

# 22 QCs

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# 11 CPD

## 22 QCs ...

## on the hot employment law issues for 2014-15

Thursday & Friday 9-10 October 2014  
The Strand Palace Hotel - West End, London  
Devised and chaired by Michael Rubenstein

11 CPD Hours (5 ½ hours per day)  
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Dear Colleague,

You are cordially invited to attend this unique conference.

We have put together for you 22 of the UK's leading Queen's Counsel to give you the latest information you need on 22 key employment law topics that are likely to be of concern to you in 2014-15.

There will be comprehensive documentation on each day for you to take away and refer to over the coming months, and I will be chairing both days to ensure that the event runs smoothly.

The conference has CPD accreditation (5 ½ hours per day) and we have been able to price the event at a level considerably lower than some of our competitors.

All in all, this is the event of the year for those advising on employment law issues. I look forward to welcoming you in October.

Best wishes,

Michael Rubenstein  
Publisher, *Equal Opportunities Review*  
General Editor, *Equality Law Reports*  
@mhrubenstein

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09.30 **Immigration and employment law**

In *Onu v Akiwiiu*, the Court of Appeal looked at whether discrimination against an employee because she is a vulnerable migrant worker constitutes direct racial discrimination. By the time of this conference, we may have the Supreme Court's decision in *Hounga v Allen* on whether a race discrimination claim arising from employment is barred because the contract of employment is tainted by illegality. A statutory Code of Practice on preventing illegal working without discriminating has been issued.

**Karon Monaghan QC, Matrix Chambers**

10.00 **Collective redundancy consultation**

The Court of Justice is considering two UK references on the meaning of "establishment" and the trigger point for consultation. A new Spanish reference to the CJEU asks whether the definition of "redundancy" can be restricted to dismissals for ETO reasons. The Court of Session has ruled that redundancy consultation obligations are not triggered by expiry of a fixed-term contract and the Court of Appeal is expected to decide when the obligation to consult arises.

**John Cavanagh QC, 11KBW Chambers**

10.30 **Discretionary bonuses: new legislation and case law**

The EU Capital Requirements Directive IV sets a limit on the variable remuneration that can be paid to risk takers in credit institutions and investment firms. This limit on bankers' bonuses is being challenged in the Court of Justice in *United Kingdom v European Parliament*. Recent UK cases such as *Dresden Kleinwort v Attrill* have looked at the general principles regulating the exercise of a discretion.

**Andrew Hochhauser QC, Essex Court Chambers**

## 11.00 Coffee

11.15 **Employment law and pensions: Recent developments**

Retrospectivity, or lack of it, of survivor benefits for same-sex couples has been a big issue with an unsuccessful challenge in the EAT to the exclusion relating to civil partners in *Walker v Innospec* and the results of a Government consultation on survivor benefits as required by the Enterprise and Regulatory Reform Act. The first instalment of the long-awaited *Project Waltz* decision held that IBM was in breach of the implied term in removing employees from a defined benefit pension scheme and requiring them to agree that pay increases were not pensionable. The remedies hearing deals with the consequences, including the approach to damages for breach of that term in non dismissal cases.

**Andrew Short QC, Outer Temple Chambers**

11.45 **Restraining dismissals: recent case law**

The courts are showing an increasing willingness to grant injunctions preventing dismissal. This session will include a look at the implications of the Supreme Court's landmark decision in *West London Mental Health NHS Trust v Chhabra* restraining a disciplinary panel from investigating a complaint in breach of contract and at *Ashworth v Royal National Theatre*, a claim for specific performance.

**Suzanne McKie QC, Littleton Chambers**

12.15 **Direct and indirect discrimination: where the law is now**

The Supreme Court has provided guidance on the ingredients of direct and indirect discrimination in *O'Brien v Ministry of Justice*, *Homer v Chief Constable of West Yorkshire Police* and *Seldon v Clarkson Wright and Jakes*. The correct pool for comparison was the issue in *Naeem v Secretary of State for Justice*. Whether indirect discrimination claimants have to show the reason for adverse impact was considered by the EAT in *Essop v Home Office (UK Border Agency)*.

**Robin Allen QC, Cloisters Chambers**

## 12.45 Lunch

13.45 **Fiduciary duties and the duty of fidelity: restraints during employment**

Setting up in competition, taking confidential information, breach of director's duties and conspiracy were all issues in *Energy Renewals v Borg*. *Warm Zones v Thurley* concerned confidential information, *J M Finn & Co v Holliday* looked at injunctions to enforce garden leave during a notice period and *Thomson Ecology v APEM* illustrates that orchestrating a team move while still employed is likely to involve a breach of contract.

