

# Straight Lines 2017

Our dedicated newsletter for employment practitioners

**str8**  
solutions

## THE PERFECT STORM

**WITH UK BUSINESSES** of every size experiencing downward pressure on profits, employment law practitioners cannot expect to be an exception. There's an almost perfect storm swirling around us:

1. Clients want to contain or reduce their costs.
2. Intense and sometimes naive competition for legal services.
3. A reduced perception of the employment risk following the introduction of ET fees.

The only way of meeting these challenges is with cost proximate services and a clear marketing strategy to communicate the issues and solutions.

*This year's golden rule: don't change your price unless you want a fight for the business.*

As you will read later in this issue, clients requirements are changing. They see little value in on-line employment templates and call-me-back services and many have formed the view that ET claims have simply 'gone away'. Of course claims have not disappeared completely but fees have successfully killed off most spurious ones and while full ET numbers have dropped off a cliff, the average cost of a claim has increased to more than compensate, without taking account of management time.

**Retainer** /service maximus (aka "help")

1. Someone to talk to
2. Someone to fix it
3. Someone to pay up  
ie. a straight solution to every issue

If you are not selling integrated retainers then you are left to the whim of chance as to whether employment work will come your way and when. Retainer services guarantee regular monthly income and insurer paid representation and litigation work on the claims that occur. If you are unsure about how to enter the retainer field, let us be your guide — register for a seminar or book a tele-conference today.

This is marketing challenge No.1; to make employers aware of the trends.

**HISTORICALLY**, we have seen two seasonal claim spikes, in April and November (we call them Summer holidays and Xmas shopping!).

The introduction of fixed fees has distorted the market in many ways. Before-the-event insurers have increased sales in order to capture more claims at source and of course they have the resources to make claims more difficult for employers to defend. At the same time, in order to differentiate, many Directors and Professional Indemnity policies have been widened to include employment liability.

90% of UK businesses have one or more forms of BTE legal expenses and most of these will let them down when most needed. Unless a policy specifically names the advice provider as the insurers representative, the policy may not be worth the paper it's written on.

Solicitors have one enormous advantage over independent HR providers — regulation. This allows you to sell fully integrated advice and indemnity services that a client can rely on.

If you are selling a retainer service, our advice is don't get dragged into a de-construction of your pricing — your professional service is a seamless integration of advice and indemnity. Anyone who wants to bolt together the various components does so at their own risk.

“ It's unwise to pay too much, but it's worse to pay too little. When you pay too much, you lose a little money — that's all. When you pay too little, you sometimes lose everything, because the thing you bought was incapable of doing the thing it was bought to do. The common law of business balance prohibits paying a little and getting a lot — it can't be done. If you deal with the lowest bidder, it is well to add something for the risk you run, and if you do that you will have enough to pay for something better.

Quality is never an accident. It is always the result of intelligent effort. There must be the will to produce a superior thing.

—John Ruskin

**COMING SOON**

## Purely Employment

The widest standard employment insurance with the best pricing solution yet devised.

## You Couldn't Make It Up

Statistically a business is far more likely to have an expensive employment claim than it is to experience a serious fire, theft or flood claim. The facts:

- ACAS notifications now exceed 1800 per month
- 22% go to full ET / 16% are currently unknown in outcome
- 47% include elements of Discrimination/ public interest
- 43% are claimants with less than 2 years service



## Why Are So Many Claims Going To A Full ET?

We think there are two main reasons:

- Tribunal Fees create a financial interest in the claim and once the Fee has been paid claimants are reluctant to discontinue without a settlement.
- Many if not most Tribunal Fees are now being paid by Third Party funders such as a Union, a no-win no-fee solicitor or a personal legal expenses insurance company via Home insurance or even a credit card. TP funders are experienced in the game of litigation and having funded the claim fee are looking for a return on their investment, so they look to create additional issues to further their own revenue.

## Why Are Claims Costing More To Settle?



**THIS IS DUE TO THE SAME FACTORS:** a financial commitment to the claim and experienced litigators.

Experienced funders recognise every opportunity to extend the complexity of a claim (and their own revenue) by adding additional Heads of claim such as whistle blowing or discrimination.

There is also another unforeseen consequence of the new fees regime — evidence suggests that with the massive overall reduction in ET claims,

judges (who may be paid by the day or half day) are regularly extending Hearings by several days in order to retain their own level of earnings. In one extreme example, following a 20 minute pre-hearing, the Recorder delivered 246 pages of notes!

Our average ET claim payment is now £8,500 for settlement and representation costs combined (a figure that reduces to £5,000 for unfair dismissal claims). Our largest single claim in 2016 is not yet settled and to date has cost £65,000 in fees. It relates to a litigant in person represented by her partner. The claimant had less than 2 years service and the circumstances of the claim appeared to give them no chance of success. Nonetheless the claimants have denied all offers falling short of their £250k expectations. They lost a 10 day Tribunal Hearing and an Appeal and have recently received leave to make a second Appeal on a technical issue. These are not the kind of unexpected expenses that any business would welcome

# The Advice and Assistance Market —An Investors' View

The 'advice-and-assistance' market around legal services is in post-2013 hangover.



**2013 WAS THE BEST YEAR** ever for the 'affinity and advice' market, being pre-Jackson and most fixed fees. With service providers having to slash prices for advice 'per call' to the bone (as well as cutting the quality of advisers), the affinity market got what it asked for – a lot of sweat to lose a few pounds.

