**Employment law**

In the context of general employment law the rules have become so detailed, complex and obscure that non-lawyers have little chance of understanding them. In Bristol, we have found that advice on employment law issues often involves explaining legal issues which are relevant to clients' everydat working lives but which they find very difficult to understand.

**Suffolk Mental Health Partnership NHS Trust v Hunt and Others (2009)**

This case involved the level of detail which should be included in a written grievance relating to an equal pay claim.

Lord Justice Pill made the following comment:

- The encouragement of negotiation, conciliation and settlement might be frustrated if the grievance procedure led to satellite litigation on technical issues about whether a statement amounted to a grievance.

Lord Justice Wall added the following:

- Employment-related issues which were designed to be simple and understood by ordinary working people had become overlaid with degrees of sophisticated argument which at times render them unrecognisable.
- Employment tribunals were set up as *fora* in which ordinary working men and women could bring claims which they had been unable to resolve in the workplace with a view to swift and straightforward resolution. To this end, the rules relating to representation were very relaxed, case management powers are wide and costs were only to be awarded in extreme circumstances.
- His experience was that these essentially worthy aims were in grave danger of being frustrated by over-elaborate and sophisticated argument unintelligible to the layman.
- His layman's plea was that there should be a return to the clear intentions underlying the establishment of the employment tribunal system; that lawyers should strive for clarity and simplicity and that unions and employers should strive to make the system work in the interests of ordinary working people.

**Fixed-term employment contracts**

Some employers have tried to get round the rule that employees have to work for a year before being able to complain of unfair dismissal by employing them on a series of fixed-term contracts, often for 364 days at a time.

It was recognised that something should be done about this attempted evasion of employment protection law. What eventually emerged was the familiar result - a scheme of such obscurity and complexity that no-one without access to a law library could possibly understand it. This has caused real hardship to those who try to assert their employment rights.

The lawmakers (and, no doubt the parliamentary draftspersons) tried to deal with the issue by the use of procedural requirements and fictions. These are so far removed from the realities of people's day-to-day working lives that they achieve a kind of abstract, illusory fascination comparable to a hard-fought game of chess. One aspect of this is that a person whose fixed-term contract comes to an end is deemed to have been "dismissed". This immediately imposes a legal fiction upon a crucial everyday reality. The employee

has not been “dismissed” or sacked, as most workers would say. She will certainly not tell future prospective employers that she was dismissed, but rather that her fixed-term contract expired.

If employers are using fixed-term contracts to avoid legal protection for their employees, there are two simple ways of dealing with this which everyone could understand:

1. Make fixed-term contracts unlawful.
2. Give employees the right to complain of unfair dismissal as soon as they start work.

**Employment Act 2002 (Dispute Resolution) Regulations 2004**

Regulation 13: Extension of time limits

“(1) Where a complaint is presented to an employment tribunal under a jurisdiction listed in Schedule 3 or 4 and

(a) either of the dismissal and disciplinary procedures is the applicable statutory procedure and the circumstances specified in paragraph (2) apply; or

(b) either of the grievance procedures is the applicable statutory procedure and the circumstances specified in paragraph (3) apply;

the normal time limit for presenting the complaint is extended for a period of three months beginning with the day after the day on which it would otherwise have expired ….

(3) The circumstances referred to in paragraph (1) (b) are that the employee presents a complaint to a tribunal –

(a) within the normal time limit for presenting the complaint but in circumstances in which section 32(2) or (3) of the 2002 Act does not permit him to do so; or

(b) after the expiry of the normal time limit for presenting the complaint, having complied with paragraph 6 or 9 of Schedule 2 in relation to his grievance within that normal time limit ….”

This is very difficult for experienced employment lawyers to understand, and needs access to statutory source material. For even the most determined, articulate and highly-educated non-lawyer, it is impenetrable. This sort of convoluted draftsmanship takes employment law even further away from the grasp of wronged employees and into the control of professional specialists.

The aim of these Regulations was to reduce the number of applications to the employment tribunal by encouraging the resolution of disputes before tribunal proceedings were started. It was, essentially, a cost-cutting exercise.

This was done in such a clumsy, obscure and legalistic way that the system was unworkable. It created more work for lawyers and moved employment law even further away from workers. The scheme has been described as disastrous and scandalous by many employment lawyers. It has now, thankfully, been scrapped but has left complex transitional provisions.

In one case, for example, an employee of a small charity lodged a grievance on a CD, comprising 500 pages of detailed complaints. This came within the definition of “grievance” for the purposes of the dispute resolution regulations (there was no definition) and the cumbersome and obscure machinery of the Regulations swung into place.