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Welcome to the November Issue of Keeping in Touch

November is a month when Richard Grogan of this firm will be presenting three training courses.

15 November 2016 – Dublin Solicitors Bar Association – Paper on the Workplace Relations Act, 2015. The other speakers will be Mr. Alan Haugh Deputy Chairman, Labour Court and Mr. Tom Mallon BL. Richard will be presenting a detailed paper with a particular emphasis on the operation of the Workplace Relations Commission.

18 November 2016 – Skillnet Meeting – Southern Law Association and West Cork Bar Association. Richard will be presenting a paper entitled "The Workplace Relations Act 2015 – Tips and Traps for Practitioners".

24 November 2016 Richard will be presenting a training course to CMG Training entitled "Workplace Relations Act on Presenting and Defending Claims before the Workplace Relations Commission and the Labour Court". This course will also deal with practical issues including such issues as the Organisation of Working Time Act, Unfair Dismissal claims and the myriad of other claims that will be dealt with before the Workplace Relations Commission. This is a day long course.

We have decided to go to a monthly publication. The reason for this is the significant increase in the number of reported cases coming out now particularly from the Workplace Relations Commission.

The aim of this publication is to keep practitioners up to date with recent developments in Employment Law in Ireland

With personal injury and accident claims being a significant part of our practice we are also increasing our coverage of articles in this area of law.

We would like to thank those who read this publication for their continuing support and encouragement and in particular for the very kind comments which they have made.

A new development is that the firm has been asked to provide a regular update for Irish Legal News on employment matters. We were delighted to accept the request and hope those who read the publication from Irish Legal News will find our contributions useful.

Workplace Relations Commission and Labour Court have moved

As of 1st November 2016 the WRC and the Labour Court have moved to Lansdowne House, Lansdowne Road, Ballsbridge, Dublin 4. The Telephone numbers previously used will continue to be in operation.

Point of Law Appeal to the High Court which we Won

In a recent case involving First Glass Limited the employer was successful in their claim before the Labour Court. This office acting for the employee appealed the Decision of the Labour Court to the High Court.

The case involved a claim by the employee to holiday and public holiday pay.

The contract for the employee provided that the employee would be paid the sum of €34,384 per annum which converts to a weekly wage of €668.78. The employee was also entitled to certain other payments in respect of subsistence which were not relevant to the appeal.

In that case the Labour Court determined that the Claimants contract of employment which was concluded in September 2015 provided for a different rate of pay than which he was actually paid at all times material to the claim. While the Claimants actual rate was different from the rate specified in the contract he appeared to have accepted the adjustment over an extended period. If he did not, or if the adjustment of his rate of pay was unlawful that was a matter to be determined in other proceedings.

The High Court held that the Labour Court had erred in law by inferring the apparent acceptance by the Appellant of a lesser sum to which he was initially contractually entitled automatically meant that this was a sum “liable to be paid to him for the purposes of Regulation

2 of the Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997.

In this particular case the employee had been paid at the rate of €554.48 per week and also received a meal allowance which was not subject to a statutory deduction of €114.27 which came to a total of €668.75.

The case will be remitted to the Labour Court to rehear the case.

This office represented the employee both before the Rights Commissioner, subsequently before the Labour Court and in the appeal to the High Court on the Point of Law.

Legislation this Office has sought

In the past year we have made a number of submissions to the Department of Justice and Equality, Department of Jobs Enterprise and Innovation and Department of Transport relating to various pieces of legislation.

In relation to the Paternity Leave Benefits Act, this office made a submission to the Minister to amend the legislation to include a threat as a ground for an employee to bring a claim and not just that they were discriminated against. The reason for this is that the Labour Court has held in relation to the Organisation of Working Time Act that a threat, because of the wording of the Act is not sufficient to ground a claim. The Minister for Justice and Equality took our submission on board and amended the legislation. The Minister for Justice and Equality took a very proactive approach and immediate steps were taken to deal with our submission.

We have written to the Minister for Jobs Enterprise and Innovation requesting that the Organisation of Working Time Act would be amended in Section 26 to take account of the defect in the legislation which allows an employer to threaten an employee for having brought a claim provided the threat does not actually materialise but the very threat itself can undermine an employee bringing a claim.

In relation to the Workplace Relations Act 2015 we have pointed out to the Minister that there is no provision to obtain a witness summons in an Unfair Dismissal case. The Minister has said this defect will be dealt with in an appropriate piece of legislation in due course. Section 40(10) of the Unfair Dismissal Acts has not incorporated Section 80 of the Workplace Relations Act 2015.

We have written to the Minister about the fact that there is no Fees Order for employees to seek costs for seeking to implement a Decision of an Adjudication Officer or the Labour Court. The Minister has advised that she has requested the Minister for Justice and Equality to issue the appropriate Statutory Instrument. It is now over a year since the Act came into place and one would have thought that this would have been put into place.

We have written again to the Minister for Jobs Enterprise and Innovation about the issue of settlements before the WRC and the Labour Court. There are issues in relation to the practice before the WRC and the Labour Court concerning settlements and we have proposed amending legislation which we have drafted and sent to the Minister so that settlement agreements would have the effect of an Adjudication Order or Decision of the Labour Court as regards being implemented.

There is a technical issue relating to the submission of complaints to the Workplace Relations Commission which could be easily dealt with by Statutory Instrument issuing and we have written to the Minister about this.

We have also written to the Minister about some of the publications which have issued from the Workplace Relations Commission and to the Director General of the Workplace Relations Commission. The publication Employment law explained has a number of very serious defects in it. We got a very helpful letter back on behalf of the Minister for Jobs Enterprise and Innovation explaining that the document was intended to be a general guide and it is not intended nor does it purport to deal with all details and nuances of Employment Law. What is interesting is that the WRC and their publications say that they have effectively expert advisory services to advise people in relation to claims. If the WRC cannot even get their publications correct it is hard to understand where this expertise is. The good point

is that the Minister has confirmed that the WRC have advised that the defects in the publications relating to "Employment Law Explained" and "The Guide to the Maternity Protection Acts" will be amended shortly.

We have written to the Minister for Transport concerning the provisions of SI36/2012. Following a case of Baku GLS Ltd the Labour Court have confirmed that there is no time limit under the relevant Statutory Instrument provided to enable an employee to get working time records. This is despite the fact that it is an EU Regulation and there is an EU requirement in the Regulation that the employee is entitled to obtain same. If taken on board this will be the second amendment of the Statutory Instrument. A previous amendment had to be put in place as the Department of Transport had omitted to provide a provision where a particular complaint could be made to what was then a Rights Commissioner and now an Adjudication Officer.

