LAW SOCIETY Gazette

Advisers on compromise agreements 'manipulated'

Thursday 13 September 2012 by **Nicholas Lakeland**

As an employment lawyer, I am used to advising on compromise agreements, no more so than in recent years.

While there have always been attempts by employers to seek to influence the choice of an employee's legal adviser, I have recently seen a number of worrying trends emerging where employers are clearly trying to manipulate who gives advice to employees about these agreements. Pernicious practices include:

- Two investment banks making redundancies providing a 'pre-approved' list of law firms and informing employees that the contribution to legal fees would only be paid if one of the 'pre-approved' firms was used. In one case a memo to employees was sent out informing them that they should not instruct their solicitors to seek amendments to the standard form compromise agreement.
- An employer who brought in two solicitors to its offices to advise employees in relation to their agreements by setting up short sequential appointments for the employees to be advised. No choice of legal advisers was provided and the employees were told that the deal was the best they could achieve in the circumstances.
- A further education college which sent all the employees due to be made redundant to one law firm. A client subsequently came to see us who said she felt she had been pressured by her independent solicitor to sign away her rights to bring a claim for an injury caused by an accident at work. The solicitor had insisted that all claims had to be compromised even though the correct advice was clearly that the personal injury should be excluded from the claims being settled.

Section 203 of the Employment Rights Act 1996 requires an adviser to be independent to provide legal advice to the employee in relation to the compromise agreement. Looking at these practices something just doesn't look right.

For those who know their employment law cases, I am well aware of the Scottish Employment Appeal Tribunal case of *McWilliam v Glasgow City Council* [2011] IRLR 568, which confirms that the limits of an adviser's duties are to advise on the terms and effect of the agreement. I do not agree that the decision is a helpful one since our duty as solicitors is always to look to the wider and best interest of our clients and not let them sign away their rights irrespective of the deal being put to them by an employer.

In my own practice, our advice to employers has always been to avoid providing lists of 'recommended firms' to employees, but if necessary that the list needed to be a long one so as to ensure that there could be no suggestion that the firms were in any way on 'friendly' terms with the employer. As it is, employees have always looked askance at these lists and often sought advice from someone not on the list.

I am sure most solicitors believe they are acting independently. However, a solicitor should not be putting themselves in a position where they could be accused of not being independent, because to advise their client to sue may lead to a steady and potentially lucrative flow of work being cut off. At the risk of sounding old-fashioned, it is worth reminding ourselves that it is a requirement of the code of conduct that solicitors must not allow their integrity to be compromised and must act in the best interests of the client. The practices above seem to fly in the face of this enshrined principle.

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