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# Charity workshop

## Review of the employment tribunal system – What's the impact on charities?



**Last year saw a dramatic 56% increase in the number of claims presented to employment tribunals by disgruntled employees. Not only does this huge rise in claims represent an enormous burden on an already cash-strapped public purse, but it is also costing the not for profit sector millions of pounds in legal fees for defending claims and compensation payments. The employment tribunal service is suffocating under a backlog of claims and the whole system is in dire need of reform.**

Most people would accept that, as a principle of natural justice, wronged employees must retain the right to bring a claim against errant employers. However, it is also true that a large proportion of claims are being brought by 'chancers' hoping to make a quick buck by holding their former employers to ransom in the sure knowledge that their case will be settled on a commercial basis by employers unwilling or unable to meet the cost of defending their claim.

As the law currently stands, an employee can complete his/her tribunal claim form online and in a matter of minutes. One click of the mouse and without a penny to pay, the employee's claim is sent to the tribunal and, regardless of how spurious or vexatious the claim, provided it is lodged within the usual three-month limitation period, it will be accepted by the employment tribunal. The employer is then forced to expend vast amounts of time and costs in defending the claim.

The British Chamber of Commerce recently estimated that the average cost for an employer to defend a tribunal claim has risen to £8,500. The high cost of defending even the weakest claim means that many organisations will pay simply to settle, a point not lost on litigious employees or their unscrupulous lawyers.

Under UK employment legislation, all employees (excluding the genuinely self-employed or independent contractors) are eligible to present a claim for unfair dismissal once they have attained one year's continuous employment with their employer. Employees bringing a claim under the myriad of unlawful discriminatory "protected grounds" (disability, sex, race religion, sexuality, age, etc) are not hindered by any minimum qualifying period of service and are able to bring a claim from day one of employment or from the time a job vacancy is advertised, if the advert is deemed to flout anti-discrimination law. The stakes are high and akin to a lottery win for a successful employee – up to £65,300 compensation for unfair dismissal, while 'the sky's the limit' when it comes to awards a tribunal can make for unlawful discrimination.

The employees' legal costs are often picked up by their trade union, 'no win, no fee' lawyers or even by household insurance cover. For those without the benefit of legal representation, employment tribunals are under a legal duty to assist litigants in person through the maze of employment tribunal rules and procedures.

...even prudent employers... are not immune from a former employee who has an axe to grind or is out to make some easy money.

So what can be done to stem the tide, or what many would now consider to be the tsunami, of employment tribunal claims? Even prudent employers who do everything to ensure their HR procedures, contracts and employment practices rigorously comply with employment law are not immune from a former employee who has an axe to grind or is out to make some easy money.

Given the meteoric rise in employment claims, the coalition government is coming under increasing pressure to reform what is currently seen as an employee-biased system and formal consultation has been announced. Small businesses and charities, in particular, are keen to restore some balance. Over the past few months, small employers' organisations have been voicing their concerns over the ease with which an employee is able to bring a risk-free, cost-free claim against a former employer and the resulting financial burden faced by employers. A number of proposals for change are being considered.

**Increasing the qualifying period of employment for bringing a claim for unfair dismissal from one to two years.** The impact of such a change is unlikely to be significant as employees and their lawyers would simply become more creative in asserting that dismissal was on the grounds of discrimination and thus circumvent the requirement for a minimum qualifying period of service.



**An early review of cases by an employment judge to assess their merits before allowing them to proceed.** In theory, this provision is already in place. Employment tribunals have the power to order a pre-hearing review of a claim. Where a case is considered to be weak the tribunal can order an employee to pay a deposit of £500 in order to continue with the claim. Due to the huge rise in claims the employment tribunal service is severely stretched and under-funded, so rarely has the judicial resources to facilitate pre-hearing reviews of cases. In any event, to reach the stage of a pre-hearing review an employer will have already incurred considerable legal costs in terms of instructing lawyers, filing their defence and preparing for the hearing.