**Naomi Ellenbogen QC, Littleton Chambers**

14.15 **Whistleblowing: new legislation and case law**

The Enterprise and Regulatory Reform Act made major changes to the whistleblowing provisions in the Employment Rights Act, including inserting a public interest test for being able to bring a claim and removing good faith as a requirement. This session will explain the implications of these changes as well as the Government's further plans, and the latest case law on whistleblowing including *Panayiotou v Kerrigan* on when disclosure can be separated from the manner in which it was pursued.

**James Laddie QC, Matrix Chambers**

14.45 **Public sector equality duty**

There have been a large number of reported decisions in cases brought under the public sector equality duty over the past year or so. Only very few of these, however, have been successful. This session will review the case law and also recap where the law now stands in different parts of Great Britain as regards the specific public sector duties.

**Helen Mountfield QC, Matrix Chambers**

## 15.15 Tea

15.30 **Post-employment restraints**

Can information be protected post-employment even though it is widely available on social media sites? That was the issue in *East of England Schools CIC v Palmer*. Recent cases such as *Merlin Financial Consultants v Cooper* and *Prophet v Huggett*, have explored the reasonableness of post-termination restraints of different duration.

**Paul Goulding QC, Blackstone Chambers**

16.00 **Protected conversations, settlement agreements, early conciliation**

Early conciliation of tribunal claims via ACAS is now mandatory. This session will look at the key elements of the new scheme and its implications. It will also look at the new rules on protected conversations in unfair dismissal cases and at the changes that have been made to settlement agreements.

**Paul Gilroy QC, Old Square Chambers and 9 St John Street Chambers (Manchester)**

## 16.30 End of Day One

## Here is what delegates said about 22 QCs in September 2013:

"Excellent day – very informative. Invaluable to receive training from a range of speakers and to have exposure to a range of first class QCs."  
**Carly Barrett, Trowers & Hamlin LLP**

"The most comprehensive – and therefore useful – employment law conference of the year.  
And great for employers as much as lawyers." **Bernie Kingsley, Intu Properties plc**

"The calibre of speakers is phenomenal, head and shoulders above other CPD courses." **Ken Morrison, Kingston University**

"Excellent. Very well organised. Excellent standard of speakers." **Kate Annand, Doughty Street Chambers**

"As ever, an expert and entertaining look at the past 12 months' events in employment law." **Norma Shippin, NHS Scotland**

"A double espresso kick for the employment lawyer." **Phil Lindau, Withers LLP**

09.00 Registration and coffee

09.30 **The evolving duty of mutual trust and confidence**

This session will review the developing implied term of mutual trust and confidence, including the latest cases such as *McNeill v Aberdeen City Council* on whether an employee in repudiatory breach can still claim constructive dismissal, *Leeds Dental Team v Rose* on whether it is necessary to find that the employer subjectively intended to repudiate the contract, and *Gebremariam v Ethiopian Airlines Enterprise* on the extent of the Johnson exclusion zone.

**Christopher Jeans QC, 11KBW Chambers**

10.00 **Employment status**

The Supreme Court's decision in *Clyde & Co v Bates van Winkelhof* provides an authoritative determination of who is a "limb (b)" worker. We await the Court of Appeal's decision in *Halawi v WDFG UK* on whether a beauty consultant was in "employment". *Troutbeck v White* set out guidance on the "control test" for determining employment status. There have also been new appellate decisions on whether a company director was an "employee".

**Paul Rose QC, Old Square Chambers**

10.30 **Family-friendly rights: new legislation and case law**

The Children and Families Act 2014 creates a new employment right to shared parental leave and pay, extends the right to time off for ante-natal care to partners of pregnant women, and changes the right to request flexible working. How will the new provisions work? *Betriu Montull* is a key decision from the CJEU on fathers' rights to parental leave. The CJEU's decision in *Riezniece* gives guidance on comparing employees on leave and those who are not for redundancy or promotion purposes.

**Kate Gallafent QC, Blackstone Chambers**

11.00 Coffee

11.15 **Religious discrimination and human rights**

The past year has seen important decisions both in the UK and in Europe. This session will look at the wide interpretation given by employment tribunals to "philosophical belief", at the implications of the Court of Appeal's decision in *Mba v London Borough of Merton* on indirect discrimination in the context of a Sunday working requirement and at the decision of the European Court of Human Rights in *SAS v France* on the French "burqa ban".