There may be alert providers who buck the trend but the structure of the employment/HR and safety advisory market is dire. Making decent profits is a nightmare for many providers as 15 years of price haggling by the insurance industry's finest has only proved that the price wars are a great way of cutting your competitors' throat and bleeding yourself to death. Prices per call are at uneconomic levels; advisers are entry level (at best) but stacked high; service take up is dropping and clients simply don't see much value in on-line templates and 'call-backs' any more.

This is the part of a business cycle that will see smart clients

*“the winners can be the better prepared law firms”*

taking work in-house for a while, and some will make a good job of it. Others will find that even if it works the 5% extra return was a false economy and not worth the exposure.

Among the winners this year can be the better prepared law firms, the firms who take an holistic approach to pricing retainer based assistance services and who 'get' the practise-wide opportunities that flow from them.

Think about it, if you develop a relationship with a single employer with 10 people in the management team then, in a 5 year cycle, you can virtually guarantee two wills needing to be drafted, two HNW divorce claims, one or more corporate planning or shareholder issue and at least two home selling instructions. And that ignores the cash positive assistance work.

## New Year New Plans?

**IF YOUR YEAR END** is March/April, now's the time to be thinking targets for growth, margins and profit; If you're on a year end planning cycle — do you notice how out of date October's draft already looks?

The issues in 2017 are simple:

- Growing at less than 6% means you are going backwards;
- Double digit growth is needed for real traction
- Marketing should be the fastest rising cost centre
- Technology needs to deliver - dump it if it does not deliver users making real clicks and swipes
- Profitability is solid but downward pressure will increase for those who stand still.

## The Insurance Act 2015—the rules re-written

**EFFECTIVE IN AUGUST 2016** this Act was the first major overhaul of insurance law for a century or more and it rewrote the rules on material facts and utmost good faith.

Policyholder protection from insurer misbehaviour has been toughened-up as Insurers must now ask specific questions, they must read proposal forms thoroughly to go on enquiry and they can no longer decline claims for information they failed to request or avoid claims for an unrelated Breach of policy terms.

In return, Policyholders are expected to give a "Fair presentation

of facts" material to the risk and must ensure internal enquiries are complete before answering questions (i.e. a proposer must ask all other relevant Directors/ Managers for information) and answers must be clear and accessible ("see our website" or "see your records" is insufficient).

Facts found in a claim may now be retrospectively applied to the underwriting of a risk but the insurers response to a previously unknown piece of information must be "proportionate" (now there's a word to fuel more disputes!).

# Funny Old World



**IT'S BEEN CALLED 'THE FRENCH DISCONNECTION'** – a new law has been passed in France that bans employees from answering work emails, messages and calls outside of normal working hours. The law came into effect from January 1 and makes it obligatory for companies with more than 50 employees to “start negotiations to define the rights of employees to ignore their phones out of hours”.

**YOU MAY WISH** to scrutinise the new £5 note a little closer than before. Renowned micro-artist Graham Short engraved tiny portraits of author Jane Austen on four of the new fivers - each minutely inscribed note could be worth as much as £20,000. The portraits – only 6mm wide – can be found near the picture of Big Ben on the note and each has its own unique quotation around it. It's worth a peep.



**A MYSTERY FOR CENTURIES**, but scientists may have now come up with an explanation as to why ships and planes seem to disappear in the Bermuda Triangle.

Meteorologists in the US claim that hexagonal shapes in clouds in the area bounded by Florida, Puerto Rico and Bermuda can cause “airbombs” - blasts of air that come out of the bottom of the clouds and hit the ocean.

These “airbombs” can cause sea-surface winds of up to 100mph and 45ft waves, which could explain the mysterious disappearance.

## Going Straight



**FOUR YEARS AFTER** becoming part of the DIB Holdings insurance operation, Straight Solutions is de-merging to trade in its own name again. According to Brian Dunk, MD “we felt the Holding company did not have the focus or the skills to help us develop further in what for us is core business — insurance solutions designed specifically for law firms.”

“There is no change in terms of suppliers or personnel — just more of the same straight forward focus on doing things well, with integrity and great service” he added.

## PE is Fitness for Business; Purely Employment

**PE IS THE FIRST EVER** wrap-around insurance designed specifically and solely to support a law firms annual advice service. Cost-effective and all-employment risk inclusive we think it will provide the widest ever cover for the best ever price.

Initially roll out will be to established supporters but gradually we intend to offer the policy exclusively to no more than one law firm per locale. Watch out for details soon.

## Talking Point or “Pebble in the Pond”?

**EPF IS AN ACRONYM** for Exempt Professional Firm, it's the vehicle that allows lawyers to 'intermediate' or arrange insurance for their own clients without having to be independently regulated by our insurance regulator, the FCA.

The question is- how far does it stretch? EPF certainly allows injury law firms to arrange ATE cover for injury clients and to protect adverse costs in commercial disputes, or to insure empty property assets for a probate matter.

Arranging motor or home insurance – definitely not.

But what about a policy that includes Regulation, D&O (Directors and Officers) or professional indemnity when the law firm either does not or cannot directly provide advice and legal services without engaging another?

We have heard the view expressed recently that policies this wide exceed the scope of the EPF exemption and that full and direct FCA authorisation is the only way to achieve compliance.

We would be interested in your views ('cos the regulator just refers us to the Prudential Source book!).