

Editorial

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We have now had the mandatory claim and response forms in place for two months. And what fun it has been.

The purple and aqua claim forms are prescribed for use. The purple ones were produced in October 2004. They are not capable of being recognised by the government’s new optical character recognition software, which is to be used to scan in all claim and response forms once the technology is finalised. This rather undermines the government’s argument that the prescribed forms are necessary for consistency because they can all be scanned. The aqua claim and response forms are capable of being scanned. Confusingly, there is no prescribed purple response form.

Black and white photocopies of the prescribed forms are okay – even if they have gone through the solicitor’s printer first. However, identical versions of the prescribed forms that have been produced on a solicitor’s computer are not acceptable. And tribunal staff are robustly – albeit apologetically – returning forms to litigants faster than you can say “laserforms”. Importantly, unlike the situation where a claimant submits a claim form without having begun the statutory grievance procedure, there is no extension of time and so, if litigants have left presentation to the end of the limitation period, many claims (and responses) will be out of time.

This situation is a travesty. The weak and discretionary power of review is not satisfactory to deal with the administrative decision to reject incorrect claim and response forms. Unlike the situation where the forms did not contain the prescribed information, such as whether the claimant was an employee, the decision to reject an incorrect form is an administrative and not a judicial decision. Many practitioners will be dusting off the Civil Procedure Rules – and I suspect the Divisional Court would be sympathetic to arguments that the obsessive requirement for a prescribed form is incompatible with the right to a fair trial.

ELA’s legislative and policy committee is shortly commissioning research on the impact of the new procedural rules. Please take the time to respond and tell us about your horror stories. This is the best chance that ELA will have to make representations to the DTI on how well the new rules are (or are not) working. ELA aims to collate these findings in time for our next annual conference, planned for May 2006 in London. The intended theme of the conference will be whether the new rules and statutory procedures are helping to resolve and streamline disputes or, instead, erecting barriers to justice.

We have a number of excellent articles this month. David Christie considers the duty of employers to provide stress counselling services for employees, and the extent to which provision of counselling provides a defence to a claim for damages for stress at work. When discussing this area, writers tend to focus on the rather less interesting and more academic issues such as foreseeability of injury. This useful article is an excellent addition to a practitioner’s library.

John Melville-Smith provides a fascinating review of recent (and not so recent) cases on vicarious liability. Matthew Howse and Pulina Whittaker remind us of the law relating to collective consultation obligations in redundancy and TUPE situations. We also have our usual assortment of miscellaneous pieces to bundle up in your Christmas stockings.

I wish everyone a festive holiday season.

Daniel Barnett, editor