



EMPLOYMENT LAW BULLETIN

2010 - Issue 1



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Welcome to the first issue of 2010 of the Employment Law Bulletin produced by the Employment Practice Group at 3 Hare Court.

The Employment Practice Group remains busy and continues to grow. Our members regularly advise and appear in cases dealing with all aspects of employment law in Employment Tribunals, the High Court as well as the appeal courts. Our members have recently been involved in the high profile case of *Ladele v London Borough of Islington* in the Court of Appeal. In addition to employment law cases, we also deal with a variety of matters that often arise in the employment context such as personal injury, human rights, professional disciplinary and administrative proceedings, directors' duties and commercial actions.

In this issue:

Dan Clarke examines the Court of Appeal's ruling on sham agreements in *Autoclenz v Belcher*

Sara Ibrahim provides a note on the *Vento* guidelines recently revised by the EAT in *Da'Bell v NSPCC*

Daniel Tivadar analyses the protection afforded to philosophical beliefs in the light of the EAT's decision in *Grainger plc v Nicholson*

Sara Ibrahim considers challenges under the Equal Pay Act to pay schemes based on the length of

service following recent ECJ and Court of Appeal rulings

Tom Poole examines the treatment of cases where dress code requirements were challenged on the basis of sex discrimination

Sarah Crowther considers career-long discrimination damages and 'stigma' loss awards following the Court of Appeal's judgment in *Chagger v Abbey National*

Please see the back page of this Bulletin for members of the Employment Practice Group, and for other contacts at 3 Hare Court. We hope that you will also visit our website at www.3harecourt.com for further details of members of Chambers and the services we provide.

For further copies of this Bulletin, to have a copy emailed to you, or to register to receive further issues, please contact our Marketing Director at lizheathfield@3harecourt.com.

We hope that you find this Bulletin interesting and useful. As ever, we welcome your feedback.

Daniel Tivadar
Editor

SHAM AGREEMENTS AND EMPLOYMENT STATUS IN THE COURT OF APPEAL

By Dan Clarke



Autoclenz Ltd v Belcher [2009] EWCA Civ 1046 is another important Court of Appeal decision on employment status and sham agreements.

People performing work fall into 1 of 3 categories: self-employed, workers or employees (a sub-set of workers). Their status, which is often purportedly spelt out in written agreements, is crucial. There are the obvious tax implications (for instance, employers must deduct income tax and NI contributions at source). Further, while those who are self-employed enjoy no statutory rights except certain rights under health and safety legislation, workers enjoy statutory rights such as holiday pay. Employees enjoy workers' rights plus a wide range of additional statutory protections, including the right not to be unfairly dismissed. The decision provides helpful guidance on when an ET is permitted to look beyond express contractual wording under which a worker is engaged in order to ascertain their status.

Background

Mr Belcher and the other 19 claimants were engaged as valeters by Autoclenz, a car cleaning company. They had written contracts, produced by Autoclenz. The contracts explicitly provided that they were self-employed and not employees and that they would be responsible for their own

income tax and NI contributions. They further provided that: they did not have to carry out the work personally but could engage others to do it on their behalf (the "substitution" clause) and there was no obligation on Autoclenz to provide work, nor on the valeters to accept work on a particular occasion (the "no mutuality of obligation" clause).

On its face, the "substitution" clause meant that the claimants were neither employees nor workers, but self-employed, since it is well-established that an obligation to do work personally is an essential requirement of being a worker or an employee. Similarly, the absence of mutuality of obligation meant that here could be no employment status. Further, in 2004 the Inland Revenue had carried out a review of arrangements under which the valeters worked and declared itself satisfied that the arrangements were consistent with self-employment.

However, the claimants asserted that they were employees. They brought ET claims for unpaid wages, holiday pay and a declaration, contending that the true agreement between the parties was different from that expressed in the contract. Autoclenz simply relied on the terms of the contract.

The ET and EAT

The ET held that they were employees and, if they were not, they were workers. It made important factual findings. The terms of the contract were imposed by Autoclenz. Autoclenz controlled the manner in which the claimants did their work, the rate at which they were paid and the materials they were required to use. Further, notwithstanding the "substitution" clause they were, in reality,

required to provide personal service under agreements. The claimants would attend each day and be given work if it was available. They were required to notify Autoclenz in advance if they were unavailable for work, i.e. there was an obligation to attend work unless prior arrangement had been made. In practice, there were mutual obligations, i.e. the provision of work, for payment.

