SLAUGHTER AND MAY/

NEWSLETTER

MAY 2025

EMPLOYMENT BULLETIN

QUICK LINKS

HR SPOTLIGHT 2025: 19 JUNE 2025

We are holding our annual HR Spotlight on Thursday 19 June 2025 (08:30 -12:00), where our employment and incentives experts will guide you through the key HR issues currently affecting UK employers. This in-person seminar is designed to equip senior in-house lawyers, company secretaries and HR professionals with the latest legal and market analysis and the opportunity to share experiences, insights and ideas.

The morning will begin with a networking breakfast. The seminar will then take the form of "*A day in the life of the HR and Rewards teams*". Using case studies and interactive elements, our speakers will then present their thoughts on some of the most pressing HR concerns, including:

- The Employment Rights Bill – where are we now, and what should you be prioritising to prepare?
- Harassment – how to take "all reasonable steps to prevent it", and manage potential liability for third party actions.
- Transatlantic divergence– how changing attitudes to culture and DEI may impact global employment.
- Pay transparency – preparing for race and disability pay gap reporting and other forthcoming changes.

Please register here if you would like to attend.

COURT OF APPEAL EXAMINES LEAVER PROVISIONS IN COMPANY'S ARTICLES OF ASSOCIATION

The Court of Appeal has confirmed a High Court decision on the interpretation of leaver provisions in a company's articles of association. The case concerned the point at which a shareholder, who was also a director and employee, was deemed to have served a compulsory transfer notice for the sale of his shares. The Court of Appeal concluded that the notice was served when the shareholder ceased to be an employee, with the result that he received a higher value for the shares than if it had been triggered by his later resignation as a director (*Syspal Capital Ltd v Truman*).

Key practice point: Although the decision makes commercial sense, it did turn on the precise wording and is therefore a reminder for employers to check that leaver provisions in companies' incentive plan rules and, where relevant, articles of association, are drafted and operate clearly and as intended.

Facts:

- Mr Truman owned 24% of the shares in a holding company; he was also a director of the holding company and a director and long-serving employee of one of its subsidiaries. He was dismissed as an employee of the subsidiary in October 2022 and

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removed as a director of the subsidiary in November, but he remained a director of the holding company until his retirement at age 65 in May 2023.

- The articles of association of the holding company included a provision that a shareholder ("employee member") was deemed to have served a transfer notice, requiring the sale of their shares, when the employee member ceased to be employed "*as an employee, director or consultant of a Group Company (and does not continue in that capacity in relation to any Group Company)*" [emphasis added]. Mr Truman was the only employee member when the articles were adopted.
- The date of the transfer notice mattered because, under the articles, the shares would be valued at "market value" if triggered by Mr Truman's dismissal as an employee, or at the substantially greater "fair value" if triggered by his later resignation as director of the holding company.

The High Court concluded that it was only on his resignation as a director of the holding company that a transfer notice was deemed to be served, and that his shares were therefore to be priced at fair value.

Decision: The Court of Appeal rejected the subsidiary company's appeal, agreeing with the High Court's decision. The words "*in that capacity*" referred to any of the capacities of being "employed" – as employee, director or consultant of a group company. The purpose of the transfer provisions was to provide the option of a clean break with an employee member who stopped contributing to the day to day running of the business. It was not uncommon for senior employees to retire from full-time employment but to continue as consultants and it would not make commercial good sense to require them to sell their shares, and to do so at the lower of the valuations in the articles. It would make even less sense that it would also apply to a consultant moving to full-time employment.

SUPREME COURT DECIDES THAT DEFINITIONS IN THE EQUALITY ACT 2010 REFER TO BIOLOGICAL SEX

Summary: The Supreme Court, in a decision on the meaning of provisions of the Equality Act 2010, held that the definitions of "man", "woman" and "sex" in the Equality Act 2010 refer to biological sex (*For Women Scotland v Scottish Ministers*).

Key practice point: To discuss the implications of this decision for your business, please speak to your usual Slaughter and May contact.

Facts: The case was brought as a challenge to statutory guidance issued by the Scottish Government which said that a person with a Gender Recognition Certificate (GRC) recognising their gender as female is considered a woman for the purposes of public sector gender representation targets.

Decision: The Supreme Court concluded that the statutory guidance was incorrect. The terms "man", "woman" and "sex" in the Equality Act 2010 refer to biological sex; any other interpretation would make the Act impracticable to operate. The Court stressed that the biological sex interpretation does not deprive trans people, with or without a GRC, of existing protections from discrimination in their acquired gender.

