



EMPLOYMENT LAW

From prompt to Tribunal: dealing with AI-drafted employee grievances and claims

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Speakers



Rose Lim
Knowledge Lawyer



Leigh Janes
Senior Associate

What are we going to cover today?



What is AI, how is it used, and what are its dangers?



How employers should deal with AI-drafted grievances and the issues this can cause



The dangers of using AI in Employment Tribunal claims, and how employers can respond to this

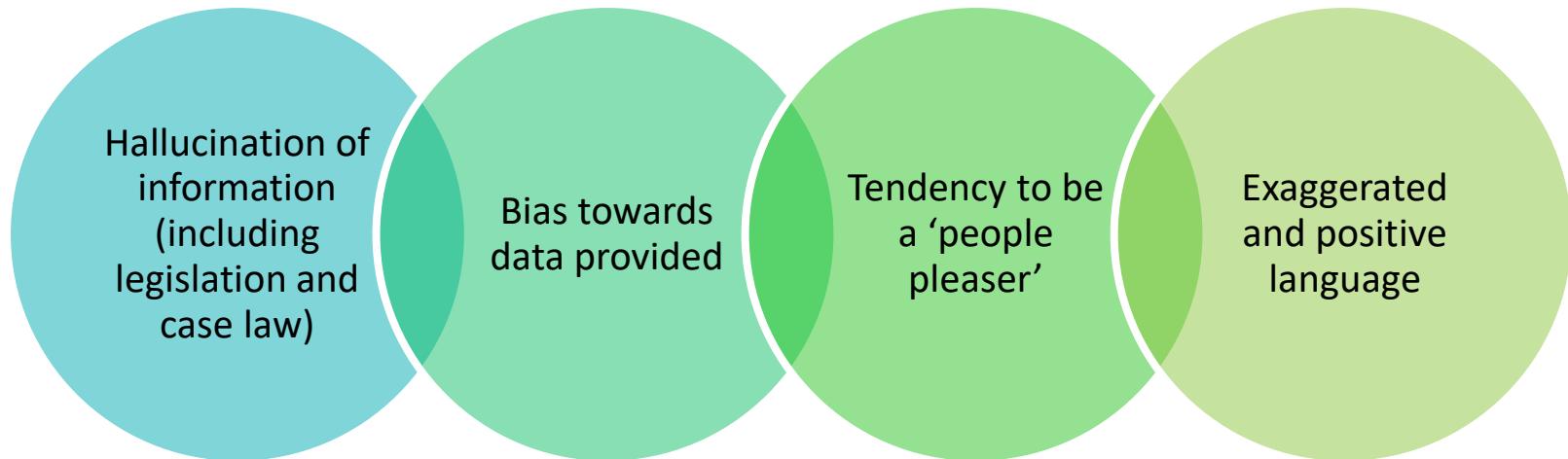
What is AI?

What does AI mean?	Types of AI	Open vs Closed
<ul style="list-style-type: none">• Artificial Intelligence technology enables machines to simulate learning, comprehension, problem solving, decision making, creativity and autonomy• Allows machines to make predictions / decisions based on data	<ul style="list-style-type: none">• Generative AI understands input <u>and</u> creates original content (text, images, videos)• Conversational tools (e.g. ChatGPT) can use generative AI in a way that is highly user-friendly and give output via online discussions with the user	<ul style="list-style-type: none">• Open AI = user input is retained and used to train the algorithm• Closed AI = user input tends not to be retained (depending on terms)• Both types can be trained on any data (e.g. public information only or paid resources)



Risks of AI

Challenges with AI



Confidentiality



Information input into Open AI is **no longer confidential** and possibly **no longer privileged**



All tools have **potential for data exposure** through human error or data breaches



Employees' Use in Grievances

AI Use in Grievances

Solely positive feedback on employee's view and demands

Inaccurate references to policies, contracts and the law

Rewording of issue, obscuring true complaint

Unnecessary length and formal structure

Potential for hallucinated facts

Employee becomes **entrenched in position**, confident that it is the **only correct view of events** and that their demands are **reasonable**

AI Use in Grievances: Example

I hope this message finds you well. I am writing to formally raise a grievance concerning a matter that has caused me significant concern and distress. It involves the allocation of overtime work, which I believe has not been handled in accordance with both company policy and my employment contract.

On [date], I was made aware that my colleague [Colleague's Name] was offered overtime work, which I understand was in breach of our internal policy and my contractual rights. Specifically, **according to the company's overtime allocation policy, overtime work should be offered in a fair and equitable manner, with due consideration given to seniority, workload, and availability.** I was both willing and able to undertake overtime during the same period, yet I was not offered the opportunity, despite having the requisite availability and desire to perform the work.

