

# MINUTES OF USER GROUP MEETING

Thursday – 4 June 2015

## 1. **Present**

Lynne Sheridan, Peninsula Business Services Limited  
Tom Sheridan, Peninsula Business Services Limited  
Mary Kitson, Equality Commission NI  
Kathryn Laverty, Cleaver Fulton Rankin  
Beverley Jones, Jones Cassidy Brett Solicitors  
Alan Scott, Department for Employment & Learning  
Carolyn Rhodes  
Daire Murphy, Law Centre (NI)  
Ines Mathieu, Law Centre (NI)  
K Gallagher, Millar McCall Wylie  
CSO  
Scott Alexander, Legal Island  
D Murtagh, Belfast City Council  
Adrienne Brock, Elliott Duffy Garrett  
John O'Neill, Thompsons NI  
Lisa Bryson, A&L Goodbody, Solicitors  
Michelle McGinley, EEF  
Gerry Grainger

## **Apologies**

Tom Campbell  
Judith Blair  
Lisa Sturgeon  
Mark McEvoy  
Labour Relations Agency

## **Minutes of the last User Group Meeting on 18 September 2014**

2. No comments or objections were made in relation to the minutes of the September 2014 Meeting.

## **Matters Arising**

3. There were no matters arising from the minutes of the September 2014 Meeting.

## **Bundles**

4. There was a general discussion about difficulties which had been experienced in relation to bundles and witness statements.

5. Specifically, in a significant number of instances, there had been a failure to lodge the bundles in time and/or a failure to comply with the page limit and/or a failure to ensure that the bundle does not contain documents which are irrelevant, or which are of peripheral relevance only.
6. It was also noted that, in a significant number of cases, there had been a failure to comply with the word limit for witness statements.
7. It was emphasised that parties must comply with the page-number limit unless and until an employment judge has approved an increase in that limit.
8. It was also emphasised that parties are under an obligation to comply with the word limit for witness statements unless and until an Employment Judge has granted leave to exceed that word limit.
9. There was a general consensus that, with a view to ensuring that any issues relating to bundles could be dealt with well in advance of the hearing, it was appropriate to change the arrangements, in respect of the provision of bundles, so as to require provision of one bundle either two weeks or three weeks after service of the respondent's witness statements.

#### **Late settlements**

10. There was a general discussion regarding the unfortunate practice, which seems to be particularly prevalent in Northern Ireland, of cases being settled at the last minute, as distinct from being settled (if settlement is appropriate) in a timely manner, well in advance of the date scheduled for the main hearing.
11. In that context, Employment Judge Drennan QC drew attention to the tendency to instruct counsel only at a very late stage of the proceedings.
12. The President stated that she would welcome any constructive suggestions regarding changes in practice which would enable industrial tribunals to encourage the early settlement of those cases which are appropriate for settlement.

#### **Late provision of witness statements**

13. The President drew attention to a practice, by some representatives, of "drip-feeding" the provision of respondent's witness statements, while failing to comply with the time limit set by an employment judge in respect of the provision of such statements. She pointed out that such a practice is in breach of tribunal requirements and is also discourteous to the other party.

#### **Witness Orders**

14. There was a general consensus that, if a witness order was granted in favour of a particular party, it was appropriate for the Office of the Industrial Tribunals, to notify the

opposing parties of the fact that the witness order has been made, and of the identity of the person who was the subject of that order.

### **Written witness statements from “compelled” witnesses**

15. There was a general discussion about the inconvenience of written witness statements not being available from witnesses who were present pursuant to witness summonses.
16. It was noted that, in some instances, witnesses who were apparently present under compulsion were, in reality, very willing to give evidence on behalf of the party who summonsed them. There was a general discussion as to whether, in those circumstances, the relevant party might be asked, perhaps only as a matter of courtesy, to provide written witness statements, in advance of the hearing, from those “compelled” witnesses.

### **ENEs and merits assessments**

17. Daire Murphy suggested that, in many instances, it would be helpful if the employment judge, during the course of an ENE, were to express a view as to the merits of the particular claim. He also suggested that it would be helpful if the agenda for an ENE referred to the possibility of there being such an assessment. Those comments provoked a general discussion about the situations in which, in the context of an ENE, such general, provisional and preliminary assessments of merits might be helpful, and the situations in which such assessments would be inappropriate. The President indicated that an assessment was currently being provided where appropriate.

### **Note taking in tribunals**

18. There was a general discussion about the variations in practice, between the various employment judges, in relation to note taking. Michelle McGinley, on behalf of Peter Bloch, noted that many hearings are now recorded and suggested that, in those circumstances, any requirement for parties to slow down (for the purpose of allowing an employment judge to take a verbatim note), added disproportionately to the length of hearings.
19. There was no consensus on this issue. Gerry Grainger pointed out that, even if an employment judge did not keep a verbatim note, a party might well want to do so. The President suggested that there was a wide margin of discretion, available to individual employment judges, on this matter generally.