On appeal by Autoclenz, the EAT found that they were not employees but workers. HHJ Peter Clark held that that the “no mutuality of obligation” clause was not a sham. He found, following *dicta* of Rimer LJ in *Consistent Group Ltd v Kalwak* [2007] IRLR 560, that to constitute a sham there had to be a joint intention by both parties to a contract to mislead somebody (a so-called *Snook* sham, after *Snook v London & West Riding Investment Ltd* [1967] 2 QB 786). That was not the case here. Because that clause was not a sham the claimants could not be said to be employees. Neither side was happy with that result. Autoclenz appealed and the claimants cross-appealed contending that the claimants were self-employed and employees, respectively.

The Court of Appeal decision

The Court of Appeal (Sedley, Smith and Aikens LJ) held that the claimants were employees. The Court found that the ET was entitled to make the factual findings that it did. On the matter of principle, the Court rejected the EAT’s analysis as to when a contract can be said to be a sham. There was no need for evidence that the written terms were affected by a common intention to mislead.

The *dicta* of Rimer LJ in *Kalwak* were *obiter*. In any

event, the court in that case had not intended to lay down a substantively different test from the correct test, as recently set out by the Court of Appeal in *Protectacoat v Szilagyi* [2009] IRLR 365. The correct approach is for the ET to consider whether or not the words of the written contract represent the true intentions or expectations of the parties, not only at the inception of the contract but, if appropriate, as time goes by (para [51]). It will have to examine all the relevant evidence, including the written term itself, read in the context of the whole agreement and evidence of how the parties conducted themselves in practice and what their expectations of each other were (para [53]).

Comment

The decision is to be welcomed in that it confirms the incorrectness of the rather narrow *Snook* test relied by the EAT. On the facts, the decision is striking. The written terms of the contract could not have been clearer (and the arrangement had passed inspection by the Inland Revenue) yet the claimants were found to be employees. Nevertheless, the decision should be kept within its proper scope. It is not likely to lead to great uncertainty. As Smith LJ emphasized, the written terms will still be the first port-of-call. There will have to be cogent evidence that the parties have expressly or impliedly varied the agreement between them or that the agreement did not truly reflect the rights and obligations of the parties.

These are high hurdles. Smith LJ upheld the ET’s findings only with hesitation (para [61]). For instance, she noted that the fact that none of the claimants had ever relied on the substitution clause was not in itself a basis for saying that the clause was a sham (although an inference could be

drawn from that). Similarly, a unilateral expectation that the claimants would turn up each day was not an obligation to do so. In every case, the evidence will have to be scrutinized carefully to see if it amounts to simple non-enforcement of an obligation, an expectation or an actual agreement between the parties.

VENTO GUIDELINES RAISED

By Sara Ibrahim



In the matter of *Chief Constable of West Yorkshire v Vento* guidelines were set down by the Court of Appeal for compensation for injury to feelings. Three bands were identified. The top band for the most serious cases (such as a prolonged campaign of harassment) was set at between £15,000 and £25,000, with only exceptional cases meriting awards above this. A middle band for less serious cases was set at £5,000 to £15,000. Finally, there was a lower band intended for isolated acts of discrimination which was said to attract awards of £500 to £5,000.

Recently, in the matter of *Da'Bell v National Society for the Prevention of Cruelty to Children*, the EAT has revisited the amounts in *Vento* to take account of inflation. The highest point of the lower band rises from £5,000 to £6,000. Similarly, the middle band is now between £6,000 and £18,000. Finally, the upper limit of the top band is now set at

£30,000. These figures were initially calculated by the employment tribunal using the RPI index and were approved by the EAT without amendment.

PHILOSOPHICAL BELIEF AND CLIMATE CHANGE – HAVE THE FLOODGATES OPENED?

By Daniel Tivadar



In *Grainger Plc v Nicholson* UKEAT/0219/09 Mr Justice Burton sitting in the Employment Appeal Tribunal held that a belief in man-made climate change - and the alleged resulting moral imperatives - were protected philosophical beliefs under the Employment Equality (Religion or Belief) Regulations 2003. Employment practitioners should be familiar with this decision as it provides a useful insight into the breadth of beliefs that the tribunals will protect under the Regulations.

The Regulations came into force on 1 December 2003 and outlaw direct and indirect discrimination, harassment and victimisation on the basis of religion or belief. "Religion or belief" originally included "religion, religious belief, or **similar** philosophical belief". However, section 77 of the Equality Act 2006 removed the requirement for philosophical beliefs to be similar to religious ones in order to achieve protection. Rather disappointingly, however, the concepts of "religion", "religious belief" and "philosophical belief" remained undefined.

