



Supreme Court ruling on Tribunal fees, what next for employers?

The Supreme Court has ruled that the Government was acting unlawfully and unconstitutionally when it introduced employment tribunal fees of up to £1,200 in 2013 and it will now have to repay around £32m to claimants. The Government's own statistics showed that there were 79% fewer cases brought over three years the fees were in place and unions such as Unison said the fees had prevented workers from accessing justice.

The fees were introduced to prevent spurious claims from being made, which slowed down the tribunal system for genuine claimants. Fees ranged from £390 to £1,200 with discrimination cases taking longer and being costlier for claimants, as they are typically more complex.

The Supreme Court found this was indirect discrimination because a higher proportion of women would bring claims for discrimination. Also, some people will have been put off from taking a case to a tribunal because paying fees would overshadow any financial reward. The Court's Summery added claimants in low or middle-income households could not afford the fees "without sacrificing ordinary and reasonable expenditure for substantial periods of time."

So, what does this now mean for employers? It means there needs to be a clear respect for the rights of employees and it is important to have the correct contract and employment policies in place, to ensure there is clarity for both the employee and employer.

It may change the way employers deal with employment matters in the future and my advice is to always take advice before you take any action, as many employment issues arise because the correct procedure has not been followed at the outset.

If an employment dispute cannot be resolved internally or with external mediation, employers won't now be able to sit back and wait to see if the claimant pursues their claim, as there will be no fee payable to take it further. They will need to be more proactive to try and deal effectively with the issue and to resolve it quickly.

Ultimately Employment Tribunal cases are important for society as a whole and employers will have to fear greater repercussions for not following the rules, and ACAS good practice guidelines.



The gender pay gap, a lesson for all?

Much has been written this summer and a considerable amount of outrage shared on social media about the inequalities in pay at the BBC among its staff, especially those in the public spotlight. About half of the UK workforce are affected by new reporting rules and whilst many businesses have already published a snapshot of their employee pay, those with 250 or more employees will have to publish their gender pay gaps by April 2018, including:

- Publishing median gender pay gap figures, comparing the pay of a man and a woman who are both at the mid-point of the company payroll.
- Publishing mean gender gap figures produced by dividing the total payroll by the total number of workers.
- Publishing the proportion of men and women in each quarter of the pay structure.
- Publishing the gender pay gaps for bonuses.

The data will be held on a government database and those businesses that don't comply by April 2018 will be contacted by the Equalities and Human Rights Commission. If a business does discover a gender pay gap, they will be encouraged to publish a plan alongside the figures with detailed information about how they propose to address this issue.

Women tend to learn less than men over their entire careers for many reasons. Differences in caring responsibilities and the fact more women take on low skilled and low paid work.

Campaigners would however like to see more done by the UK Government to tackle wider issues of inequality. Such as:

- Advertising all jobs as being flexible, part-time or a job share unless there is a strong business case not to.
- Supporting women to progress to higher paid jobs and tackling unconscious bias.
- Becoming a living wage employer as over 60% earning less than the living wage are women.
- The implementation of greater penalties for employers who do not comply with the new reporting.
- The creation of targets for apprenticeships, aiming for 50:50 gender recruitment.
- Introduce a dedicated period of leave for fathers paid closer to replacement earnings rate, as too few fathers are using current shared parental leave.
- Invest in free, high quality childcare.

Whilst this wish-list is not enshrined in law, businesses should take note of the move to greater workforce equality and take steps to act now to identify, address and close any gaps within their organisation.



News in brief

Tattoo or no tattoo, that is the question

We have discussed within these pages the issue of employer attitudes to tattoos previously but recent reports indicate that they are not only a problem for employers but clients too. A recent survey showed that 73% of the public were comfortable with a tattooed police officer but only 53% with a tattooed lawyer.

Modern Slavery - Do you know where your workers are from?

It has been suggested recently that employers are at risk of employing victims of modern slavery due to the complexity of the modern labour market. According to the report which concentrated on the food and construction sectors, current modern slavery checks are not "fit for purpose" as they fail to monitor workers throughout the "labour supply chain" including those that have been outsourced, sub-contracted or hired on a temporary basis. Statistics released by the National Crime Agency showed a 50% increase in referrals in the last three years. The Government are said to be considering what further steps may be necessary to protect victims of modern slavery and human trafficking.

GDPR - less than 8 months to go

Those that have already started getting their organisations ready for the changes due in Data Protection law are fast realising the enormity of the task ahead. Much needs to be done but there are also many myths out there. With that in mind the Information Commissioner's Office are publishing myth busting blogs on their website at <https://iconewsblog.org.uk/tag/gdprmyths/> Make sure you know fact from fiction before May 2018.

Common Mistakes When Setting Up A New Company

When setting up a new company there are sometimes common errors which people make if they don't take the right advice. Here are just a few of them to avoid but it is best to take advice to make sure you have structured your business in the best way for your longer-term ambitions.

Spelling mistakes

It isn't uncommon to see incorrectly spelt company names, incorrect director names or addresses, so make sure you triple check everything before you submit the forms.

Name suitability

The company name must be available, in that it is not being used by anyone else. In addition, there are a number of words which are restricted and Companies House only allows them to be used in certain circumstances, so check the name is available before you go any further.

Registered Address

All UK companies must have a correct address for the registered office and an application with a PO Box or an incomplete address may be rejected.

The wrong type of company

Most businesses will be set up as limited companies with the objective of making a profit and they will be limited by shares. If you intend to run a 'not for profit' organisation, a company limited by shares is not the right structure. Typically, a company limited by guarantee is used for non-profit making purposes such as charities or clubs. It is not possible to switch from being a share company to a guarantee company, so this can be a costly mistake to rectify.

