

SLAUGHTER AND MAY

Employment



At Slaughter and May we provide innovative, commercially-aware advice to our clients on their most difficult and sensitive employment issues. We support a diverse range of businesses - from FTSE listed companies to start-ups, individuals to charities - who rely on us to go beyond day-to-day employment law and to tackle new and complex problem areas.

We partner with our clients on a wide range of contentious and non-contentious employment matters, including:

- board-level relationships, the latest corporate governance and executive remuneration requirements
- negotiating employment / severance documentation, especially for key senior personnel
- complex and sensitive issues involving discrimination, whistle-blowing, and restrictive covenants
- managing information and consultation requirements, often on a cross-jurisdictional basis
- redundancies and restructurings
- employment disputes, investigations and dismissals (including data protection, monitoring and access to employee communications)
- employment aspects of all commercial transactions including acquisitions, disposals and service provision changes, flotations, takeovers and insolvent restructurings
- trade union relations and industrial action

In particular, we have considerable experience of advising on issues affecting directors and senior managers, from their initial recruitment and service contracts, issues with ongoing terms and conditions, through to termination arrangements and enforcement of restrictive covenants to protect the employer's interests if things haven't worked out.

As an international law firm, we frequently act on cross-border employment matters. With our extensive network of contact firms in Europe and beyond, we provide our clients with a 'best of the best' legal service in international employment law.

“
A real class act
The Legal 500, 2016
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Employment expertise

These are some of our areas of key focus:

- **Board-level advisory work:** The firm's extensive range of listed clients means that we have an unrivalled reputation in dealing with the full range of board-level employment matters, from initial recruitment and service contracts, issues with ongoing terms and conditions and incentivisation, through to termination arrangements and enforcement of restrictive covenants to protect the employer's interests if things haven't worked out.
- **Trade unions and industrial relations:** Employee engagement is a hot topic at the moment, and companies are under increasing pressure to demonstrate how they take into account the views of the wider workforce. Fostering good working relationships with a recognised trade union or other employee forum can pay dividends, and avoid costly and disruptive industrial action. We have significant experience in this area. We also have an interest in shaping the development of the law, and made representations on behalf of a client to the Carr Review which led to the enactment of the Trade Union Act 2016.

Recent examples: advising a number of FTSE 100 and FTSE 250 companies on the departure of the current CEO, CFO or other executive directors, and the appointment of their successor(s). Our advice typically includes negotiating the terms of the settlement agreement with the departing director and the service agreement with the successor, facilitating a smooth transition, as well as careful consideration of the company's obligations to shareholders, in particular, acting in accordance with its remuneration policy and all relevant disclosure obligations.

- **Redundancy / restructuring:** Economic conditions continue to be challenging for many companies, who face the prospect of restructuring their businesses and/or making large-scale redundancies. We are ideally placed to advise on the legal (and wider workforce) implications of the various strategic options which arise in these circumstances.

Recent example: advising a client in connection with possible redundancies resulting from the restructuring and transfer of part of its business overseas. We are also advising another client in relation to scenario planning in respect of potential employee impacts which might arise in connection with its proposed joint venture, including the point at which collective redundancy consultation obligations may be triggered.

Recent example: we advised a client on industrial relations and recognition issues at one of its sites, and on strategic planning to address threatened industrial action.

- **Executive remuneration:** Remuneration design has become a particularly sensitive issue. Many factors must be taken into account, including legal and regulatory restraints, the need for shareholder engagement, market forces, institutional investor guidance and tax planning. We have been at the forefront of advising in this area. We were heavily involved in the consultation process for the 2013 legislation, and have therefore been ideally placed to assist our clients with the difficult task of complying with the legal requirements, as well as meeting the expectations of shareholders and the wider market.

Recent example: advising numerous clients on their executive remuneration arrangements.

- **Whistleblowing:** The recent media attention on whistleblowers, along with ongoing legal and regulatory developments, have made the proper management of whistleblowing complaints a high priority for many businesses. We have significant expertise in this difficult area.

Recent example: advising a FTSE 250 company on the removal of one of its directors following contested whistleblowing allegations by the director. This involved providing detailed advice to the client about its position and negotiating the terms of the settlement with the departing director.

- **High-value discrimination:** Discrimination allegations remain some of the most sensitive and potentially damaging HR issues for any business. We are regularly instructed on the most complex and high-value discrimination claims, and have a track record of successful resolution.

Recent example: advising our client on the age discrimination issues which may arise from proposals to make amendments to benefit provision under its pension scheme, including the use of transitional protections. We acted for another client in defending a tribunal claim of disability discrimination based on complex mental.