Mr Nicholson was dismissed on the alleged grounds of redundancy; however, he claimed that his dismissal was an act of discrimination on the grounds of his asserted philosophical belief about climate change and the environment. Mr Nicholson told the tribunal that his philosophical belief affected how he lived, where he lived, how he travelled, what he bought, ate and drank; in other words, it shaped his entire life. As a preliminary issue, the ET ruled that Mr Nicholson's convictions could amount to a philosophical belief under the 2003 Regulations. His employer appealed.

Burton J, sitting alone, considered the appeal in this unchartered area. In his judgment he sought to give general guidance which will be relied upon by tribunals faced with the question of whether a relevant conviction constitutes a protected philosophical belief. The judgment establishes the following principles: while to establish a religious belief, it may be sufficient for a claimant to show that he is an adherent to a particular religion, in case of a philosophical belief, not least all the facts underlying that belief, cross-examination may be needed. This cross-examination will presumably be aimed at the "genuineness of the claimant's professed belief" – see Lord Nicholls' speech in *R(Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246.

Case law relating to the European Convention of Human Rights, in particular Article 9 (right to freedom of thought, conscience and religion) and Article 14 (right not to be discriminated against on the basis of, *inter alia*, religion, political or other opinion) will be relevant to cases decided under the 2003 Regulations. In any event, as Elias P

stated in *Eweida v British Airways plc* [2009] ICR 303, it is incumbent on employment tribunals by virtue of s. 3 of the Human Rights Act 1998 to construe the 2003 Regulations compatibly with Convention rights.

Burton J set out a number of requirements for protection; the relevant beliefs must: (1) be genuinely held; (2) be a belief and not merely an opinion or viewpoints based on the present state of information available; (3) relate to a weighty and substantial aspect of human life; (4) attain a certain level of cogency, seriousness, cohesion and importance; and (5) be worthy of respect in a democratic society.

Beliefs may be protected even if they do not form part of a system of beliefs and are "one-offs", such as vegetarianism or pacifism. In other words, the belief need not amount to an "-ism" to achieve protection. Finally, a belief based upon or by reference to science may nonetheless amount to a "philosophical belief".

Clearly, an indefinite number of philosophical beliefs may be potentially protected under the 2003 Regulations according to the requirements identified by Burton J. It would, however, be wrong to assume that it was this case that opened the floodgates. Ever since the Equality Act 2006 dispensed with the requirement of philosophical beliefs to be similar to religious beliefs, it was only a matter of time for the breadth of this concept to be demonstrated.

The policy behind the 2003 Regulations is simply that an employee's beliefs should not be a relevant factor when his/her employer is considering

whether to dismiss/promote/discipline etc. Essentially, the employer should be acting merely on the employee's merits as demonstrated in the workplace.

The above policy, however, is likely to lead to a large amount of litigation. This is because – unlike the “first generation” discrimination provisions which concentrated on issues that the employee could do nothing about, such as their race, sex and disability – people choose their philosophical beliefs. It is a personal decision which beliefs one subscribes to and beliefs can accordingly be very telling about the person that holds them. It is socially completely acceptable to select who one wishes to associate with on the basis of “views” or “beliefs”. Employers – and staff – will find it difficult not to do the same at the workplace. Will an employer be responsible for its staff not inviting a fellow worker to the pub after work because he/she constantly goes on about the existence of alien life forms?

Further, the manifestation, rather than the mere holding, of a philosophical belief can be perceived to be contrary to interests of the employer. It seems that a pharmaceutical company could not discriminate against an anti-vivisectionist salesperson who manifests his/her views in sales meetings with clients. It is for these reasons, that the *Nicholson* decision is probably only the first in a very large number of cases in employment tribunals based on the 2003 Regulations.

JUSTIFICATION FOR SERVICE PAY SCHEMES

By Sara Ibrahim



The Court of Appeal considered when it was appropriate for an employee to challenge a pay scheme based on the length of service under the Equal Pay Act (1970) in *Wilson v Health and Safety Executive* after the ECJ handed down judgment in *Cadman*.

Mrs Wilson was employed as a Band 3 inspector by the Respondent, when she issued an equal pay claim in 2002 citing three male inspectors who were paid more, partially because of their longer service. The Respondent operated a pay scale which was dependent on length of service, which was typically up to 10 years.

