the generally poor standards of oral advocacy in English courts and tribunals are closely related to the late delivery of documentation and a lack of detailed preparation.

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Chambers & Legal News

Looking forward...

Having hurtled through a few select cases to show our past...we now return to the present cases. After all, you are only as good as your last case...

- Successfully obtained insurance cover on behalf of clients who are currently litigating in a combined claim
- Representing a number of disabled clients in relation to appeals against decisions to dismiss their claim for entitlement to ESA
- Providing legal advice on ad hoc basis to a client who is running their own case, and thus keeping costs down.
- Working on contentious probate matter
- Representing two clients in a high profile, complicated public law matter

To name but a few!

If we can assist with your case, call Emma, Head Clerk, or Robert, Head of Chambers. We will discuss your needs and find appropriate fee structuring to suit.

Dates for your Diary

October 31st 2012 Seminar at 10am. Subject TBA
All welcome. Please confirm by calling or emailing Chambers.

For weekly updates, follow our blog on www.frederickchambers.co.uk
Don’t forget to like us on Facebook!