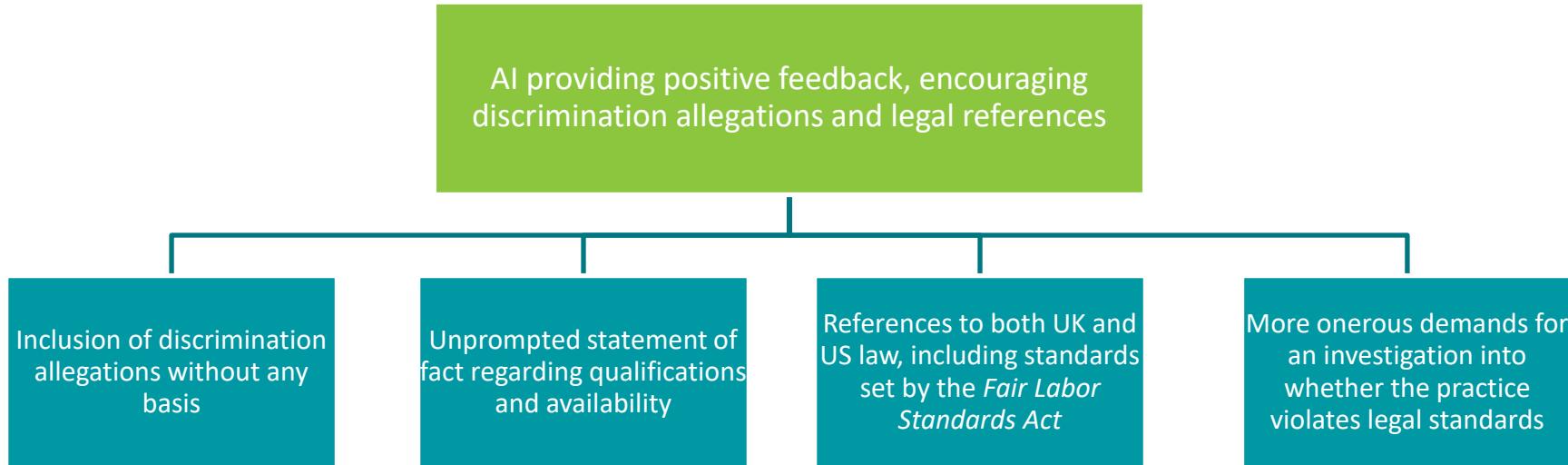
Furthermore, I believe this incident also contravenes the terms outlined in my employment contract, **which states that overtime will be offered on a fair and consistent basis to employees in accordance with business needs.** The decision to exclude me from overtime opportunities, without any reasonable explanation or justification, has left me feeling undervalued and treated unfairly.

Given the circumstances, I would appreciate the following actions:

1. A review of the overtime allocation process to ensure compliance with company policy and contractual obligations.
2. A meeting to discuss this matter in more detail, with the aim of finding a resolution.
3. A formal response to clarify why I was excluded from the overtime opportunity, and what steps will be taken to prevent such discrepancies in the future.

I would be grateful for a prompt response to this grievance and the opportunity to resolve this issue amicably and professionally. I trust that the company will uphold its commitment to fairness and transparency in all matters concerning its employees. Please confirm receipt of this letter and let me know the next steps in addressing this grievance.

AI Use in Grievances: Example



Impact on the Grievance Process

Feeling of having to respond to each 'point' made by the AI draft

Unable to understand the real issues in the employee's complaint

Any possible outcome is unlikely to resolve complaint

Untangling the **real** from the **AI** = Grievance becomes **significantly harder to resolve**

Regulating use of AI in Grievances

Regulate use of AI

- **Cannot prohibit** (or police) use of AI altogether
- Set **parameters** around use of **work-provided AI tools** (banning use for personal purposes, including preparing disputes)
- Banning use of **non-work provided tools** during **working hours and on work devices**
- Providing that breaching any of these requirements may lead to **disciplinary action**

Cover in grievance policy

- Acknowledging **why employees might be tempted to use AI** to help prepare their grievance.
- Summarising the **issues with AI** (e.g. hallucinations and inaccuracies)
- Explaining the **risks to the process** if AI is used, including the **potential for delay**
- Encouraging the employee to **use their own words** to explain what they feel has happened

Spotting AI-generated Grievances



Typical AI inaccuracies, including made-up facts, incorrect or unnecessary legal references, or non-existent quotes from employment documents



Unusual writing tone and style, that appears stiff or not in the employee's voice



Overly formal structure, splitting things into unnecessary **points or themes**, or using **repetitive phrasing** (rule of three, lists etc.)



Typical AI giveaway words and patterns (such as “*Not [x], but [y]...*”)