At the employment tribunal it was accepted that a length of service criteria tended to have a disproportionate effect on women as they often had shorter periods of service than their male colleagues. The Respondent relied on the ECJ judgment of ‘Danfoss’ which stated that it was to be assumed that pay on the basis of the length of service should be assumed to be justified. When the matter had been put before the ECJ, they had decided that rewarding experience was a legitimate objective and therefore did not fall foul of Equal Pay directives. This argument was accepted by the tribunal. Before the tribunal gave judgment, a similar case was being heard by the EAT under the name of *Cadman v Health and*

Safety Executive but no judgment had been given. This matter was referred to the ECJ for a preliminary ruling and Mrs Wilson's appeal was stayed pending its outcome.

When Mrs Wilson's claim was referred to the Court of Appeal, they relied on the ECJ's judgment in *Cadman*. The judgment of the ECJ had stated that there may be situations where reliance on the length of service to dictate pay may require justification. In their judgment, the ECJ said the test should be whether the employee had raised "serious doubts". When considering the meaning of this test, the Court of Appeal said it was necessary for the employee to show there was evidence (if established at trial) which shows the use of the length of service test is disproportionate or unjustified. Further, it was decided that the burden of proving that reliance on length of service as an indicator of pay was objectively justified remained on the employer. This was determined in accordance with the overarching principles as set down by the Equal Pay Act. The Court of Appeal made it clear that while domestic courts could not detract from rights enshrined under community law, community law could not detract from any additional rights the domestic courts saw fit to impose.

The implications of the case mean that an employer may be required to justify not only the adoption of a service related pay scheme but also how that pay scheme is implemented. "Serious doubts" as interpreted by the Court of Appeal sets a relatively low threshold for employees to meet. Employers therefore need to be able to justify not only the use of the service linked pay scheme but that sufficient additional experience is accumulated over a long

period of service. Jobs where skills or expertise can be learnt quickly and that require little updating may not be objectively capable of justification.

DRESS CODES AND SEX DISCRIMINATION

By Tom Poole



Although the most significant battles in dress code cases now tend to be fought under the religious discrimination legislation, the recent case of *Dansie v The Commissioner of Police for the Metropolis* [UKEAT/0234/09] reminds practitioners that dress codes can also give rise to claims under the sex discrimination legislation.

Legal background

The first reported case dealing with the discriminatory effect of dress codes was *Schmidt v Austicks Bookshops Ltd* [1978] ICR 85. The issue was whether a requirement for women who worked in a bookshop and who came into contact with members of the public to wear a skirt meant that they were being treated less favourably than the men. In dismissing Ms Schmidt's appeal, the EAT identified the feature of the case was that although there was no comparable restriction which could have been imposed on the men (for example, preventing them from wearing trousers), they too had been subjected to some restrictions, such as not being allowed to wear T-shirts. Therefore, there were in force rules restricting

wearing clothes and governing appearance which applied to men and also applied to women, although obviously, women and men being different, the rules in the two cases were not the same. What was important was that the employer treated both female and male staff alike, in that both sexes were restricted in their choice of clothing.

The *Schmidt* case was considered by the Court of Appeal in *Smith v Safeway Plc* [1996] ICR 868. In that case, a male delicatessen assistant in a supermarket was dismissed because his hair, which he wore in a ponytail, infringed the rules for male staff, which stipulated tidy hair not below collar length and no unconventional hairstyles. Female staff were allowed to wear their hair long. The rule was, therefore, not based on hygiene or safety, but on appearance. The Court of Appeal restored the employment tribunal's decision that requiring Mr Smith to wear shorter hair was not discriminatory. In so doing, the Court of Appeal endorsed the approach of the EAT in *Schmidt* and made two important points. First, it is necessary to consider a dress code as a "package" and not item by item. Second, a dress code that applies conventional standards is one which, so far as the criterion of appearance is concerned, applies an even-handed approach between men and women and not one which is discriminatory.

Until *Dansie*, the most recent example of dress codes giving rise to claims of sex discrimination was *Thompson v Department for Work and Pensions* EAT/0254/03. That was the case where Mr Thompson failed to show that the requirement to wear a shirt and tie whilst working at Jobcentre Plus was indirectly discriminatory against men. In

that case the EAT observed that it was unquestionably the case that the requirement on male members of staff to wear a collar and tie meant that female members of staff had a far greater choice in what they could wear than men. However, Keith J summarised the correct legal test in this way: the question was whether, applying contemporary standards of conventional dress wear, the employer was asking men to display an equivalent level of smartness to that required by female staff by requiring them to wear a collar and tie. The EAT held that the employment tribunal was wrong to find that requiring one sex to wear clothing not required of the other amounted to less favourable treatment of the first. The employer's appeal was allowed and the case remitted for rehearing by a fresh employment tribunal.