- **Employee investigations:** When workplace issues arise, a thorough investigation will be crucial to the fairness of whatever steps the employer decides to take to resolve them. We assist our clients in navigating the legal pitfalls, including those surrounding data protection, monitoring and access to employee communications.

Recent example: advising a global banking and financial services company, a FTSE 100 company, and an international healthcare services company on their investigation of suspected employee misconduct.

Hot Topics

Our practice is constantly evolving to reflect the continuing stream of new employment law. “Hot topics” where forthcoming changes in employment law will be significant for employers include:

- **Brexit:** The UK’s exit from the European Union could have significant implications for UK employment law, much of which is derived from EU law. While the Government does not currently envisage making any substantive changes to EU-derived employment law, it has acknowledged that some changes may be needed to legislation which envisages the UK being part of the EU, such as that governing European Works Councils. Much will depend on what trade deals the UK develops with the EU and the rest of the world, and what requirements those trade deals impose in terms of employment laws and social policy. Companies that have adopted global HR and remuneration policies will need to keep them under review, to ensure they keep pace with the changing legal landscape. Companies with European works councils will need to consider how those will operate post-Brexit, particularly where the works council is currently headquartered in the UK. Brexit is also playing a big role in workplace morale, with many EU nationals feeling concerned about their job security and future right to work in the UK. There is also some evidence that EU nationals feel more vulnerable to discrimination since the referendum. Employers who do not offer appropriate support and engagement with these employees may face significant workforce issues in the coming months and years.
- **Employment status:** The Government has now responded to the Taylor Review, and is consulting on possible reforms to employment status, amongst other issues. If taken forward, the reforms will have implications beyond the gig economy, for all employers. We are also expecting some significant case law developments in the coming months, addressing the dividing line between workers and independent contractors and what rights are available to workers. Businesses would be well advised to audit their terms of engagement with their employees, casual workers, directors, contractors and consultants to assess their exposure.
- **Data protection:** The EU General Data Protection Regulation (GDPR) was implemented in the UK and across the EU on 25th May 2018. The GDPR requires employers to consider at the outset the ground(s) for lawfully processing employee data, and makes it more difficult to rely on employee consent. It also introduces more onerous requirements in relation to notifying employees of data processing, and in relation to compliance with subject access requests. Employers must ensure their policies and processes respect the new regime.
- **Corporate governance:** Listed companies will soon be required to publish annually the ratio of CEO pay to the average pay of their UK workforce. While the Government no longer intends to force companies to appoint employees to the board, premium listed companies will be expected to adopt one of three employee engagement mechanisms: a designated NED, a formal employee council, or a director from the workforce. The changes are expected to take effect from January 2019, so affected companies will need to keep abreast of developments.

- **Gender pay reporting:** Employers with 250 or more employees were required to prepare and publish their first set of gender pay data by 4th April 2018. The reporting obligation has already attracted significant media coverage, and employers should now be considering any steps they can take to reduce the gap, before the next reporting deadline in April 2019.
- **Equal pay:** High-value class-action equal pay claims have now moved into the private sector. Supermarkets are firmly in the firing line, with ASDA, Tesco, Sainsbury's and Morrison's all currently facing complex claims worth billions of pounds, which have the potential to fundamentally undermine their business models. One spin-off from gender pay reporting may be that other employers are highlighting sectors of their business with a predominantly male or female workforce. If the workers in those sectors can be shown to be doing like work or work of equal value to other higher paid sectors dominated by the opposite sex, the employer could find itself next in line for a claim.
- **Sexual harassment and NDAs:** The recent sexual harassment scandals hitting Hollywood and Westminster are forcing employers to re-evaluate the culture of their workplaces. Whilst employers may previously have been tempted to settle such claims under confidential terms, recent cases have exposed the limitations of this approach, and the further reputational damage that may ensue from being seen to 'cover up' the issue. Employers are now expected to be much more open and transparent in this area, but this comes with a new set of challenges for the employees involved.
- **Holiday pay:** Lack of clarity surrounding the proper calculation of holiday pay is creating headaches for employers, and has led to some employers facing historic liability for underpayments. There have been a raft of recent cases in this area, with the latest rulings confirming that employers may need to include voluntary overtime in the calculation, and that employers who deny paid holiday to workers who have been misclassified as self-employed may be liable for holiday pay stretching back over the entire working relationship. Despite all the cases, the legal position on calculating holiday pay is not yet fully settled. Forthcoming case law is expected to provide further guidance, and employers will need to ensure they stay on top of the latest position.

The team is excellent and able to provide a seamless service

Chambers UK, 2017

Key contacts

If you feel that we can be of any assistance to you, or you would like further information about our Employment practice, please contact any of the following:



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May 2019

J319761_Employment PB_MAY 2019_v02