

# Editorial

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Daniel Barnett, editor

The first wasted costs order against a legal representative has now (sort of) been made. At 12.45 on 1 October, less than three hours into the new regime, a tribunal in Leeds awarded costs against the claimant's solicitors on the basis that they should have known that an unfair dismissal claim issued more than three months after dismissal had no reasonable prospect of success. However, the chairman later decided to review his decision once he realised that he lacked jurisdiction to make the order under the transitional provisions of the new procedural rules because the claim had been issued before 1 October. Leaving that point aside, it does show that at least one tribunal is willing to use the wasted costs jurisdiction. The interesting question will be how many firms (or counsel) appeal wasted costs orders;

this may save their insurers money, but it also guarantees unwanted publicity.

Age discrimination is becoming bigger and bigger news. Last month, *Personnel Today* dedicated an entire issue to it, and some solicitors are marketing their skills in helping workplaces become age-compliant. Mr Rutherford is petitioning the House of Lords to be allowed another go at disapplying the unfair dismissal upper qualifying age. Yet the wheels of government turn with their customary sloth; the Department of Trade and Industry is still consulting on age discrimination legislation despite having known these laws were on the cards since the EU Framework Directive was passed in December 2000. A cynic might note the political controversy surrounding the forthcoming age discrimination laws and the proximity of a general election, but this editor would never suggest a link.

Thanks to all those who completed the questionnaire in our September issue. The results are on page 160. While I am pleased that *ELA Briefing* is so well read, I was struck at how few read the IRLRs and ICRs. Other results revealed a lack of interest in a new 'In transit' section, but substantial interest in an 'In court' (listing important appeals where decisions are expected in forthcoming months). We will start compiling this soon – but we will be relying on readers to provide the information. If you are involved in any interesting appellate cases and would be willing to share the point of law with other readers, please e-mail me (mail@danielbarnett.co.uk).

We have a number of highly practical articles this month. I commend Neil Russell and Adam Davis's piece on the impact of the money laundering regulations on employment lawyers (p152). I no longer ask employer clients whether they have ever paid wages in cash (so as to set up an 'illegality' defence), since knowledge that they are defrauding the Revenue triggers the obligation to report them to NCIS. Perhaps having less of an impact on daily practice – but a fascinating read nevertheless – is Marc Jones's summary of the EAT's holding in *Moonsar v Fiveways Express* (p161), which holds that a finding of sex discrimination when men view pornography at work turns on whether any women in the room enjoy it too!

By the time this issue of *ELA Briefing* arrives, preparations will be well under way for Christmas. No doubt many readers will be busy organising parties while writing articles for the local press on the onerous employment obligations that arise from hanging mistletoe in the office. In true dispute resolution style, enlightened employers will open up a grievance grotto for Santa to sit in (no doubt next to the disciplinary and dismissal dungeon).

I wish everyone a happy holiday season.

Daniel Barnett, 1 Temple Gardens, editor