We are a small specialist Employment Law firm. We are constantly having to make submissions in relation to defects in legislation that is being drafted and put through or which has been put through. A lot is made by Government Departments about employment rights and protecting employment rights. The very basis of doing so is that legislation would be properly drafted.

In the UK they have the advantage that before a Statutory Instrument issues a draft of the Statutory Instrument is made available for appropriate comments to be made. This is a very useful provision as it enables relevant bodies to make submissions in relation to the Statutory Instrument and in particular if there is a provision which requires amendment so as to be effective it would enable those involved in Employment Law to make appropriate submissions.

The difficulty in getting legislation in Statutory Instruments properly drafted here in Ireland is that there is a lack of resources in the Parliamentary Drafting Office.

There is a Brexit issue which is going to need to be addressed going forward. A lot of our legislation in the Employment Law field and in other fields is simply copied from UK legislation. Once the UK leaves the EU then the ability for the Irish Governments Departments to

simply copy UK legislation with appropriate amendments will be gone. Therefore significant investment in having trained Parliamentary drafters will be required. We have a little over two and a half years to get this done. There is a considerable amount of training that will have to be done. Leaving it to the last minute will not be effective. Planning for this needs to take place as part of the programme of dealing with Brexit. I can see the political barrier for any Government admitting that we are effectively copying UK legislation. However that is the reality. If we do not deal with this now then the potential for legislation to be properly drafted in this country in a couple of years' time will be non-existent.

Hopefully action will be taken.

Claim against Aer Lingus (Ireland) Limited

In a recent EAT Decision hearing number 63792 this office represented three non-Irish Nationals in claims against Aer Lingus (Ireland) Limited under the Terms of Employment (Information) Act 1994-2012.

This was an appeal to the Employment Appeals Tribunal by Aer Lingus who had previously lost a case before a Rights Commissioner.

The Decision indicates that Aer Lingus (Ireland) Limited argued breaches were under the de minimus rule and that the prescribed obligations have been substantially and therefore adequately complied with. The arguments raised by this office is that the employees were not advised fully as to the times and duration of breaks and that the information required by Section 23 of the National Minimum Wage Act was not specified.

The Employment Appeals Tribunal stated,

"The Tribunal allows the findings of the Rights Commissioner insofar as the three individuals contracts did not specify sufficiently the break entitlements (albeit within the parameters of operational difficulties) and did not refer to the statement provided for in the National Minimum Wage Act".

The Decision is interesting in that the Employment Appeals Tribunal has said that the admissions amounted to breaches of the legislation and while no detriment or prejudice is shown went on to hold that there is no obligation to show same.

While the level of the award of compensation was minimal, it does indicate a lack of compliance with employment legislation in providing proper contracts of employment.

While it is not part of the particular case that was brought the relevant legislation does not require that employees are furnished with a contract of employment. The legislation requires that the employee is furnished with particulars under Section 3 of the Terms of Employment (Information) Act which is a statement from the employer. These of course can all be included into a contract but for the purposes of the Act no claim can be made other than in respect of non-compliance with the 14 points that must be included in a statement to be sent to an employee.

The Labour Court is, at the present time, accepting arguments of no detriment. This issue in unrelated claims has been sent to the High Court by way of Point of Law Appeals in cases against Johnstown Garden Centre Limited and Noonan Services Limited. Both of which were returnable on 1st November.

Six Points to Consider on Employment Law for Corporate Transactions

Most corporate solicitors have a good working knowledge of Irish Employment Law. However it is sometimes possible to overlook certain aspects in a corporate transaction which could lead to major issues for both the corporate solicitor and their client.

1. Intra-group transfers/TUPE

The TUPE applies to intra-group transfers which might take place before or after a share sale.

It is important to make sure that clients are aware that the dismissal of an employee can be automatically unfair if they are dismissed

before or after an intra-group transfer and their dismissal is connected with that transfer.

It is important that clients would need to be advised of their legal requirement to inform and possibly consult with the employees.

An employee who is subject to an intra-group transfer will have the same protections as if they had been transferred to a third party.

2. Conditions Precedent

If there is a condition precedent in a deal which provides that senior employees must enter into a new employment contract or a settlement agreement it is important to ensure that sufficient time is allowed for them to seek independent legal advice. It would be important to consider whether your client should pay towards such advice.

3. Restrictive Covenants

It is essential to consider whether post transaction restrictive covenants are necessary to protect the business. Are potential customers covered by the restrictive covenants?

It is important to look to see if any current restrictive covenants are likely to be enforceable in a post deal scenario. Do they provide the necessary level of protection? Will you need fresh restrictive covenants? Will you need to have new contracts in place to deal with any new restrictive covenants which may be relevant?

4. Holiday Costs

When drafting clauses about apportionment of holiday costs for the buyer/seller of a business it is relevant to remember that the European Court of Justice has ruled that certain commission payments must be included in holiday pay

5. Disputes/Beware of Limitation Periods

Normally where an employee has left more than six months prior to a transfer or sale of business and have not filed a claim before the WRC

employers and their advisors may assume that there will be no claim. There is provision to extend time up to twelve months. If a National Minimum Wage claim comes in even if the employee has left they can claim for any pay reference period in the previous 12 months and can bring a claim back for six years.

6. Changing Terms and Conditions of Employment

It is important to check contracts of employment and staff handbooks to determine whether changes can be made to existing employees contracts of employment and if so to what extent. Under TUPE it is possible to make certain changes but there are strict rules relating to same. You also need to consider what "promises" might have been made to employees or what changes in working patterns may now have changed from their contract of employment and where there would be a custom and practice within the particular business.

Conclusion

In the heat of a commercial transaction involving the sale or transfer of a business sometime the employment law issues are missed. Unfortunately some companies have very poor personnel files. It is important to ensure that checks are made with employees that the entity acquiring a business knows what the employees believe their terms and conditions are and whether they have any documentation of which might be different from the documentation that the seller is providing.

Settlement Agreements in Employment Cases – Are They Binding?

Settlement Agreements are widely used in Ireland. They are there to compromise employment claims. They are used to deal with the discharge of liabilities to an employee in termination of employment situations and in potentially contentious employment matters.

Settlement Agreements are generally speaking put in place in redundancy situations where an employer is paying an ex gratia payment to ensure that all claims are disposed of.