Following the judgment, the Equality and Human Rights Commission (EHRC) issued a non-binding interim update, reminding employers that (under workplace health and safety legislation) they must provide sufficient single-sex toilets, as well as sufficient single-sex changing and washing facilities where these facilities are needed, and giving more detail about the use of workplace facilities by trans people. The EHRC is to issue more detailed statutory guidance later this year.

HORIZON SCANNING

What key developments in employment should be on your radar?

Before 22 July 2025	Publication of the Equality (Race and Disability) Bill, to extend pay gap reporting to ethnicity and disability for employers with more than 250 staff, extend equal pay rights to workers suffering discrimination on the basis of race or disability, and ensure that outsourcing cannot be used to avoid equal pay
2025	Some provisions of the Employment Rights Bill relating to trade unions and industrial action may come into force
1 September 2025	Economic Crime and Corporate Transparency Act 2023: failure to prevent fraud offence for large organisations in force
2026	Earliest date for the majority of Employment Rights Bill provisions to come into force, including on dismissal for failing to agree contractual variation, collective redundancies, zero hours contracts, flexible working, protection from harassment, family leave, equality action plans, tribunal time limits
Autumn 2026	Earliest date on which Employment Rights Bill changes to the law on unfair dismissal expected to come into force
Uncertain	• Three-month limit on non-compete clauses in employment and worker contracts proposed by previous government • Regulations to bring Victims and Prisoners Act 2024 into force: NDAs that prevent certain disclosures by victims of crime to be unenforceable

We are also expecting important case law developments in the following key areas during the coming months:

Discrimination / equal pay: *The Royal Parks Ltd v Boohene* (Supreme Court: whether contract workers had discrimination claim against end user; *Augustine v Data Cars Ltd* (Court of Appeal: whether part-time status must be sole reason for less favourable treatment); *Bailey v Stonewall Equality Limited* (Court of Appeal: whether third party had caused employer to discriminate); *Randall v Trent College Ltd* (EAT: whether worker's treatment was belief discrimination or was treatment because of objectionable manifestation of belief); *University of Bristol v Miller* (EAT: whether anti-Zionist beliefs were protected philosophical beliefs and summary dismissal was discriminatory); *Dobson v North Cumbria Integrated Care NHS Foundation Trust (No 2)* (EAT: whether dismissal of for refusal to work at weekends because of childcare responsibilities was objectively justified and not discriminatory); *Corby v Acas* (EAT: whether opposition to critical race theory was a protected belief); *Ngole v Touchstone Leeds* (EAT: whether the withdrawal of a conditional job offer for a Christian mental health support worker because of Facebook posts was discriminatory); *Legge v Environment Agency* (EAT: whether employee discriminated against for not holding feminist belief); *Thandi v Next Retail Ltd* (EAT: whether there was a general material factor defence to an equal pay claim by shop floor sales staff seeking to compare themselves with warehouse staff)

Employment status: *Ryanair DAC v Lutz* (Court of Appeal: whether pilot contracted through intermediary was an agency worker); *Groom v Maritime and Coastguard Agency* (Court of Appeal: whether volunteer could be worker in relation to remunerated activities)

Industrial relations: *Jiwanji v East Coast Main Line Company Ltd* (EAT: whether a pay offer directly to staff during collective negotiations was an unlawful inducement)

Redundancy: *DP RPO UK Ltd v Haycocks* (Supreme Court: whether redundancy dismissal was fair in absence of workforce consultation)

TUPE: *Bicknell v NHS Nottingham* (Court of Appeal: whether merger of NHS commissioning groups was a TUPE transfer)

Unfair dismissal: *Sandhu v Enterprise Rent-A-Car Ltd* (Court of Appeal: whether dismissal without prior warning was within band of reasonable responses)

Whistleblowing: *William v Lewisham & Greenwich NHS Trust* (Court of Appeal: whether the motivation of another person could be brought together with the act of the decision-maker to make an employer liable for whistleblowing detriment); *Rice v Wicked Vision Ltd* (Court of Appeal: whether an employer could be vicariously liable for the acts of a co-worker where the alleged detriment was a dismissal); *Barton Turns Development Ltd v Treadwell* (Court of Appeal: whether employer could be vicariously liable for whistleblowing detriment of dismissal).

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