DMH Stallard

How (not) to lose an employment tribunal: Part 2 - Q&A

We have listed the questions received prior to and during our webinar hosted on 19 November 2020. Please see our responses below.

- **We have had cases thrown out at the pre-hearing stage before. Can we wait until after that point to settle?**

  You can settle a case at any point, including on the day of the full Hearing itself. Even though the ACAS Early Conciliation process will have finished, ACAS will remain available to assist with settlement at a later date if you want their help.

  Whether or not you wait for a pre-hearing outcome before looking to settle will be a matter of assessing prospects and tactics. It is possible that claims may be struck out and there will be nothing left to settle. However if they are not struck out, you will have lost a bargaining chip and possibly some momentum, meaning that the settlement figure is likely to rise.

- **Can the claimant request/compel a witness to attend even if the defendant does not wish them to, although they have provided a statement on behalf of the defendant?**

  Yes, a Claimant can request that a witness attend even if the Respondent does not want them to. A Tribunal can make an order compelling the attendance of a witness so long as they have relevant evidence to give and so long as they are not willing to attend voluntarily.

- **Are there data protection implications from 'keeping your ear close to the ground' to try to work out if a claimant has found new work and mitigated their loss? Particularly with reviewing social media accounts. Would you expect this type of monitoring to be included in privacy notices for example?**

  It would be unusual for this to be included in a privacy notice, with the circumstances so limited. If a claimant posts information about a new job on social media, perhaps most likely on a LinkedIn profile, they have posted the information in the public domain, so there is no expectation of privacy. Initially the information is hosted and processed by the account provider, not by you.

  If you take copies and store them, then you are starting to process the information. However, you will make the claimant aware that you hold those as they will be relevant disclosure documents. When it comes to most of the claimant's individual rights, such as the right to request that you delete the information or the right to object to your processing, those are overridden when the data is being processed for the purpose of defending a legal claim. Therefore it should not create a particular issue.

  You should always be careful to limit data collection and monitoring to what is necessary for the actual purpose. If you overstep the mark and start to process all sorts of data from social media accounts that was not relevant to the defence of the legal claim, that would then cause issues.

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DISCLAIMER

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