The conditions required for an agreement to be enforceable would appear to this office to be;

1. The agreement is in writing and signed by the employee
2. The claims being waived and discharged are very clearly set out. This means every single Act that would need to be covered.
3. The employee has taken independent legal advice.

It would appear to this office not to be sufficient that the employee is simply advised to obtain independent legal advice. They should actually be obliged to obtain same prior to any such agreement being accepted by the employer.

This will mean that the employer will need to discharge reasonable professional fees to a Solicitors firm to give such advice. In well drafted agreements an amount is set out and an undertaking is given in saying that once the signed agreement is returned this amount will be discharged to the Solicitor for the employee on receipt of a VAT invoice. Because certain difficulties have arisen for some employers not discharging same some settlement agreements now provide that it will either be discharged to the Solicitor directly or if the employee returns same with a Vat receipt marked paid that it will be discharged to the employee directly.

It is important however that employers make sure that individuals understand the documentation that they are signing particularly in the case of mental capacity.

There is a clear defect in our legislation.

In the United Kingdom there is a detailed statutory regime. This sets out the use and validity of employee compromise agreements. This legislation as not been copied into Irish Legislation. This is unfortunate. Saying this, the practice of the Labour Relations Commission, and we would presume it is likely to apply to the Workplace Relations Commission or the Labour Court on Appeal, will be that they will be reluctant to refuse to enforce such an agreement unless clear evidence is established with the Burden of Proof on the employee to show that it should not be followed. There is a difficulty for those entering into such agreements.

In Ireland, the compromise of an employment claim, particularly one that has gone to the WRC or the Labour Court on Appeal, where the employer subsequently becomes insolvent means that the employee is not covered by the insolvency legislation. If they have received the decision for the same amount from either the WRC or the Labour Court on Appeal then such an award would be enforceable against the insolvency fund.

This office has written to the Minister for Jobs Enterprise and Innovation asking that she would consider amending the legislation to allow for settlement Agreements to have the standing of a Determination or Decision. Of course this will be subject to certain safeguards that it was not abused but at the same time this failure to include same under insolvent situations does have the effect that some employees will be reluctant to enter into such agreements.

The issue is compounded by the fact that the WRC where Agreements are entered into either just before or on the day of a hearing have taken the approach as to why matters were not resolved in advance. That is a good question but often it is a matter that negotiations in the Courts often only happen very close to or on the date of a hearing when matters are generally adjourned.

While the WRC currently is allowing adjournments the indications are that they will not going forward. This means that parties may be forced to effectively go through a charade of a hearing so that a settlement agreement can be put in place subsequently.

Certainly if parties have cases before the WRC or the Labour Court it is advisable in any settlement agreement to have a provision inserted, if acting for the employee, that in the event that the settlement is not implemented by a specific date, that the employee shall have the option to either proceed with their claim or to sue on foot of the settlement agreement.

This issue is not relevant where proceedings have not been in being and where there is going to be an ex gratia payment. However, it may be relevant where simply for example statutory redundancy is proposed to be paid and the employer is seeking to have a settlement agreement put in place.

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Setting Compensation

In ADJ420 which is an Unfair Dismissal case involving an electrical mechanical engineer in a company. The case is interesting for two reasons. The first is that the decision is an extensive decision relating to the law. The second is that the Adjudication Officer in this case was helpful in awarding €80,000 and confirmed that this equates to 1 year's salary. This practice of setting the level of compensation by reference to weeks is most helpful.

Redundancy

In case ADJ 3524 the Adjudication Officer had to look at the issue of an employee who was on reduced and short time work.

The case is a useful reminder that if a person is made redundant within a year of being put on reduced hours of work then the redundancy payment is based on the earnings of a full week. If an employee is made redundant after working reduced hours for more than a year then it is calculated on the reduced earnings if the employee has accepted the reduced working hours as their normal working week and never asked to return to full time work. The case highlights that if an employee has been placed on reduced working hours they should certainly within 12 months seek to be put back onto their full hours and if they are considering looking at the issue of redundancy they should consider making the appropriate application earlier rather than later.

While the issue was not determined by the Adjudication Officer it appears that if the employee does seek to go back onto full time work then the redundancy, if it subsequently arises, will be on the full hours prior to the reduction.

It would however be important for employees to have evidence of same. It would not in our opinion be sufficient to say simply that they asked. They would need documentary evidence to prove it.

This could be an email or a letter together with evidence of posting same.

Time Limits

In case ADJ729 the Adjudication Officer had to deal with a complaint where an employee sought redundancy.

The alleged contravention took place on 21 January 2014.

An RP77 was sent on 23rd March 2015.

The complainant consulted her Solicitor in April 2015 and her Counsel in July 2015 but no claim was lodged until 25th November 2015.

The Adjudication Officer quoted the case of Cementation Skanska –v- Carroll DWT00338 as the test to be applied.

The Adjudication Officer found that the complaint would have to be made in the first 52 weeks as is the position under the Redundancy Payments Acts. The Adjudication Officer held that there was not reasonable cause to extend the time limit. This case is interesting in that it highlights the importance of individuals getting their claims in as soon as is practicable.

The complaint did not indicate why and when she consulted her Solicitor in April 2015 a claim was not put in or her Counsel in July 2015 and why it took until November 2015 to lodge same.

Unfair Dismissal

In ADJ899 the Employee was furnished with a P45. The employee was rostered for duty on 11th November 2015. Both parties at the hearing confirmed that the employee did not report for duty either on that day or any day thereafter. No explanation was furnished at the hearing by the employee. The employer issued the employee with her P45 on 22nd November with a date of 22nd November of leaving the respondent company.

It appears the complainant sent a letter on 27th of November to the respondent who responded on 27th November and the letter clearly confirmed that the complainant had not been dismissed and that her position was still available. The employee then referred a complaint to the WRC.

The Adjudication Officer held that the Unfair Dismissal claim was dismissed. This case demonstrates that a P45 is a "cessation of payment" document not a "dismissal document". Where a P45 issues and an employer advises an employee their job is still available employees should be slow to proceed to bring a Dismissal claim.

The employee had a claim under the Terms of Employment (Information) Act. The Adjudication Officer found that the statement was not signed or dated by the employer. They found that the name of the employer was not stated nor the address of the employer and that the place of work and title of the employee was omitted. A sum of €500 was awarded.