**The third and most promising proposal is to introduce a fee for an employee wishing to lodge a tribunal claim.** This is in line with the fee system already adopted by the UK's Civil Courts and suggested fees range from £30 to £500. Not surprisingly, this proposal has been met with strong opposition from the TUC, which argues that any measures that deter low-paid employees from bringing a claim will be a green light to rogue bosses to break the law.

The government has now indicated that it will commence a period of formal consultation on changes to the "costly and time consuming" employment tribunal service. Other suggested reforms include a new system whereby an employment judge would hear cases sitting alone, as opposed to the current system where cases are heard by a 'tribunal' consisting of an employment judge and two lay members.

Also, a period of compulsory mediation by ACAS will be imposed prior to the case being lodged with the tribunal. In addition, the government plans to introduce an Employer's Charter, which will remind employers of their "rights", such as the right to ask an employee to take annual leave at a time that suits the business and the right to dismiss poorly performing staff.

Whatever the solution, it is clear that something needs to be done urgently to stem the flood of vexatious claims by employees hoping for an easy windfall. We need to see the proper funding of a tribunal system, not solely reliant on public funding. The introduction of a fee – in line with the current fees charged by our civil courts – for employees wishing to lodge a claim would not only discourage time wasters with weak cases, but also throw a financial life line to our drowning employment tribunal system.

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## Accounts – all change

**Those who enjoy creating mnemonics from technical titles or even popular sayings will be in their element with the proposed new accounting regime. The likely changes to charity accounting in mnemonic speak are as follows.**

Out go UK GAAP and FRS, while in come IFRS and FRSME, together with FRSSE and PBES to form a new SORP! So what does this mean in English?

For more years than most of us care to admit, all accounts in the UK have been prepared using UK Generally Accepted Accounting Principles (UK GAAP), supported by Financial Reporting Standards (FRS). Following the introduction of International Financial Reporting Standards (IFRS), the intention being that these will be used worldwide, UK GAAP and FRS are no longer required.

In future, there will be a three-tier accounting regime, with the very largest and publically accountable organisations following tier 1, which effectively means complying with all the IFRSs. Non-publically quoted accountable organisations will follow tier 2 and the IFRS for small and medium-sized entities called the FRSME. Very small entities will continue to follow the Financial Reporting Standard for Small Entities (FRSSE) – tier 3. So where do charities fall within this new accounting regime? Naturally, most charities will fall within either tier 2 or 3. Of course the whole concept of IFRS was for the globalisation of the same accounting standards and focuses on the biggest entities in the world.

Originally, it was thought that charities could fit within the FRSME regime, even though it was not designed for not for profit organisations. However, because of different terminology and different accounting treatments, it became apparent that a specific standard would be required. Consequently, for charities (and other public benefit entities), a tailored standard (Public Benefit Entities Standard – PBES) is being developed to address those areas not covered within the FRSME. Therefore, the FRSME and the PBES will form the basis for the new SORP, which sets out the accounting framework for charities.

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The consultation period for the new accounting framework will run until 30 April this year and the draft PBES is expected to be published during the first quarter of the year. The expected implementation date for the new regime is for accounting periods beginning on or after 1 July 2013. So for many charities with December or March year ends, the first accounting period likely to have effect will be 31 December 2014 and 31 March 2015.

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# What is this Equality Act 2010 really about?

**The Equality Act is the single largest piece of anti-discrimination legislation created in this country. It brings together and re-states existing discrimination legislation with the aim of making the laws surrounding discrimination easier to understand and helping employers to make workplaces fair environments.**

## When does it happen?

The majority of the Act came into force on 1 October 2010. However, certain elements will come into force at different times to allow time for the people and organisations affected by the new laws to prepare for them.

## Changes, big and small

The Act protects individuals on the grounds of sex, race, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief (including lack of belief) and sexual orientation. These are called the “protected characteristics”.

The definition of gender reassignment has been broadened and disability changed slightly, making it easier for employees to fall within this definition. Significantly however, employees will not need to show that they themselves have a protected characteristic. Instead, if they can show they have been treated less favourably because they associate with someone who, for example, has a certain sexual orientation or is of a certain race, then this is potentially discriminatory.

