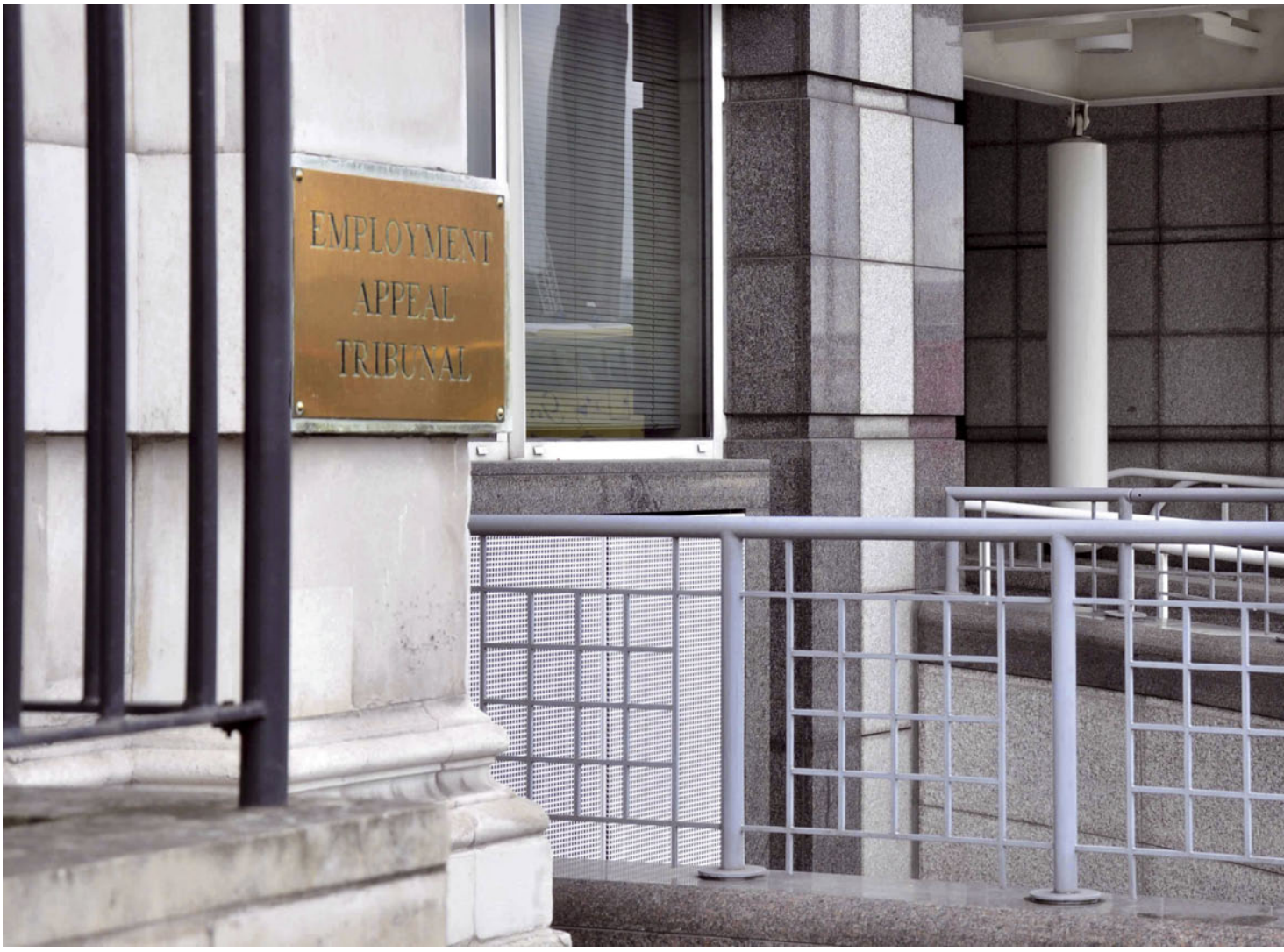

EARLY CONCILIATION

From 6 May 2014, new rules were introduced which regulate the way in which proceedings should be issued in respect of employment rights at an employment tribunal. Employment solicitor Angela Shaw, from Chamber member Lanshaws, takes a look at the changes and their potential impact on businesses.