Constructive Dismissal

In ADJ1866 the Complainant was employed as a security officer. He alleged that following a disciplinary hearing in November 2015 he was not allowed to return to work to his original job or an alternative job working the same number of hours. The Adjudication Officer found that the employee was only provided with one days' notice of the disciplinary hearing. At this meeting he was taken off the regular roster of 23 hours per week. The Respondent did not provide the Complainant with all the documentation necessary to respond to the allegations made against him including emails which stated they had been received by them. The disciplinary hearing was never convened. The alternative work offered to the complainant was night work at reduced hours and a greater distance from his previous regular job. The employee obtained new work after 5 weeks.

The Adjudication Officer determined that the Complainant was not afforded due process and fair procedures in the manner by which he was removed from his regular work. The Adjudication Officer found he was not provided with the documentation that was the source of the

allegations against him and the respondent failed to reconvene the disciplinary hearing as promised so that the complainant was afforded no opportunity to present his case.

The Adjudication Officer awarded €2400.

Harassment in the Workplace

In case ADJ2040 the employee brought a number of claims. The only claim which was upheld was the claim of harassment. In this case an award just over €8000 was made being equivalent to 52 weeks' pay.

In the case the complainant gave clear and cognisant evidence in relation to the treatment she received by the alleged perpetrator.

It appears that initially the employer appeared to believe the complainant and stated they would put a stop to the behaviour of the employee who was harassing the complainant. Then it appears that the attitude changed and a HR professional was appointed to investigate matters. The Adjudicator noted that there was a hostile and unproductive nature at the first meeting of the investigator and the complainant.

The employer submitted that as a responsible employer it engaged the services of a HR professional to investigate the complaints and further pointed to the existence of company policy on Dignity in Work. Section 14(2) provides a defence for an employer where it can be shown that the employer took such steps as are reasonably practicable to prevent the harassment. The Adjudicator found that the evidence of the complainant that the respondent initially appeared to believe the complainant. The Adjudicator held that while the respondent can rely on a partial defence in having appropriate policies in conducting the investigation the Adjudicator found that the full defence cannot be relied upon.

This case is interesting in that the Adjudicator did specify the number of weeks in setting the level of compensation. This is useful in settling a benchmark. It is also helpful that a very considered view of the facts were set out along with the law.

Equal Status Act 2000

Case ADJ1797 related to a complaint that the complainant had been discriminated on the race ground stating that upon leaving x nightclub he was verbally abused by staff or agents with specific reference to his skin colour including being called an inappropriate name which is set out in the Decision.

The Adjudication Officer set out Section 19 of the Intoxicating Liquor Act which was commenced by SI362 of 2003. The Adjudication Officer held that because it was a licenced premises by virtue of Section 19(11)(a) of the Intoxicating Liquor Act 2003 that he lacked jurisdiction to decide the case. In such case the matter should have been referred to the District Court.

This is an important Decision for practitioners to be mindful that not all claims go to the WRC.

Extension of Time

In ADJ964 an issue arose as regards an extension of time. The grounds put forward by the employee was that the employees wife had been ill suffering from cancer. The Adjudication Officer held that this was not a reason for extending time.

In ADJ748 the Adjudicator determined that the date of dismissal was 8th May 2015. The complaint was submitted on 27th of November which would have been some 20 days outside the six month period. It is unclear as to what grounds were canvassed for an extension of time if any as the employee had contended that the date of dismissal was a later date.

An interesting Decision of the Court of Appeal on this issue is McE -v- Residential Institutions Redress Board [2016] IECA 17 where judgment was delivered by Mr Justice Hogan.

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Problems arising in Employment Law Cases

Two recent decisions of the Labour Court highlight issues which are arising which may be of relevance to colleagues.

In UDD1628 being a case of Kylemore Service Group and Michael Loftus. In this case the proceedings issued out of time. The employee submitted that he was homeless and ill and incapable of attending to employment related matters within the statutory time limits. He submitted that he attended to them when he recovered and at the first opportunity to do so.

The employer in this case contended that the employee had commenced a complaint under the Data Protection Act within the statutory time limit and that his personal circumstances did not prevent him from completing proceedings with the assistance of the Citizens Information Centre.

The Court in this case reviewed the law under Section 82 of the Unfair Dismissal Acts and the issue of exceptional circumstances. The Court took the view as the employee had the capacity to issue instructions under the Data Protection Legislation there was no reason why he could not have had equal capacity to issue instructions to file a complaint under the Unfair Dismissal Legislation. The application to extend time was refused.

This case highlights the importance of issuing proceedings as soon as possible.

In a case of TUD1628 involving Starrus Eco Holdings and John Larkin a Decision from an Adjudication Officer issued against the company using the title set out above. The notice of appeal was in the name of Greenstar and the Appellants written submission referred to Greenstar Limited.

The Court in this case reviewed the case of Sylvia Wach and Travel Lodge Management Limited 2016 27ELR22 when they considered the limited scope of its jurisdiction to amend the name of a party to an appeal before it. That case was quoted and which the Court had said.

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"What is the issue in this case does not involve a formal or verbal error. Nor does the Complainant's application refer to a determination issued by the Court. The wrong respondent was impleaded and the union's application is to amend the claim by substituting another legal person for the Respondent cited. In the Courts view that goes beyond what was intended by Section 88 of the Act".

The previous case referred to a case under the Employment Equality Act 1988. The Labour Court reviewed Section 44 of The Act and in particular Subsection 8.

The Court determined that the Notice of Appeal received by the Court did not name the respondent to the appeal in the same form as the title given to the respondent before the Adjudication Officer or indeed in accordance of any legal entity registered on the Companies Registration Offices website. The Court contended that it had no option but to decline jurisdiction in the matter.

These two cases highlight the importance of firstly issuing proceedings in time and secondly making sure that the correct name is involved. An interesting issue would arise if an employee issued proceedings against a particular entity and the employer attended at an Adjudication Officer hearing and did not correct for example an incorrect name. Many Adjudication Officers and particularly former Rights Commissioners as a matter of course will ask the employer to confirm the correct name of the parties. We will be of the view that if an employer gives a particular name as being the correct name of the employer and it subsequently transpired that this was incorrect then possibly an application to amend under Section 44 Subsection 8 of the Workplace Relations Act 2015 might well be accepted.

Particular problems are arising in relation the names of employers. This office had made a submission to the Minister when the legislation was going through the Oireachtas that it would be sufficient to name the employer by way of a trade name. This would be particularly relevant when some entities will issue contractual documents and payslips in a trade name. This was rejected.