Furthermore, claims will also be able to be made on the basis of perception (even if it is mistaken) of a protected characteristic. So, for example, if an individual is not sent to a client meeting because the employer thinks he/she is younger than they are, this is potentially discriminatory on the grounds of perception of age.

The Act will also prohibit (subject to certain exceptions) employers asking job applicants questions about their health before a job offer is made.

Such questions should only be asked in very limited circumstances and strictly to assess a candidate’s ability to perform an “intrinsic function” of the job. However, employers will still be able to ask generic health questions once a job offer is made.

Employers should also be aware that they are potentially liable if their employees are harassed by people they don’t employ, such as external suppliers or customers.

**...volunteers are not protected from discrimination on the grounds of age or marriage/civil partnership, neither are they protected from harassment by third parties.**

## Are salaries confidential?

A further change to be brought in by this Act is in relation to pay secrecy. If your employee’s contract of employment requires him/her to keep their pay secret, the Act makes this requirement unenforceable. This is envisaged to be a problem in many organisations, especially in smaller charities that often have this included in confidentiality statements.

This doesn’t mean employers have to disclose the pay of individuals to other employees in the organisation; they just won’t be able to take action if an employee decides to share this information. Action can still be taken against employees who, because of their roles (e.g. managers, payroll or HR personnel), have knowledge of salaries. They can still be required to keep this confidential.

## More than employment...

The scope of this Act goes further than previous legislation and extends well beyond the workplace to cover the provision of goods and services to consumers. This has potentially far-reaching consequences.

Under previous legislation, volunteers were not protected from discrimination unless they were actually a worker or employee.



Under the new Act, there is no mention of volunteers, however its extended scope means that volunteers may be classified as service-users and have some protection under the Act.

Service users are protected against discrimination/harassment on the grounds of disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Yet unlike paid staff, volunteers are not protected from discrimination on the grounds of age or marriage/civil partnership, neither are they protected from harassment by third parties.

In any event, volunteers should be treated fairly on the grounds of discrimination, which would help to boost morale and retain the best volunteers, in addition to enhancing the company’s reputation.

## What should employers do?

As successful discrimination claims have unlimited financial liability, employers need to take notice of this new Act. We would urge you to:

- Review your equal opportunities policy and your contracts to make sure it covers the new provisions
- Train your managers so that they clearly understand what constitutes discrimination, especially in areas around association and perception
- Reissue your equal opportunities policy, making it clear that your organisation will not tolerate acts that could be considered discriminatory
- Extend your equal opportunities policy to your volunteers, but make it clear that there is no intention to create contractual relationships with volunteers.

If you want to discuss this Act or have specific concerns about any employment-related matter, please contact [Heather Matheson, managing director, HR Insight, at hmatheson@hrinsight.co.uk](mailto:hmatheson@hrinsight.co.uk)

## Protect your data, protect your organisation

**Data is any organisation's most valuable asset and should always be high on the risk management agenda.**

Recent research undertaken by the British Standards Institute (BSI) resulted in one in five organisations admitting that they may have unwittingly committed a breach, not simply by failing to hold personal information securely, but also by neglecting other legal obligations.

Since April 2010 the penalties for failing to have controls surrounding the collection, management and use of personal data have increased. From this date the Information Commissioner's Office (ICO) has the power to fine organisations up to £500,000 for serious contraventions of the Act.

In a world where little is sacrosanct from Government cuts, a revenue raising opportunity like this could prove irresistible! So is everyone taking it seriously? The regulators certainly are.

In October 2010, the ICO used its new powers to impose data-breach fines for the first time. Hertfordshire County Council was given a penalty of £100,000 for faxing sensitive personal information to the wrong recipients. In another case, A4e were fined £60,000 for losing an unencrypted laptop containing personal information.

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**Information security is something that needs to be embraced by the whole organisation... In fact it is the organisation – not IT – that is responsible for the protection of information.**

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### How can your organisation prepare?

