



# Avoiding Employment Tribunals

**Fudia Smartt & Jane Pendry**



# Introduction



- Case Study
- Once a claim has been lodged...
  - Who has been named as a Respondent?
  - Who within the business needs to know about the claim?
  - What are the risks/merits of the claim?
  - Who are potential witnesses?
  - What strategy are we going to take?
- Lessons to learn and Top Tips

# Case Study

## Fact Set 1

- What are the possible legal and organisational issues?
- What are the risks if this situation is not managed carefully?

# Case Study

## Fact Set 2

- How does the grievance impact on your how you deal with this issue?
- Would you allow Devak to come back to work?
- How should you deal with the request for documents?
- What would you do next?

# Case Study

## Fact Set 3

- What legal claims might arise from the facts as currently presented?
- What practical steps might you advise to protect RESPECT's position should this turn litigious?
- How would you deal with Devak and Fiona?

# Case Study

## Fact Set 4

- What do you do next?

# Once a claim has been lodged...

- Who has been named as a Respondent?
- Who within the business needs to know about the claim?
- What are the risks/merits of the claim?
- Who are potential witnesses?
- What strategy are we going to take?
- Litigation Tactics
- Settlement
- Lessons to learn and Top Tips

# Who has been named as a Respondent?

- Organisation only?
- Organisation and named individuals?
- Will the organisation support the named individual(s)?
- Same legal advisor?



# Who needs to know about the claim?

- HR
- Employee's manager
- Individuals named in the claim
- Legal team
- External legal advisers
- Insurers
- Charity commission?

# Disclosure and documents

- The earlier relevant documents can be obtained, the better prepared you and your legal advisers will be in deciding upon the appropriate strategy!
- Which documents are disclosable?
- Remind staff not to destroy documents that might need to be disclosed.

# Disclosure

- During litigation each party must disclose documents which:
  - you intend to rely upon
  - adversely affect your own case
  - adversely affect another party's case
  - support another party's case
  - are ordered to be disclosed by the Tribunal

# Privilege

- Legal advice
- Litigation
- Effect of documents being privileged?
- Your label doesn't matter – privilege is a matter of law/fact to be determined by the Tribunal
- Losing privilege

# Without Prejudice

- Communications genuinely aimed at settlement of a legal dispute are not admissible in litigation
- What is a “legal dispute”?
  - Redundancy consultation?
  - Grievance process?
  - At the point an employee is told they are redundant?
  - When you receive a letter from a lawyer?
- Pre-termination negotiations

# Witnesses

- Identify as early as possible
- Assess their credibility
- How senior are they? Reputational issues?
- What would their statement cover?
- Are they available in next 6-12 months?

# Strategy

- Consider:
  - Merits
  - Management time
  - Legal spend
  - Litigation tactics
  - What does the claimant actually want from the process?
  - Settlement?
  - Strike out applications for unmeritorious claims?
  - Threat of costs?

# Lessons to Learn





# Contact Details

## **Fudia Smartt**

Senior Associate

0208 394 6525

[Fudia.Smartt@russell-cooke.co.uk](mailto:Fudia.Smartt@russell-cooke.co.uk)

## **Jane Pendry**

Associate

0208 394 6478

[Jane.Pendry@russell-cooke.co.uk](mailto:Jane.Pendry@russell-cooke.co.uk)