There are problems in identifying the proper employer. There is no requirement in a P60 to set out the formal legal name of the employer. The Revenue will accept registration by an employer using a trade

name. Therefore P21 forms may have a trade name rather than the employers full name. Again if the employer has a lengthy name the P21 will not set out the full name. Payslips issue in trade names rather than company names. It is now becoming commonplace that employees are having to go to the Revenue to request them to set out whom the Revenue say they are employed by. The Revenue appear to have a difficulty in giving out this information. Therefore employees now are often being advised to bring a request in writing to the Revenue seeking their Revenue file.

There is an unfortunate defect in our legislation in that there is no penalty on an employer for failing to notify the employee as to the full correct name of the employer on all documentation furnished particularly P60's and payslips

Because of recent cases as regards using incorrect names it is vitally important that the employee ascertain the correct name of their employer. It is not what they are told but what they can get in writing setting out a full legal entity. Then it is necessary to undertake a Companies Office search. It is useful with proceedings to attach a copy of the Companies Office search and send it in with the claim form.

The importance of issuing proceedings early is often over looked by employees. Because every day lost can impact on a claim it is important that proceedings are issued as soon as possible.

Continuing Breach

In cases involving a breach of the Organisation of Working Time Act, Payment of Wages Act and various other pieces of legislation a Defence is often raised by employers that the first breach occurred more than six months ago and therefore an Adjudication Officer had no jurisdiction to hear a complaint.

This issue is covered in a case of the HSE and McDermott being a Decision of Mr. Justice Hogan 2013 334MCA.

In that case Mr. Justice Hogan held that there can be a continuing breach.

The effect of this is that if there is a breach under the Payment of Wages Act going back a number of years, provided the employee limits the claim to the six month period prior to lodging the complaint then the employee can pursue the claim.

This Decision has important implications for claims under the Terms of Employment (Information) Act and the Organisation of Working Time Act where there have been ongoing breaches.

Disability/Reasonable Adjustments Can Include Protected Pay

In the UK case of G4S Cash Solutions (UK) Limited v. Pawel UK EAT/0243/15 the UK EAT upheld the Employment Tribunals findings that it was a reasonable adjustment for an employer to continue to pay indefinitely a disabled employee the same rate of pay despite having being moved to a more junior role on his return to work. Mr. Pawel was employed by G4S Cash Solutions (UK) Limited as a single line maintenance engineer. Following a period off work with back pain he returned to work on the understanding he could no longer be in a job that involved heavy lifting or working in confined spaces. In the UK an employer has a statutory duty to make reasonable adjustments under the Equality Act 2010 to ensure a disabled person access to employment. The reasonableness depends on factors such as ease and cost of implementation among other things. Mr. Pawel was given a lessor roll at a t-runner providing support to a single line maintenance engineer. There was no formal agreement entered into but he returned to work on the same level of pay. Later the role was made permanent but given that it did not require engineering skills G4S proposed reducing his salary. Mr. Pawel did not accept this.

The UK EAT held that it could find no reason in principle why protecting the pay could not be considered a reasonable adjustment in assisting an employee returning to work. It said that the question whether it was reasonable for that particular employer was separate and should be considered on a case by case basis. They declared there was a distinction between the impositions of a particular adjustment on an employee without their consent as fulfilment of the employers statutory duty verses imposing a variation on the employees contract which was a contractual matter requiring the employees consent.

They held that the adjustment was one that was not compatible with the existing contract and that the employee was not obliged to accept it because such an adjustment requires agreement in order to be effective. The EAT held that the change to a lower rate of pay was a clear unilateral change to the contract. They concluded that this was not part of the band of reasonable adjustments the employer should have made and therefore the pay should have been protected.

While this is a UK case it is still an interesting case as regards the rights of employees here in Ireland and the obligation of employers.

SI36 of 2012

These Regulations relate to the rules governing those in the transport industry. The rules apply to both employers and employees.

One of the rights of an employee is to obtain records of the hours worked.

In a recent case involving Baku GLS Limited the Labour Court ruled there is no time limited for the employee to obtain the said records. We have commented on this previously.

This office wrote to Minister Shane Ross about this issue. It now appears that the Department of Transport is taking the view that the issue of amending the Statutory Instrument to provide for a time limit for the provision of the records is a matter for the Department of Jobs Enterprise and Innovation. This argument is book-passing. The issue in relation to road transport is under the control of the Minister for Transport. It is not a matter for the Department of Jobs Enterprise and Innovation.

To be fair to Minister Ross it appears that he is taking a very pragmatic view in relation to matters namely that this issue needs to be rectified by way of an amending Statutory Instrument.

This will be the second amendment to this Statutory Instrument if made. A previous amendment had to be made again at the request of this office because of the fact that one of the provisions namely

Regulation 9 had no complaint procedure to what was then a Rights Commissioner now an Adjudication Officer.

Unfortunately, SI36 of 2012 is simply a further example of sloppy drafting by Government Departments in relation to basic legislation.

Because the right to get the records is derived from an EU Regulation if the Government Departments between them do not amend the Statutory Instrument then claims against the State will issue for failing to vindicate the rights of the workers who request such records.

Such a case can only be taken in the High Court. This involves significant legal costs to the State which can be easily avoided by amending the Statutory Instrument.

I would like to thank Minister Ross for the proactive approach he is taking in relation to matters. But If the Government Departments do not deal with matters they cannot complain if they suddenly find that they are getting claims before the High Court for failing to vindicate rights when they have been put on notice of the defect in the legislation which has been highlighted in the recent case before the Labour Court.

Working Time Cases – Records

In Case ADJ 2287 the Adjudication Officer confirmed that where an employer does not provide records the burden of proof lies on the employer.

The Adjudication Officers in this case also looked at the issue of the time limit and quoted the case of HSE-v- McDermot 2013 334MCA which confirmed that where a contravention is framed for a period in which the claim is presented not more than six months after the beginning of that period the claim is not statute barred. The effect of this is that if there is an ongoing breach by an employer an employee can bring a claim provided they limit it to the six months prior to the time of lodging the claim. If they go outside that period then the claim may become Statute Barred. This is a drafting issue which unfortunately a number of employees will not always recognise. It is important that the claims are properly put in place.

KEEPING IN TOUCH

THE NEWSLETTER OF RICHARD GROGAN & ASSOCIATES SOLICITORS

Industrial Relations cases before the Labour Court

In the case of Chanelle Mullally and Others Appellants and The Labour Court Respondent and Waterford County Council Notice Party an issue arose in relation to an appeal by way of Judicial Review of a Decision of the Labour Court under Section 20 (1) of the Industrial relations Act 1969.

