

In ELA

Legislative and policy committee update

As the new submissions on the elakol website demonstrate, 2004 has so far given the committee a lot to work on. ELA members on the various different working parties have been considering the small print of:

- the employee consultation provisions involved in the European Company Statute
- the new employment tribunal rules
- the new employment tribunal forms (submission due 24 May)
- the Data Protection Code of Practice, part 4
- the EC consultation on working time
- the revised ACAS code on disciplinary and grievance procedures
- the EC consultation on directors' remuneration

It is perhaps little wonder, with this level of activity, that I recently learned that ELA has been identified as a "stakeholder" in the Department of Trade and Industry by MORI, which has been appointed by the DTI to conduct research on its effectiveness. After wondering briefly whether this is a wholly good thing – we do, after all, pride ourselves on our political neutrality – I have decided that the committee, its working parties and the Employment Lawyers Association as a whole should see this as a compliment and as a reflection of fact. As employment lawyers we are all stakeholders in the DTI's effectiveness. If we help to improve the legislation and guidance streaming out of Brussels and London, our advice to all clients will be the clearer for it.

We were also recently approached by both the Equal Opportunities Commission (EOC) and the Law Commission, both of which see us as sensible commentators on what works and what does not work in current law.

These approaches have highlighted what we do well collectively – regardless of the employee or employer bias of our individual practices – as a non-partisan, non-political expert observer, and what we do better by consulting our members at large for comment in their individual capacities. Everyone working for L & P experiences the tension between what we can say "for ELA" and what we would let rip with if speaking for ourselves. There have certainly been times this year when we have seen our title – the legislative and policy committee – as inaccurate. We don't do "policy" to the extent of being political.

This was well illustrated when we discussed the EOC's approach to us in connection with the general formal investigation into the discrimination faced by pregnant women at work. The EOC is particularly interested in the views of lawyers about alternative approaches to legal protection. What if, for example, we scrapped the current system of allowing claims of automatically unfair dismissal and

sex discrimination where a woman is dismissed during pregnancy for a pregnancy-related reason, and adopted a rule that a woman can not be dismissed at all during this or a longer period? These are fascinating questions and ELA members' personal views on the answer would probably run from wild applause to raucous booing. We decided as a committee that it would not be right to formulate policy for ELA, but hope that many members took advantage of the opportunity to respond to the EOC directly. All members received an e-mail from Byword on 29 March attaching a link to the EOC's questionnaire on the subject.

The approach from the Law Commission, by contrast, played to what we see as the committee's strengths. The Law Commission is currently considering doing some work on the reform of discrimination law. The "ninth programme" of work of the Law Commission will start in April 2005. We have been asked to comment on the issues practitioners routinely face in the application of anti-discrimination law.

We have a strong working party on discrimination issues, which is chaired by Sue Ashtiany and Sarah Gregory. Our experience has been that, although we never want members, particularly those joining working parties for the first time, to feel that older hands have a "lock" on particular issues, it is helpful to have certain core standing working parties (always open, however, to new membership). That way, it is easy for us to pull together a submission at short notice, which draws on the collective commentary already submitted on other aspects of related topics. The Law Commission challenge chimes with a note we have often sounded – "thank you for asking for our comments on this issue, but have you noticed that the piecemeal development of discrimination law means that this, that or the other is either inconsistent, or really shouldn't be bludgeoned into superficial consistency with another area of discrimination law".

Looking forward to the rest of the year, the committee expects to be as busy as ever. Members wanting a tip about what to prepare corporate clients for in the coming months should take a look at the new section of the DTI website: http://www.dti.gov.uk/er/regglist_2004.htm. Here you see a listing of the new Acts, regulations, codes and other initiatives timed to hit in 2004 and beyond. The committee is already gearing up to comment on issues as diverse as procedure for equal value claims in tribunal, the draft guidance on the implementation of the Information and Consultation Directive and the shape of age discrimination legislation.

We welcome volunteers with experience and enthusiasm. Please contact the committee secretary, Liz May, at liz_may3@yahoo.co.uk so we can contact you when new opportunities to comment arise during the year.

Alison Wetherfield, legislative and policy committee chair