The decision in Dansie

Turning now to the facts of *Dansie*, which is another hair length case. Mr Dansie started training as a police constable at Hendon Training centre. Prior to starting that training he inquired as to whether his hair length would be acceptable to the Force and was told that it would comply with the Force's dress code policy. That policy stated that the standard of dress should be smart, fit for the purpose and portray a favourable impression of the service. Separate managers' guidance on the code provided that hair had to be neat, not cover the ears, and be worn above the collar, and that for safety reasons long hair had to be neatly and securely fastened up and worn relatively close to the head.

When Mr Dansie reported at Hendon his hair, which was shoulder length, was slicked back and tied in a bun on the back of his head. Having

started the training programme, Mr Dansie was told to have his hair cut or face disciplinary action. It was common ground that a female recruit would not, in similar circumstances, have been required to have her hair cut. Mr Dansie brought a claim to the employment tribunal alleging sex discrimination and harassment.

In dismissing Mr Dansie's claims, the employment tribunal directed itself that the law allowed a dress code policy to be considered as a whole, and that a policy could be gender-specific and gender-neutral provided it was fair-handed between the sexes and fitted within society's conventions and the needs of the profession in question. It found that the Force's dress code policy was gender-neutral and applied an overarching principle that was fully acceptable in law. It also decided that, although Mr Dansie had established a prima facie case of unlawful discrimination, the Force would have treated a woman in the same way in a comparable situation, and Mr Dansie's treatment was therefore neither less favourable treatment nor treatment on the grounds of his sex.

In dismissing Mr Dansie's appeal, the EAT stated that the relevant legal principles were to be found principally in the judgment of *Smith*. From that learning, the EAT derived the following four principles:

A difference in treatment between the sexes on one particular aspect of a dress code is not necessarily more favourable treatment of a member of one sex compared with a member of the other sex.

Dress codes have to be considered as a whole, even though a single provision of the code might

upset the balance of treating the sexes equally. A dress code which applies a conventional standard of appearance is not in and of itself discriminatory.

Looking at a dress code as a whole, neither sex should be treated less favourably as a result of its enforcement.

Applying those principles to Mr Dansie's situation, the EAT held that the employment tribunal had correctly stated the legal test and reached a permissible finding of fact that the guidelines issued by the Force to managers in applying the dress code policy were equally balanced between the sexes.

Practice points

When faced with a potential dress code sex discrimination claim, practitioners should look no further than the Court of Appeal's judgment in *Smith*, which has been helpfully reiterated by the EAT in *Dansie*. The key question to ask is whether, considering the dress code as a *package* and applying contemporary standards of conventional dress, the employer is treating one sex less favourably than the other as a result of its enforcement. More often than not the answer will be no.

CAREER-LONG DISCRIMINATION DAMAGES

By Sarah Crowther



The poor outlook for employees in the current labour market is having an impact on the size of claimant's tribunal claims for future loss and arguably leading to an increased tendency for allegations of discrimination to be pursued so as to avoid the statutory cap on unfair dismissal awards. Was the Court of Appeal in *Chagger v Abbey National* [2009] EWCA Civ 1202 guilty of encouraging these trends?

In *Chagger* the Court of Appeal considered damages in a very high value tribunal discrimination claim, finding partly in the claimant's favour, including on the issue of recoverability of 'stigma' loss. The initial reaction in employment law circles was one of concern on behalf of respondents facing increasing numbers of claims where career-long losses are claimed that the Court of Appeal had opened a potential flood-gate to claimants in tough economic times. On close analysis it seems in fact that the decision of the Court of Appeal in *Chagger* contains a good deal of comfort for respondents and their representatives.

By the time the appeal in *Chagger* had reached the Court of Appeal, liability was no longer in dispute and the facts were relatively straightforward: Mr Chagger was dismissed on grounds of redundancy by Abbey following selection from a pool of 2 which was not only automatically unfair by reason

of Abbey's complete failure to follow the statutory dismissal procedure, but was also an act of discrimination on grounds of Mr Chagger's race.