Responding to AI-generated Grievances



Potential for disciplinary action if policies breached



Look for common giveaways that AI has been used



Use in-person meetings to test the employee's version of events



Avoid responding to each 'point' made by the AI

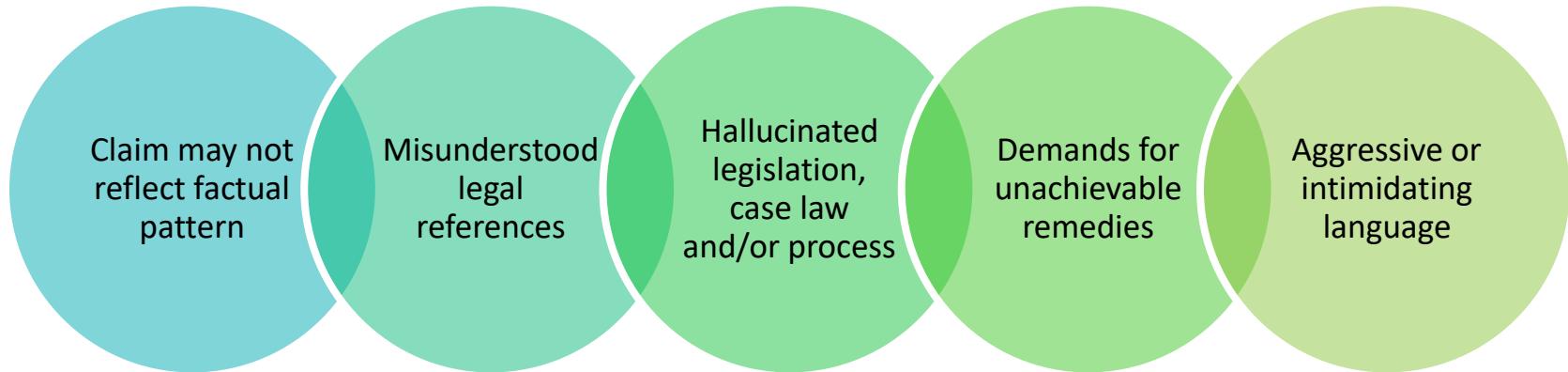


Remember that ACAS Code still applies and the procedure must remain fair



AI in Tribunal Claims

The Pleadings



Case becomes **harder to settle**, as employee may **misunderstand the strength** of their claim and have **unrealistic expectations**

Impact on the Tribunal Process



Significant **increase in legal costs** from increased volume of documentation, allegations and **untangling** the real from the AI



Inaccuracies with written **witness evidence**, with similar issues to those faced with **grievances**



Potential for contentious **cross-examination**, with employee **unable to row back** from AI-generated position



Employee likely to feel **attacked** when challenged and therefore **entrenched further** in their position

Learning Points: Cases with LiPs

Witness Evidence: *Tsikni v Kontis & Alphakon*

- Employer applied for **reconsideration** of judgment against them, alleging that the employee had **misused Chat GPT** to draft her **witness evidence**
- Tribunal refused saying they had been **cognisant** of this and **considered it when weighing the evidence**
- Tribunal noted that she **had been cross-examined** and that the employer had **full opportunity to test her evidence**

Inaccurate authorities: *Kuzniar v GDC*

- Employer sought strike-out (and later costs) due to employee's use of AI, which had led to **28 problematic authorities** (15 non-existent; 13 inaccurate)
- Employee **admitted use of AI** and **attempted to mitigate** the issue when brought to her attention
- Tribunal found that she had **conducted the claim unreasonably** but **costs not awarded**

Will not be inherently wrong for employees (particularly litigants in person) to use AI, but expectations of accuracy remain the same

Learning Points: Cases with Legal Professionals

Non-Existent Authorities and Legislation (Open AI)

- **Ayinde** – Reference to five non-existent cases and incorrect statements about legal obligations on opponent by claimant's lawyers
- **Al-Haroun** – 45 non-existent or incorrectly quoted authorities provided by claimant and lawyer
- **MS (Bangladesh)** – Reference to non-existent case in grounds of appeal



Potential for **contempt of court** proceedings and **regulatory referrals**, as well as **wasted costs orders**

Closed AI

Ndaryiyumvire v Birmingham City University

- Fictitious cases generated by authorised in-house legal research software (supported by Law Society)



AI or not AI?

Sandy Peggie v Fife Health Board

- Passages from prior **Forstater** case quoted in judgment but did not exist
- Judicial Office have refused to confirm whether errors were the result of AI

How should employers respond?



Wasted costs orders **possible but exceptional**, with limited effect if employee does not have the means to pay



Strike-out **possible** but with a **very high threshold**, with use of AI unlikely to be a reason in itself



Seek to use as part of **challenging case and credibility** through:

- **Scrutiny of factual allegations and testing against witness evidence / contemporaneous documents**
- **Challenging inconsistencies in evidence** (both written and oral)
- **Cross-checking all legal references against reliable sources**
- Drawing **Tribunal's attention to use of AI** where misleading
- Seeking **disclosure of prompts and responses** from AI discussions

Top Tips



Employers are **equally exposed to issues with AI** (including hallucinations)



Be aware that employees are likely to **lose faith in the process** if AI used incorrectly



Prompts and responses will **not be confidential or privileged**



Tribunals likely to have **limited sympathy for mistakes** (particularly if legally represented)

Our contact details



Rose Lim

Knowledge Lawyer
roselim@bdbf.co.uk



Leigh Janes

Senior Associate
leighjanes@bdbf.co.uk



EMPLOYMENT LAW

Putting experience to work

Kings House, 36 King Street, London EC2V 8BB

Office: +44 (0)20 3828 0350

www.bdbf.co.uk