This case is interesting for two reasons.

The first is that the Court of Civil Appeal has stated that such decisions of the Labour Court are not subject to Judicial Review by the Courts. What is probably more interesting is that the Court set out the provisions of Section 20 (1) and in particular the fact that parties referring a dispute must undertake before the investigation to accept the recommendation of the Court. Generally it is employees who would be making that application.

The Court looked at the issue as to what the role of the Labour Court is and confirmed that that role is confined simply to making recommendations which do not bind the parties.

The Court of Civil Appeal set out at some length the Decision in the case of MacDonnacha –v- Minister for Education and Skills [2013] IEHC225. The Court stated in relation to such procedures that the role of the Labour Court is;

“Its role in such cases is to resolve disputes and to maintain industrial peace and the criteria which underpins its recommendations are not strictly legal ones”.

The Court went on to state “in summary, therefore the recommendation of the Labour Court at most amounts to a binding resolution of any such dispute for Industrial Relations purposes”.

The Court then importantly went on to state;

“It follows, therefore, that the Labour Court recommendation does not create res judicata …”.

In this case the Court of Appeal stated that the Labour Court was not purporting to determine or otherwise adjudicate upon the legal right to the parties and that it was at most expressing a view as to how a particular issue of Industrial Relations relating to Union recognition might be resolved.

The Court addressed the issue of the language of Section 20 (1) of the 1969 Act which states;

"Undertake…to accept the recommendation".

The Court pointed out that the 1969 Act requires that the workers or Trade Union concerned undertake before the Investigation to accept the recommendation and that this undertaking forms the very basis of the Labour Court jurisdiction to make a recommendation.

The Court states that it would be meaningless if a recommendation would bind workers or a Trade Union who invoke the jurisdiction of the Labour Court in the first place where an employer was not so equally bound. The Court went on to state that in those circumstances the Court was driven to the conclusion that agreeing to be bound is simply a legal mechanism which enables the Court to assume jurisdiction to issue a recommendation. Beyond that, such undertakings have no further lasting or enduring quality.

The Court stated that the recommendations of the Labour Court does not give rise to judicable rights or issues such as would permit the applicants to seek Judicial Review of that Decision.

This case is extremely important in restating the law that even though an employee may state that they will be bound by a decision of the Labour Court effectively matters referred under section 20 of the Industrial Relations Act bind nobody. This is clearly a defect in the legislation. Now this can be addressed in two ways;

The first is the traditional Irish method from the Department of Jobs, Enterprise and Innovation is namely to do nothing.

The second is that the legislation is changed so that matters can only go before the Labour Court where both parties agree to be bound by a

recommendation of the Labour Court. There will be opposition to do so probably from both employer bodies and employee bodies.

The third option is that the legislation is changed so that there is a provision whereby the parties can agree to be bound by a determination of the Labour Court or if both parties do not agree to be bound that in those circumstances it is simply a recommendation and is binding upon nobody.

The first option of doing nothing may however be the one that the Department goes for. It has the advantage of the employee who refers matters effectively signing something to say that they are bound and therefore being seen in some way to bind the parties or at least if the employee loses that the employer can state that the employee agreed to be bound by the recommendation of the Labour Court. The difficulty on it is that currently employees are bringing Industrial Relations claims under Section 20 (1) of the Act of 1969. They then get a recommendation in their favour and they are seeking to have it enforced.

It would be much better if parties were notified at the very start particularly where employees are involved that even though they agree to be bound unless the employer agrees to be bound the recommendation is non-binding and has a moral authority only. It is an important moral authority. However there have been some well publicised cases where recommendations of the Labour Court are not being enforced particularly by employers.

This case is important for restating the law. The converse of this is that the provisions under the Industrial Relations Act are effectively toothless and have a moral obligation only rather than any legal status whatsoever. This is neither beneficial to employers nor employees. This issue effectively means that even if an employee brings a claim and loses the employee can turn around and say even though the determination was against me it doesn't impact on me. Let us take a situation where a Union refers a matter to the Labour Court relating to a purported amendment to contracts of employment by an employer. The Labour Court let us say find partly in favour of the Union and their members and partly in favour of the employer. Let us say that the Labour Court recommend that a particular premium is say reduced but on payment of a specified sum to the employees. If

some employees reject this then this will not be covered by the normal rules relating to collective bargaining as the employees can say they are not bound by the recommendation and are entitled to issue their claim under the Payment of Wages Act regardless of the recommendation of the Labour Court. Now of course if the employees had accepted the monetary payment they would be estopped but if they do not accept the monetary sum then it appears that they may well be able to pursue their claim under other pieces of legislation completely separately and contrary to any recommendation of the Labour Court which might have been accepted by the vast majority of employees.

There needs to be some provision in the Industrial relations Act to amend Section 20 to provide that such recommendations can be binding.

WRC Customer Service Charter

The WRC in October issued a Customer Service Charter. This Charter is important in that it sets out the level of service parties using the services of the WRC can expect to receive but also it importantly sets out a complaint procedure.

Up until now those using the service have generally been referred to as "users" or "stakeholders". At a recent conference in UCD we did raise this issue with the new Director General and pointed out that it would probably be more user friendly if those using the services of the WRC were referred to as either "clients" or "customers".

We are delighted to note that the Director General has taken on our proposal to refer to those using the services as "customers". This is a much more friendly and proactive approach.

Ms. Buckley as Director General must be congratulated for taking the step of introducing these new procedures. Being prepared to have a system where complaints can also be lodged is a most welcome approach.

Listing out the names of people who can be contacted over various issues is also very beneficial.

Two New Employment Publications by Anthony Kerr

The Employment Equality Legislation Fifth Edition has been published by Anthony Kerr at a cost of €125 along with the Termination of Employment Statutes also at a price of €125.

For anybody involved in Employment Law these publications are very much the go to books.

Some practitioners will have Irish Employment Legislation by Anthony Kerr but even if you do these publications are ones that practitioners should have readily available. I would recommend both publications to colleagues.

Brexit - an Employment Law hard exit Brexit concern

There is a considerable amount of talk about Brexit from the financial and business perspective. However there is little talk about Employment Law.
What is going to happen post Brexit? We have a common border with Northern Ireland. A lot of Irish companies operate both in Ireland, Northern Ireland and in the rest of the UK. Post Brexit there is every potential that various aspects of EU Law will no longer apply in the UK. This will be a challenge for both the Government and for businesses. It will be especially a challenge for solicitors and barristers.