### **NI Employment Bill**

20. Alan Scott said that, in the ordinary course of events, it was likely that it would be necessary for the Employment Bill to be introduced in the Assembly prior to the summer recess, if there was to be a realistic prospect of the Bill being enacted prior to next year’s election.
21. The President updated those present on the current state of play in relation to the Employment Bill based on the Official Report of DEL’s briefing to the Committee for

Employment and Learning on 13 May 2015. The following is a summary of that update.

- (1) The Employment Law Review which went out for public consultation in July 2013.
- (2) Following that public consultation which closed in November 2013, DEL provided a detailed oral briefing to the Stormont Committee for Employment & Learning in June 2014 (4/6/14) covering feedback on key policy issues which were explored through the public consultation.
- (3) In September 2014 the Minister held meetings with key stakeholders to discuss the outcomes of the public consultation and on 10<sup>th</sup> September 2014 he briefed the Stormont Committee on how he was minded to proceed.
- (4) In November 2014 (20/11/14) the Minister obtained the Executive's agreement to draft an Employment Bill and he indicated that he intended to have it introduced for the summer recess.
- (5) On 13<sup>th</sup> May 2014 DEL officials briefed the Stormont Committee for Employment & Learning on the main policy intentions of the proposed Bill.
- (6) There are three main themes to the Bill.
  - The first theme relates to early resolution of workplace disputes.
  - The second theme relates to ensuring that employment tribunals are efficient and effective.
  - The third theme relates to better regulation measures.
- (7) Going back to the first main theme which relates to early resolution of workplace disputes. That will be done by an early conciliation process through the Labour Relations Agency and it will be mandatory for potential tribunal claims to be routed in the first instance to the Labour Relations Agency. It was launched in GB in April 2004 and it has led to a reduction in the number of claims being lodged with the Employment Tribunals.

The Department is seeking enabling provisions within the Bill to allow for a neutral assessment service to be established through the Labour Relations Agency.

- (8) The second theme is to ensure that Employment Tribunals are efficient and effective and meet the needs of today's users. A set of draft new Rules are being drawn up similar to the revised Rules in Great Britain with scope for Presidential guidance.

At the last User Group Meeting in September 2014 the Department anticipated that the draft new Rules would be ready to go out for consultation in October or November of 2014. There has been a delay and it is now anticipated that the draft new Rules will be ready to go out for public consultation shortly.

As the Vice President urged at the last meeting, it is very important that users take the opportunity to provide their views during the consultation process in relation to any procedural issues about which they are concerned. In particular as the Vice President pointed out they might wish to provide their views on whether:-

- (i) Deposit Orders should be granted in respect of parts of cases or only in respect of full cases;
  - (ii) the limit for a Deposit Order should continue to be £500 or should it be increased to £1,000 as in GB;
  - (iii) the limit on Deposit Orders should be per case or per respondent.
- (9) The third theme is better regulation measures.
- (i) There will be no change to the one year qualifying period for unfair dismissal claims at present;
  - (ii) There will be provision to curb above inflation increases in the upper limit of the compensatory award;
  - (iii) There will be a reduction in the consultation period for redundancies involving 100 plus employees from 90 to 45 days and the removal of fixed term employees from the count for the purposes of collective redundancies;
  - (iv) There will be changes to the whistleblowing legislation to bring it in line with the changes which were introduced in Great Britain by the Enterprise and Regulatory Reform Act 2013 by:
    - introducing a specific public interest test which is designed to make it harder to bring an entirely personal dispute under the umbrella of whistleblowing protections.
    - altering the effect of the good faith requirement. In Northern Ireland the issue of good faith goes to the heart of whether or not a disclosure is protected whereas in Great Britain it is now only looked at when assessing compensation.
    - amending the definition of worker to include some health workers who were not previously included.

- introducing vicarious liability for detrimental acts by colleagues of a whistleblower. An employer will be able to successfully defend the case if he can show that he took all reasonable steps to prevent the worker or agent from doing the act in question or acts of that description.

The Bill does not at this stage include provisions on zero hours contracts.

(10) The next stage is for DEL to obtain Executive approval for the Employment Bill.

### **New Rules**

22. The President and Alan Scott also informed those present of the current situation regarding the proposed new Rules. The Department hopes that the proposed draft Rules will be available, for consideration and consultation, within a month. On the basis of that expectation, it was anticipated that the next meeting of the User Group, in September 2015, would be focused on the proposed new Rules.

### **Decision - statistics**

23. The President provided an update on recent statistics regarding the timescales for the issuing of decisions, during the period 1 April 2014 to 31 March 2015.

- 75.1% decisions issued within 6 weeks
- 78.2% decisions issued within 7 weeks
- 88.3% decisions issued within 12 weeks
- 11.7% decisions issued outside 12 weeks

### **Date of next meeting**

24. It was agreed that the next User Group Meeting will take place on **Thursday 10 September 2015 at 1.30pm.**