Company directors

Under the Companies Act, a company director cannot be under 16 years old. It is advisable for directors to be aged over 18 as younger persons cannot legally enter into a contract. The Board of directors can be impractical with too many directors and not every shareholder needs to be a director. It is very important to make sure anyone appointed as a company director is aware of and capable of fulfilling their responsibilities.

Shareholders

Conversely not all company directors will be shareholders and again it is possible to have too many shareholders. Also, two directors with a 50:50 interest is a recipe for a deadlock situation in the event of a disagreement in the future, so a shareholders' agreement providing for a solution to a deadlock should be put in place.

Share classes

When you form a company, you can have different share classes with different rights and issue different percentages of shares to the shareholders. It is therefore important to give consideration to this and how to structure it correctly.

Sarah Astley comments: *"It is always best when forming a company to take advice first, to make sure that you avoid these common and avoidable mistakes. Taking advice will help set you on your path to success by allowing you more time to concentrate on establishing and running the business without having to worry about future issues about the company formation."*

Monitoring Employees' Messages, A Warning



A recent ruling by the European Court of Human Rights has agreed with an employee's rights to privacy under Article 8 of the European Convention, (which guarantees the right of respect for privacy, family life and private correspondence) when using an online chat service on company equipment for personal use. How should employers respond to this ruling and what policies should they have in place?

In this particular case, Bogdan Barbulescu, a Romanian engineer at a sales company was fired after using his Yahoo Messenger account for conversations with his fiancée and brother. Mr Barbulescu successfully argued that although the company banned the use of office resources for personal matters, it had infringed his rights by spying on his messages.

The first thing for employers to do in light of this ruling is to check your IT policy. If a business wants to check their employees' communications on work devices, it should be clear to staff about the extent to which emails or messages will be monitored and why. In Mr Barbulescu's case, this was done without his knowledge.

Make sure all staff are informed of and have signed a copy of your company policy on the use

of all IT equipment, telephones and other devices and make sure all new starters to the business are aware of the policy.

Consider allowing some limited use by employees during work breaks and encourage them to mark any private communications as private.

Employers can still monitor emails to detect and prevent crime such as fraud or downloading and distributing obscene or illegal materials. Employers cannot track or 'hack' into personal devices if they are used in the workplace. If the employer suspects the employee of any banned use during working hours, they should follow their disciplinary procedures.

Amanda Finn comments: *"It is always better to prevent any issues like this from arising in the first instance and the way to do that is to have clear and up to date policies, which are clearly communicated to all staff and updated regularly. In the changing way we are all communicating, employers may want to consider that some personal use will be part and parcel of the working day and people need to be able to communicate with loved ones during their breaks or in the case of an emergency. Offering some flexibility might encourage sensible use, but with the caveat that it could be reviewed and withdrawn at any time if abused."*



Flexible Working for both Men and Women

A recent report has found that men across the UK would like to have greater workplace flexibility, as families try to juggle the demands of childcare and achieving a better work/life balance.

The survey of 3,000 adults including the employed, part-time and jobseekers, was carried out by Timewise and it found that four out of five men would prefer more control over their working hours, or already work flexibly. It also found that 90% of all employees dislike the typical nine to five structured working day.

Both male and female full-time workers would like greater flexibility to reduce commuting times, for increased leisure or study time and to assist with childcare.

Instead of the nine to five working day, many employees would prefer to have the flexibility to work from home on some days, working part-time at the same hourly rate or working a different set of hours spread across several days.

Other data published recently by the Office for National Statistics also supports the findings of

this research and recently said that one in ten people in the UK are "overemployed", working more hours than they want to. This group would be willing to take a pay cut and work fewer hours but they outnumber underemployed people, who would like to work more hours.

Younger people would also like to work flexibly with 92% of working 18-34 year olds wanting flexible hours, whereas older generations, 88% of 35-54 year olds and 72% of those aged 55 plus wanted more flexible working hours.

Amanda Finn comments: *"It is certainly a challenge for business owners to try to find compromise and to give staff greater flexibility, which in the longer term should mean a happier and more committed workforce. A first step for employers could be to review their business operations and to identify where it might be possible to implement some flexibility, however small, and to build from there. Just because it has always been done one way does not necessarily mean that is the only way it can be done. Opening minds to issues such as job shares, use of IT and engaged employees can reap rewards for both employee and employer."*

Quick reference section

Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

(From April 2017)

Apprentices	£3.50
16-17	£4.05
18-20	£5.60
21-24	£7.05

National Living Wage from April 2017 for 25+ £7.50

Statutory Sick Pay (from April 2017) per week £89.35

Statutory Shared Parental/Maternity/Paternity/Adoption Pay (basic rate) (from April 2017) £140.98

Statutory Holiday

5.6 weeks for a full time employee. This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped for dismissals after 6th April 2017 under the Statutory Scheme at £489.00

CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



Sarah Astley
Tel: 01622 689727
Email: s.astley@gullands.com



Andrew Clarke
Tel: 01622 689733
Email: a.clarke@gullands.com



Dudley Cramp
Tel: 01622 689734
Email: d.cramp@gullands.com



Amanda Finn
Tel: 01622 689795
Email: a.finn@gullands.com
Twitter: @Gullands_HR_Law



John Holder
Tel: 01622 689775
Email: j.holder@gullands.com

Gullands Solicitors are Authorised and Regulated by the Solicitors Regulation Authority. Number 50341

16 Mill Street
Maidstone
Kent ME15 6XT
01622 678341

18 Stone Street
Gravesend
Kent DA11 0NH
01474 887688

www.gullands.com
info@gullands.com



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