The first issue will be what will happen if a company goes into liquidation or an employer becomes bankrupt. Currently claims by employees are covered under the Insolvency Scheme operated by the Department of Social Protection. An Irish person employed by a UK company will still be able to claim through the Insolvency Fund here in Ireland if working in Ireland. However, an Irish person working for a UK company in the UK or a person working for an Irish company but where the employee is based in the UK may not be able to claim.

Currently a person working in Ireland is protected by all the European legislation. What will happen if the UK departs from some of that legislation? What happened if you have a person employed by a Northern Ireland company working part time in the Republic and part of the time in Northern Ireland where the UK revoke for example part of the Working Time Directive? What protection will that employee have? In many industries there is currently co-operation between the various bodies in different jurisdictions. For example, international truck drivers are ones where the regulatory authorities in the various EU countries can seek information from authorities in other EU countries for the purposes of checking whether there is compliance with the EU Directives and Regulations relating to truck drivers. How is that going to happen post Brexit? Post Brexit we may still have the situation of UK companies operating here. Currently all they have to do is to register on the external register of companies if they only operate a branch here. If an employee has a claim against such a company they can issue the proceedings here and can go through for full enforcement here. If there is enough money involved they may have to go to the UK to have a company wound up but they will get the protection of the Social Fund here. How is that going to operate post Brexit? Will we need new rules for non EU companies operating here in Ireland or will such employees be effectively left in a position of having no realistic recourse to enforce employment rights?

Post Brexit we potentially have a situation that a number of EU laws may be revoked as they apply to UK employers. Certainly any new EU Directives or Regulations will not apply to UK companies. Employees who have claims that might go to the European Court of Justice will no longer be binding on UK companies. There is the prospect that there is going to be forum shopping by employers as to where would be the best place to set up the employment of persons working within the EU.

There is going to be challenges for employers also. Luckily the UK Government seem to be rowing back from the proposal for companies having to list their non UK Nationals. However, Irish companies operating in Northern Ireland or the UK may now find that having to move employees to either of those jurisdictions may involve having to obtain some form of work authorisation or work permit. How will we here deal with employees coming from the UK? Unless there is freedom of movement of workers under our current legislation

effectively priority has to be given to Irish-EU Nationals. This is going to be a headache if Irish businesses have to apply for work permits to engage UK nationals or to move Irish nationals to work in a UK branch. As time goes on there is going to be significant divergence between UK law and the rest of the EU.

Clearly a hard Brexit or even possibly a soft Brexit is going to have significant impact on how employment relationships are governed and dealt with into the future. There has been little or no debate on this. It is unlikely to be top of any agenda but it does have the potential immediately post Brexit to start to create significant difficulties for both employers and employees. As part of any Brexit appropriate planning and consultation needs to be put in place by the stakeholders which includes representatives of employers and employees as to how matters are going to be managed post Brexit with all the indications being that the UK is not going to relent on the issue of freedom of movement of persons coupled with them exiting the cocktail of EU laws which apply in the workplace. There are significant challenges which are going to have to be met and the sooner they are met and looked at the better is the chance that this country and those who are both employers and employees working in Ireland can have their situations properly managed and controlled. Unfortunately, it is likely that that this will not happen and we will be left post Brexit scrambling around trying to work out how to deal with the changed employment environment which will be neither good for employers nor employees.

We can have great "ideals" that post Brexit there will be no border with Northern Ireland. There may be derogation or there may not be. But certainly if there is a hard Brexit the issue of UK companies with an operation in Ireland and vice versa will need to be addressed before Brexit.

Pay Headache for the HSE

Two doctors successfully brought claims to the EAT in relation to the contract that was put in place for doctors who agreed to the new HSE contract to provide services to public patients. When this contract was put in place it appears that the then Minister specified that there would be a deduction from what was paid.

This issue went to the EAT and the doctors won. The EAT Decision is currently the subject of an appeal to the High Court.

If that appeal by the State is not successful it was originally thought that the cost to the HSE would be somewhere in the region of €300 million. It now appears that this could be closer to €700 million.

The potential impact on the HSE, future budgets and, the ability to invest in services or give tax deductions going forward could be significantly limited.

This case will be followed with interest by many whether they are employment solicitors, doctors and politicians as there are far reaching implications in this case.

UK Whistleblowing Legislation

The UK Employment Rights Act 1996 protects workers from being subjected to any detriment including dismissal on the grounds that they have made a protected disclosure. In McTigue v. University Hospital Bristol NHS Foundation Trust 2006 being UK EAT0354/15/2107 the UK EAT found that a person supplied to an end user NHS Trust by an agency could be considered to a "worker" of the end user and thus entitled to receive whistleblowing protection. The Tribunal Judge held that McTigue was engaged on terms that had been substantially determined by the NHS Trust. The NHS Trust had not contributed or determined more than a minority of the terms as that was left largely to the agency. She held that the employee did not therefore meet the threshold. McTigue successfully appealed the decision. In the EAT's opinion she was found to have been engaged by both the NHS Trust and the agency. This case was decided on the facts and although in most cases it will be the agency who substantially determines the workers terms of engagement each case will need to be carefully considered between the relevant parties and their contracts. The EAT in the UK specifically highlighted that where the relevant terms of an agency worker's assignment are drawn from contracts with multiple parties it is not necessary to undertake an examination of which terms are derived from which party but it may

be necessary to look instead as to whom the relevant "employer" is and there can be more than one.

This is a significant UK EAT Decision.

Bringing Laptops Home

In a UK case, The UK Information Commissioner's Office fined a nursing home in Co. Antrim for breaching their Data Protection legislation. The case involved one where a laptop belonging to the nursing home was taken home by a staff member. The laptop was not encrypted. During a burglary at the staff members home, the laptop was stolen. Sensitive personal data of staff and residents were contained on it.

A fine of £15,000 was made.

This case should be a reminder to all data controllers to regularly review not only that there are up to date data protection policies in place within the business but that they are strictly adhered to.

Gender Pay Gap Reporting

One issue that always comes up in relation to this is the issue of introducing appropriate legislation to deal with it. Well there is a solution. There is the UK legislation which could easily be copied.

On 22nd August 2016, Section 78 of the Equality Act 2010 being UK legislation was brought into force by the Equality Act 2010 (Commencement No.11) Order 2016 SI 839/2016.

