

## **VICTIMISATION OF EMPLOYEE LITIGANTS**

A recent decision in the House of Lords has demonstrated the importance of employers reflecting carefully upon methods used in attempting to resist litigation brought by their employees. In the case of *St. Helens Metropolitan Borough Council v J E Derbyshire and Others*, a claim of unlawful victimisation was pursued by a number of employees, who had brought equal pay claims against the local authority. The claims succeeded in the Employment Tribunal but ultimately the matter was referred to the House of Lords on appeal. The House had to address the issue of whether the Council's conduct during the Equal Pay litigation amounted to victimisation contrary to the *Sex Discrimination Act 1975*.

The factual background to the cases was that some 509 women had brought claims against the local authority for equal pay. A number of the claims were settled by way of lump sum payments for back-dated salary. However, some claimants did not wish to settle. At that stage, the local authority wrote a letter to all staff (not just the litigants) spelling out the 'danger' that continuing to pursue the equal pay claims further might 'deprive children of their school dinners and cause redundancies amongst employees' work colleagues.' The Council argues that the letter was done within the context of litigation with a view to seeking to resolve the dispute and was not intimidatory.

The House of Lords accepted the Tribunal's conclusion that the letter "amounted to an attempt to induce the acquiescence of individuals." It also went on to conclude that the letter was intimidating and it fell short of conduct, which could be characterised as "honest and reasonable." The Employment Tribunal was ultimately supported by the House of Lords in its view that the 39 employees, who had resisted a compromise settlement had been victimised for bringing equal pay claims. They had done so quite legitimately. The letter sent by the Council was intimidatory and detrimental to the employees. The House of Lords supported the Employment Tribunal's decision and emphasised that where an employee is subject to a detriment albeit in the form of emotional blackmail, it could amount to victimisation for the purposes of their employment rights. The Council had argued that their actions were fair within the context of the litigation and their attempt to encourage settlement. That view was rejected, both by the Employment Tribunal and the House of Lords.

The key points for employers from the House of Lords' decision is that there may be a fine line to be drawn between attempts to settle litigation and conduct which might amount to oppressive behaviour or victimisation. Perhaps the most telling phrase was the House of Lords reference to whether the conduct of the Council was the "honest and reasonable" conduct of an employer; it found it was not. The fact that the letter went to all employees was indicative of an attempt to place the claimants under pressure from their peers, individuals who had little further to gain from the ongoing litigation.

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