To get your data security into shape, your organisation should consider the following.

#### Governance

- Establish a policy for dealing with data protection issues, including the appointment of a trustee or senior employee to be responsible for compliance with the Act.
- The right people at the right level of seniority need to be involved.
- A risk assessment of the whole business should be carried out using outside expert help if necessary.

#### Training and awareness

- Contracts of employment and staff handbooks should be updated to ensure they contain clear rules regarding the collection, recording and passing on of personal data.
- Make sure that your staff understand the policies and procedures and can work with them. Don't assume that your staff know what they have to do.
- Conduct checks to ensure that staff are implementing the procedures in practice.
- Focus on high-risk areas.

#### Controls

- Generally speaking, too many people have too much access to too much information. All access rights should be granted on a need-to-know basis.
- Is your website secure? Are there adequate controls in place for staff accessing the organisation's IT systems when working from home?
- Risk-based monitoring of access to donors and stakeholders' data should be considered.
- Portable media, including USB devices and CDs, need good management to mitigate against data security risks.

#### Disposal of customer data

- Many organisations are quite good at disposing hard copy, paper-based data records. However, when was the last time you checked the procedures at your outsourced offsite storage facility?
- Are hard drives and computers/laptops securely destroyed before disposing of the hardware?
- Ensure internal procedures exist to delete and destroy securely all personal data that is no longer required.



#### Management of third-party suppliers

- How does the third party manage and secure your data?
- Who has access to it?
- How is it transferred between the two organisations?
- Don't rely on the contract to absolve you of responsibility in the event of a breach.

There is a lot to consider when protecting your data from improper use. Imagine the consequences of stakeholder information getting into the wrong hands. Clearly, the financial consequences will be pretty bad, while the inconvenience of fraud will not endear you to them. Most significantly, the hit on an organisation's reputation could be catastrophic.

Securing information assets should be a top priority for all organisations since no-one can afford the reputational damage caused by loss of data. Information security is something that needs to be embraced by the whole organisation and is not a dry technology subject. In fact, it is the organisation, not IT, that is responsible for the protection of information.

We can help you ensure that your policies and procedures satisfy the Act's requirements. If you would like to discuss how we can assist you, contact [Mark Child, partner, Kingston Smith Consulting, at mchild@kscllp.co.uk](mailto:mchild@kscllp.co.uk)

# Seminars and courses

## Seminars / Charities

### Thursday 17 March – City

Strictly accounting – A 60-minute guide to understanding accounts for trustees

### Wednesday 6 April – Brentwood

Strictly accounting – A 60-minute guide to understanding accounts for trustees

### Thursday 12 May – City

How to maximise the value of your database?

### Wednesday 8 June – Hemel Hempstead

An update for charities

### Wednesday 29 June – Brentwood

How to increase voluntary income: Part 1

## Seminars / Schools

### Tuesday 22 March – Westminster

Raising finance for schools

### Tuesday 28 June – City

How will the public benefit requirements judicial review affect your school?

## Courses

Kingston Smith Fundraising and Management Division offers a range of training courses for the not for profit sector. Our training courses build on our highly successful seminar programme by providing more in-depth analysis of topics which address the developing needs of the sector. Delivered by our in-house team, courses will help trustees, CEOs and directors of fundraising to deliver their goals more effectively.

We cover a wide range of topics which include the following upcoming courses.

**Major Donor Fundraising techniques-**  
16 February, 26 May

**Charity finance management for non-accountants**  
9 February

**Governance - An overview of trustee duties**  
3 March

**Better bid writing**  
28 March

**Fairytale fundraising strategies**  
6 April

**Capital project fundraising**  
10 May

**Legacy fundraising**  
8 June

### How to book?

Kingston Smith runs an extensive programme of seminars. To access the full programme and book your place visit [www.kingstonsmith.co.uk/events](http://www.kingstonsmith.co.uk/events) or email [events@kingstonsmith.co.uk](mailto:events@kingstonsmith.co.uk) or phone 020 7566 3850

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