Section 78 of the UK legislation confirms the power to make regulations requiring certain employees to publish information relating to pay of employees for the purposes of demonstrating whether there is enough difference in pay between men and women. This is referred to as the gender pay gap.

The UK Equality Act 2010 (Gender Pay Gap Information) Regulations 2016 was due to be brought into force in October 2016 but has been

delayed until Spring next year. It is likely that it will be brought into force in April 2016. This would mean that the first audits could be required by April 2018.

Again, these regulations can be copied from the UK legislation.

There is no reason why we should not have gender pay gap reporting in Ireland.

The WRC estimate the pay difference between men and women is some 18%. Maybe now with UK legislation in place somebody in one of the Government Departments could start copying the UK Legislation with appropriate amendments to bring similar legislation in here.

Pregnancy and Maternity Discrimination Continues to Rise in the UK

In August 2016 the UK Government's Women and Equalities Committee published a report on pregnancy and maternity discrimination. The report stated that there was shocking statistics that pregnant woman and mothers report more discrimination and poor treatment at work now than they did a decade ago.

The UK report urges the UK Government to publish a strong and specific communication plan, require employers to undertake an individual risk assessment for pregnant women or new mothers and monitor access to free, good quality one to one advice on pregnancy and maternity discrimination issues and assess whether additional resources are required.

This area of law will undoubtedly be influenced by the outcome of Brexit.

Injuries Board and Book of Quantum 2016

In our last article regarding the Book of Quantum, we looked at some of the disadvantages associated with it, namely: -

- The Book was outdated and had not been updated since it's publication in 2004.

- The ranges of value were too broad and offered little guidance.
- The lack of guidance for certain injuries, e.g. eye injuries.
- The judiciary having little regard to the Book of Quantum.

On 5th October 2016, the new updated Book of Quantum was published and there has been much commentary regarding the new publication since then. The unusual thing is that both the insurance industry and legal practitioners, representing both plaintiffs and defendants, seem to be unhappy with the new Book of Quantum and have heavily criticised same.

The most notable criticisms are from the insurance industry and defendant legal practitioners relating to the increase in the value of compensation for 35 categories of injury. A fractured ankle in the minor range of value increasing to up to €54,700.00. Whiplash type injuries have also increased. An example of these increases is a substantially recovered minor neck injury being valued up to €15,700.00. Other injuries have either remained unchanged or risen only slightly.

The increase in the values of some categories of injuries have sparked outrage in the media and among angry insurance consumers who have seen ridiculously high increases in motor insurance premiums within the last 12 months. The initial reaction is to attribute blame to high cost personal injuries claims, particularly with the new Book of Quantum increasing the values of compensation for various different injuries. However, blame cannot be attributed that easily.

Verisk Analytics Limited are data analysts who were engaged by the Injuries Board to examine over 51,000 finalised personal injuries claims from 2013 and 2014 so that this new Book of Quantum could be compiled. These 51,000 cases were a combination of personal injuries cases finalised by the courts and by way of out of court settlements. However, out of these 51,000 cases, only a very small portion consist of awards made by the courts. As a result, this new Book of Quantum is being based on compensation paid out by the insurance industry themselves.

The media have made comments in relation to some of the values for injuries compensation being considerably higher than other European countries and have questioned why the values cannot be benchmarked against international systems. However, it is not within the statutory power of the Injuries Board to benchmark internationally and, even if this were allowed, other countries are not comparators for the Irish system for reasons being, for example, the different social welfare systems and different legal systems. However, our own Court of Appeal have set out a very fair benchmark for assessing general damages in personal injuries cases which appears to have been ignored.

In the case of Payne –v- Nugent [2015] IECA 268, the Court of Appeal outlined a new way of assessing personal injuries cases. This does not seem to have been taken into account in the new Book of Quantum. This case highlighted that "modest injuries should attract moderate damages" and saw the Court of Appeal reduce a High Court award of general damages by 46% from €65,000.00 to €35,000.00. This judgement highlighted that in assessing the award of compensation, the trial judge should have regard to where the injury falls on the scale or spectrum of damages which ends at €400,000.00 for the catastrophically injured. The judgement also highlighted that the damages must be reasonable and proportionate. The Court of Appeal did highlight that this was not a formula to be adopted but that it was more of a benchmark by which the appropriateness of an award could be evaluated. The approach in this case is essentially start at the top and work your way down having regard to the injury. This is a more fair and proportionate approach than having regard to a label for an injury. This approach to awarding general damages was followed by the Court of Appeal in the cases of Nolan –v- Wirenski [2016] IECA 56 and Anthony and Rita Shannon –v- O'Sullivan [2016] IECA 93 where the Court of Appeal significantly reduced the awards of general damages made by the High Court. Yet this new Book of Quantum is based on the examination of awards made in cases prior to these Court of Appeal decisions.

A criticism of the 2004 Book of Quantum was the very broad range in values for injuries. This has not been fully rectified in the 2016 edition. This issue has been tackled for certain injuries with the

introduction of a new category for the severity of an injury. The 2004 Book of Quantum categorised the severity of the injury into minor, moderate and severe. The 2016 edition has categorised certain injuries into minor, moderate, moderately severe and severe and permanent. However, the values of compensation within many categories still remain quite broad. For example, the value of a fractured jaw in the moderate category ranges from €35,900.00 - €74,900.00.

The revision of the Book of Quantum has included values for injuries which were excluded from the 2004 edition. The publication attributes the absence of certain injuries from the 2004 edition to the lack of available data at the time of it's publication in 2004. The additional injuries include concussion, partial finger amputations, clavicle injuries, upper limb disorders, Achilles tendon injuries, lung lacerations, food poisoning and eye injuries. Values for total blindness, amputation of limbs (excluding digits) and paralysis are absent. However, in these more serious cases other factors would have to be considered, e.g. age, occupation, lifestyle, cosmetic disfigurement, requirement for prosthesis, adapted accommodation and other matters.

It is still very early days for this new Book of Quantum and it's success very much remains to be seen. Commentators appear to be very taken up with it's content and not so much with it's compilation and calculation. The data analysed would appear to be primarily based on out of court settlements, which is compensation paid out by the insurance industry themselves. Given that the insurance industry have been criticised for their disinterest in challenging cases and being only concerned with their pricing, this is worrying. What is also worrying is that the data concerning the awards made by the courts in 2013 and 2014 which was examined is flawed given that the Court of Appeal went on to reduce the general damages awards in 2015 and 2016. The fact that the Court of Appeal's benchmark approach to assessing general damages appears to have been ignored is also disappointing.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**
****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**