1. The pillars of a civilised society...

- ...include access to justice and “legal aid”
- We are witnessing the greatest attack on individuals rights to claim Britain has ever seen
- Rights without remedy are no rights at all
2. Overview – 6 topics

- Employment Law reforms
- Jackson reforms
- Extended portal
- Slashed fees
- CICA
- Health & Safety

- State Legal Aid - no longer available for housing, welfare & benefits, employment, child custody & divorce, clinical negligence, immigration, debt and education
3. Employment (1) – ET fees

<table>
<thead>
<tr>
<th>Claim</th>
<th>Level</th>
<th>Issue</th>
<th>Hearing</th>
<th>Total</th>
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<tr>
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- Claimants only pay in addition to their witnesses expenses – a real deterrent
- No guarantee of recovery even if successful
- A remissions system “not fit for purpose”
4. ET (2) UD compensation cap

- Compensatory award cap now – £74,200
- Median award 2011-12 – £4,591
- In future the cap will be 12 months' net pay, but the overall cap will still apply if an employee's pay for 12 months exceeds it.
5. ET (3) other reforms

- Two years to qualify for UD rights
- “Protected conversations” – employers talking to employees they don’t want behind closed doors and what’s said is inadmissible at an ET (subject to “improper conduct”)
- Compulsory pre-claim conciliation, perhaps without advice
6. ET (4) more reforms

- Costs orders double – from £10k to £20k (w.e.f. 01/04/12)
- Deposit orders – also doubled to £1k
- No wing members for UD cases (06/04/12) and in EAT (ERR)
- But “Aggravating” employers £100 to £5k: paid to the State, but halved for payment in 21 days (ERR) **NB: Unpaid awards**
- Legal aid – for advice in employment, welfare etc. went at the beginning of April
7. Collective and broader issues

- Redundancy consultation – 90 days to 45 (for 100 or more)
- TUPE – services & 1 year protection
- Employment law review, “red tape challenge”, “no gold plating”
- Employment Agencies etc. Regulation – Leaving enforcement to the individual at a time when they’d have to pay fees etc.
8. Equality

- The Equality Act 2010 introduced a new concept of combined discrimination, making it possible to bring a direct discrimination claim in relation to a combination of two characteristics (but no more than two).
- Without this, a black woman could be denied justice if she was subjected to treatment that a black man or a white woman would not experience.
- The Government refuses to introduce this.
9. Collective and broader issues

- Redundancy consultation – 90 days to 45 (for 100 or more)
- TUPE – services & 1 year protection
- Employment law review, “red tape challenge”, “no gold plating”
- Employment Agencies etc. Regulation - Leaving enforcement to the individual, when they’ll soon have to pay a fee etc.
10. In the context of the employment relationship

- The “innate inequality” in the employment relationship, which is a “relationship of subordination” is well recognised.
11. Health & Safety

- Reversing the assumption that injured workers can claim damages for breach of regulation
- Increased complexity and cost
- Lords majority of 2 (06/03/12) – reinstated by Commons on 16 April
- Takes us back to Victorian mill owners…
12: Regulation & civil remedy

- Impact of other “reforms”, including Jackson & slashing legal fees
- “Good Health and Safety, Good for Everyone” 21 March 2011: Proactive HSE inspections went in “safer” workplaces – including agriculture, quarries & docks
- “Killing off the health & safety culture” says Cameron (05/01/12)
Criminal Injuries Compensation
14. Criminal Injuries (1)

- 90% of those who would have recovered will either receive nothing or suffer a substantial reduction.
- The upper limit for loss of earnings will be set at £4,462.20 p.a. (SSP).
- The Government’s aim “ensuring that victims and witnesses get the support they need...to overcome the consequences of crime.”
15. Criminal Injuries (2)

- 10/09/12: John Redwood “I didn’t come into politics to cut compensation for victims of crime.”
- Until 1 November, when the reform was voted through unchanged
16. “Jackson”-based reforms

- A complex issue, but essentially when Labour removed state legal aid, for example, for personal injury claims, they replaced it with a system that enabled claimants to recover their entitlement to compensation for loss.

- Since 1 April many will lose damages or not be able to take a claim at all. The real problem with “whiplash” has been used as a smokescreen to cut access to justice for all.
17. “Proportionality” – as an example

- Before 1 April if costs were reasonably and necessarily incurred to succeed in a claim for damages they were recoverable – necessity trumped proportionality.
- Now proportionality trumps necessity: insurers will deny where they should not to invoke this. E.g. the cost of an engineers report to establish noise levels in a deafness claim may be disproportionate and the claim will not be brought, or the claimant may lose all the compensation due.
18: Mesothelioma

- The opposition’s high-water mark in the passage to the LASPO Bill – an exemption
- But by 18/12/12 - again at the behest of the ABI – the Government wants “fixed legal fees for mesothelioma claims; a dedicated pre-action protocol for those claims and an electronic portal” (McNally)
19: Valentine’s day summit with ABI

- “Government commitment to reduce the current £1,200 fee that lawyers can earn from small value personal injury claims”
20. The ABI’s prize

- Referral fees myth
- ABI to Cabinet Office

09/02/12: fees have to

“reduce substantially so there is no economic value in a solicitor acquiring a claimant through referral or advertising... the fixed cost is £1,200 [and] the fee has to come down to £400 or thereabouts if it is to work.”
21: Has the attack ended?

- Currently awaiting MoJ response to consultation on whiplash and the small claims track limit: no recoverable costs in cases < £5k
- 20/03 “The ABI...called for a ‘genuine and open public discussion’ about the level of damages...’High compensation awards mean higher car insurance premiums...And [if they are lowered] the industry will have more capital to invest in well-run companies or infrastructure to support the economic growth...”
- And if you believe that...
22: Reversal & rebalancing required

Every argument has two sides