Since the dismissal Mr Chagger had made astonishingly dedicated efforts to obtain alternative employment in his field (trading risk control) but failed to gain work and ultimately had to re-qualify to train as a teacher. He alleged that four specific companies to which he had applied refused him employment by reason of the fact that he had brought proceedings against Abbey. He therefore claimed damages on the basis that the discrimination had caused him to lose his career.

Abbey argued that damages needed to be discounted to reflect the chance that the dismissal would have occurred in any event had the discrimination not taken place – essentially a *Polkey* point. It also contended that such was mobility of the labour market in the trading risk control field that Mr Chagger would not have remained in employment with Abbey and that the date of a likely move therefore formed the cut-off date for loss attributable to the discrimination. Thirdly Abbey stated that any loss caused to Mr Chagger by the decision of third parties not to employ him due to his having brought tribunal proceedings the so-called 'stigma' damages were not recoverable in principle against Abbey. There was also an issue regarding the statutory uplift and whether the Tribunal was entitled to treat the question of the overall proportionality of the award for damages as an 'exceptional circumstance' in order to award less than 10% uplift.

The Court of Appeal was at pains to re-affirm the basic principle that damages for discrimination are

essentially tortious damages and that accordingly the Tribunal's task is to determine what would have occurred had there been no unlawful discrimination. The gravity of the alleged discrimination was wholly irrelevant to this exercise. As it was common ground that it was a genuine redundancy situation and the pool for selection was 1 from 2, the chance that dismissal would have occurred regardless of any discrimination needed to be factored into the calculation of loss. *Polkey* would apply – in fact potentially a huge victory for Abbey on the facts of this case.

On the other hand, the Court of Appeal rejected Abbey's arguments regarding the mobility of employees in Mr Chagger's field of work. As it pointed out, there was no case advanced by Abbey that Mr Chagger would have left his job other than for similar work paid on the same or better terms and it was 'wholly realistic' for the tribunal to assume that Mr Chagger would have continued to earn at or about the same level but for the discriminatory dismissal.

Mr Chagger was also successful on the narrow issue of whether 'stigma' loss is in principle recoverable: the fact that a claimant needs to rely on the (potentially unlawful) acts of third parties to establish the loss does not break the chain of causation and there is no policy reason for the Courts to disallow this 'type' of loss. However, the Court of Appeal proceeded at length to circumscribe the factual situations in which such losses would in practice be recoverable. First it emphasised that an employee would bear the burden of proof on the point in cases where 'stigma' loss was the only head of loss (because the Tribunal has found that he would have been

dismissed at precisely the same time in any event) and that it would be 'very difficult for the employee to make good his suspicions'. A mere assertion by the claimant or an account of his suspicions is not enough and it is not an appropriate matter for inference. In any event, say the Court of Appeal, in practice Tribunals taking a 'sensible and robust approach to the question of compensation' probably already have these issues in mind when assessing loss, strongly implying that they anticipate no real change in approach following this decision and also suggesting that in most other cases a 'modest lump sum' akin to a personal injury *Smith v Manchester* [1974] 1 K.I.R. 1 award would be appropriate. Further, the Court of Appeal expressed doubt as to how often the issue would arise, stating that it is far from the common experience that the effect of unlawful discrimination is to cause an employee to become, like Mr Chagger, 'virtually unemployable in their chosen field'.

Finally, and perhaps crucially, the Court of Appeal confirmed that an uplift can be reduced to reflect proportionality of the overall award in high value claims. To decided otherwise would tend to bring (if this is in fact possible) the Dispute Resolution Regulations into disrepute.

It seems likely, therefore, that not only will Mr Chagger's award be significantly reduced upon reconsideration by the Tribunal, but that the reasoning of the Court of Appeal gives respondents much more to cheer about than may at first-blush have appeared. 'Stigma' loss awards are clearly intended to be very much the exception rather than the norm and will generally be very modest in value.



Employment Practice Group

Members of the Employment Practice Group at 3 Hare Court undertake all kinds of employment work, and at all levels, on behalf of employers, employees, employment agencies and trade unions.

In addition to 'straightforward' employment issues, including unfair dismissal, redundancy, and various contractual claims, we have argued issues of equal opportunities, discrimination and human rights.

We have increasingly become involved in claims by and against senior employees relating to restrictive covenants, confidentiality and breach of fiduciary duty. This does on occasion require immediate action, and we are used to urgent applications for injunctions and search and freezing orders.

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