**John Bowers QC, Littleton Chambers**

11.45 **Agency workers: where the law now stands**

The Agency Workers Regulations 2010 came into force in October 2011. How are they working? The Regulations apply only to temporary agency work, but what is "temporary" in this context? That was the issue in *Moran v Ideal Cleaning Services*, now before the Court of Appeal. The *Shell Aviation* case from Finland currently before the CJEU asks whether it is lawful to limit the use of agency workers.

**Paul Epstein QC, Cloisters Chambers**

12.15 **Statutory remedies**

The Government's Deregulation Bill is proposing to repeal the powers of employment tribunals to make wider action recommendations. The Government's Small Business, Enterprise and Employment Bill introduces a new financial penalty for respondents who fail to pay a tribunal award in time. *Frith Accountants v Law* looked at whether there can be contributory fault in a case of constructive dismissal.

**Jane McNeill QC, Old Square Chambers**

# Programme - Friday 10 October 2014

12.45 Lunch

13.45 **Trade union recognition developments**

How far does the right to freedom of association under Article 11 of the European Convention on Human Rights extend? This was one of the issues considered by the High Court in *R (Boots Management Services) v Central Arbitration Committee*. It was also considered by the Court of Justice of the European Union in its recent decision in *RMT v United Kingdom*.

**David Reade QC, Littleton Chambers**

14.15 **TUPE: legislative and case law developments**

The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013 amended the law relating to service provision changes, alters the rules on unfair dismissal and post-transfer changes, and codifies the static interpretation of TUPE. Recent decisions have explored when there is a service provision change, whether a transferee has a duty to provide information to employees of the transferor, and whether administrators can have an ETO reason entailing changes in the workforce so as to fall within the defence provided by reg.7 of TUPE.

**Thomas Linden QC, Matrix Chambers**

14.45 **Equal pay: new case law**

The Equal Pay Audits Regulations 2014 come into force on 1 October 2014 and require an employment tribunal to order an employer to carry out an equal pay audit after finding that there has been an equal pay breach. The Court of Session has confirmed that employees of an arms length LLP can compare themselves with employees directly employed by a local authority. In *Calmac Ferries v Wallace*, the EAT considered the amended wording of the material factor defence.

**Daphne Romney QC, Cloisters Chambers**

15.15 Tea

15.30 **Disability discrimination: recent case law**

In *Z v A Government department*, the Court of Justice further elaborated on the role of UNCRPD in determining the definition of disability. Whether discriminating on grounds of obesity is disability discrimination is before the CJEU in the *Kaltoft* reference. Guidance on when knowledge of disability will be imputed to the employer came from the Court of Appeal in *Gallop v Newport City Council*. A number of cases over the past year have refined the case law on the reasonable adjustment duty, including *Hainsworth v Ministry of Defence* on whether the protection against associative discrimination imposes a duty to make reasonable adjustments.

**Sean Jones QC, 11KBW Chambers**

16.00 **Current working time issues**

We finish our conference with what may be the costliest issue of all: the right to paid annual leave under the Working Time Regulations. The CJEU's decision in *Lock v British Gas Trading* holds that holiday pay must include the commission an employee would normally receive. By the time of this conference, we expect the EAT's decision on whether holiday pay must include overtime payments. Both issues may lead to claims for retrospective payments of up to six years.

**Caspar Glyn QC, Cloisters Chambers**

16.30 End of Day Two

Join us for another great year of expertise in employment law!

"As usual, high quality update on key areas of law for employment law professionals."

**Joanne Woodhead, British Sky Broadcasting Ltd**

"Really great. Definite redo next year. Highly recommended and immense quality. Inspiring!" **Karen Jackson, didlaw**

"Excellent way to catch up on the many developments over the past year, particularly on return from maternity leave!"

**Claire Andrew, Linklaters LLP**

"This is always a fantastic conference and this year's was no different.

A very interesting and informative day." **Danielle Brouard, Baker & McKenzie LLP**

"Excellent conference. I found the speakers engaging, lively and relevant covering a wide spectrum of employment law."

**Frank Hanson, Frank Hanson Training and Consultancy**

"Superb conference with quality speakers." **Amanda Jones, Maclay Murray & Spens**

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The registration fee includes enrolment, course papers, lunch and refreshments, certificate of attendance (upon request), as applicable for the one or two day course. Substitution of delegates is permitted, prior to 1 October 2014. Full payment, including VAT, must be received prior to 1 October 2014. Payments will be refunded only if a written request is received by Amanda Spiers via email ([amanda@rubensteinpublishing.com](mailto:amanda@rubensteinpublishing.com)) on or before 1 October 2014. We reserve the right to alter or cancel the programme due to circumstances beyond our control.

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