New employment rules designed to reduce the number of workplace disputes going to tribunal were implemented in May.

Introduced by the Enterprise and Regulatory Reform Act 2013, the early conciliation scheme makes it compulsory for employees wishing to lodge a tribunal claim to first notify Acas, the conciliatory and arbitration service.

The reason for this new mandatory requirement is to actively promote negotiation in the early stages of a dispute before it progresses to litigation and to reduce the burden on employment tribunals.

The new process is simple. The prospective claimant must now submit a completed Early Conciliation Notification Form to ACAS – or provide the information by telephone – which must include basic information about the anticipated claim.

Once received, Acas will explore the possibility of resolving the dispute without the need to head to tribunal. It will have up to one calendar month to facilitate negotiations, which can be extended for a further period of 14 days if both parties consent and Acas believes there is a reasonable prospect of settlement.

If a resolution is achieved, this will be outlined in a confidential document and the matter will not progress to tribunal.

There are likely to be instances where the relationship between the claimant and respondent has so irretrievably broken down that negotiation will not be possible.

When this happens, the claimant

will be issued with an early conciliation certificate number (subject to exemptions) to be inserted into the claim form and will have one calendar month from this date to submit a claim to an employment tribunal.

Many claimants fail to realise that there are strict time limits to issue a claim – usually three months from the date that employment was terminated.

The new rules will impact on this time limit, so any accepted formal conciliation process will effectively stay the limitation date – that is, 'stop the clock' – which will create an extension of time.

Claimants must be very careful to ensure the vital limitation date is not overlooked.

So, what will these new changes mean in practice? As with any new rule, only time will tell.

It is unlikely that claimants will be aware of these changes and will simply submit a claim to the employment tribunal only for it to be rejected, which will inevitably create a delay.

In my experience, claimants are generally left reeling from a dismissal and do not immediately issue a claim, or seek legal advice at all.

It is possible that the time limits could create complacency and confusion over whether a claim is submitted on time, which may result in an increase in short hearings to determine the issue, contrary to the intention of reducing tribunal hearings and burdens on business.

The length of the conciliation period may also be insufficient to properly investigate allegations in more complex cases and many employers are reluctant to settle without first knowing whether the claimant is prepared to incur an issue fee and formally pursue a claim at all.

The conciliation process could be used to better understand the strengths and weaknesses of the opponent's case and employers may welcome the "heads up" of a looming claim.

However, ACAS reports a good success rate during the voluntary conciliation period, which is promising.

Angela Shaw

The introduction of early conciliation follows a tightening of employment regulations last August, which led to a 79% fall in the number of tribunal cases in the last three months of 2013.

Ministers were criticised by union leaders and employment lawyers over the reforms, which included introducing fees of up to £1,200 for claimants who could previously bring cases for free and doubling the time a worker must spend in a job before they can bring a claim from one year's employment to two.

Skills Minister Matthew Hancock

But Skills Minister Matthew Hancock hailed the 'simple' reforms, saying they maintained protection for employees who have been mistreated, but corrected the balance in a system which had been biased in favour of claimants.

As a result, the total number of claims fell from more than 40,000 in Q4 2012 to fewer than 10,000 in Q4 2013.

He said: "Below the radar - unnoticed by many - firms big and small have fallen victim to the insidious growth in vexatious employment tribunal claims.

"Employment protections are vital in any modern economy, but this had become a system that in too many cases was being ruthlessly exploited. Increasingly, the real victims were the businesses targeted by bogus claimants. It put some small businesses off hiring at all."

The average cost to an employer of going to a full tribunal is estimated by Acas to be £3,700. By contrast, the pilot scheme on which early conciliation is based had an average cost to employers of £480.

The number of tribunals has also fallen since fees of up to £230 were introduced just to begin a claim. In August last year, the first month of the charges, the number fell by 55% on July's figure, to 7,448.

Acas Chairman Sir Brendan Barber

Acas Chairman Sir Brendan Barber said: "Early conciliation is a free service that has given us the chance to help people resolve their disputes early and avoid the stress, cost and anxiety associated with the tribunal process.

"The number of people who have decided to give early conciliation a go since its launch has been encouraging."

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