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MARCH 2015

Employment Law BULLETIN

Welcome to our March employment law bulletin.

Our bulletin this month covers a range of interesting cases and updates in the law.

Since 2nd March 2015, drug-driving laws have been in force and it is now illegal in England and Wales to drive when over specified limits for particular controlled drugs.

In *Donelien v Liberata UK Limited* the EAT considered whether reasonable, but not perfect, efforts are required for an employer to avoid having constructive knowledge of a disability. The EAT considered whether an employer had constructive knowledge of an employee's disability in a reasonable adjustments claim where the employer had not investigated discrepancies in the occupational health report but had taken other measures.

In *Williams v Leeds United Football Club*, a High Court case, it was considered whether an employer can summarily dismiss an employee for repudiatory breach of contract for sending an email containing pornographic images from a work account to an external account as well as within the organisation.

The suspected misconduct case of *Shrestha v Genesis Housing Association Limited*, dealt with the issue of whether an employer has to investigate every line of defence put forward by an employee. In *Hart v St Mary's School (Colchester) Limited* the court considered whether a variation clause in teacher's contract allowed the school to impose unilateral changes. The EAT found that the employment tribunal had misconstrued the contract of employment as conferring a unilateral power of variation on the school.

We next look at a service provision change case *Ottimo Property Services Limited v (1) Duncan (2) Warwick Estate Properties Limited*.

We also include a useful briefing for employers setting out matters to consider when recruiting staff.

Finally may I also remind you of our forthcoming events:

Click any event title for further details.

Capability Dismissals: Performance, Sickness and Mental Health
- Breakfast Seminar, 21st April 2015

Employment Law Update for Charities
- Full Day Annual Conference, 11th June 2015

and in conjunction with ACAS in the North East:

Understanding TUPE: A practical guide to business transfers and outsourcing
- Full Day Conference, 14th May 2015

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1: Drug-driving laws now in force

Since 2 March 2015, it has been illegal in England and Wales to drive when over specified limits for particular controlled drugs. This has been set out in section 5A of the Road Traffic Act 1988, inserted by section 56 (1) of the Crime and Courts Act 2013 and is now in force through Crime and Courts Act 2013 (Commencement No.1) Order 2014 (SI 2014/3268).

Illegal drugs such as cannabis and cocaine have very low specified limits. Other controlled drugs have limits set higher than expected for normal therapeutic doses. If drugs are taken as prescribed under medical or dental direction and driving has not been affected as a result then this can be used as a form of defence for someone over a specified limit for a particular drug.

The procedure for checking whether someone is over the limit will be conducted as a roadside test to identify whether any of the specified drugs are present. Following this a forensic analysis of the blood sample will be carried out at the police station. This identifies the drug and the amount in the blood stream.

If the person is found to be over the limit then the offence will carry a mandatory disqualification and a maximum of 6 months' imprisonment.

It is important for employers to check that their driving and substance misuse policies are in line with the change in legislation. A link to the guidance may be accessed here.

2: ACAS Code of Practice - who can accompany workers to grievance hearings?

The revised ACAS Code of Practice on Disciplinary and Grievance Procedures came into force on 11 March 2014, pursuant to The Code of Practice (Disciplinary and Grievance Procedures) Order 2015.

The changes to the Code are as a result of the EAT's Judgment in *Toal v GB Oils*. This case was about a dispute which arose between two workers and an employer over their choice of companion for a grievance hearing. EAT ruled that an employee has an absolute right to choose a companion; provided the request to be accompanied is itself reasonable. This is subject only to the limitations which are imposed by section 10(3) TULRCA. This includes that the companion be an appropriate union representative or one of the employer's other workers. The 'reasonableness' requirement does not apply to the choice of companion, as long as it falls within the prescribed statutory list. The Code has been amended to reflect this.

It is important to follow the ACAS Code of Practice, as it could avoid a potential claim and if there is a claim, it can affect the level of compensation. If the employer unreasonably fails to follow it then the tribunal may increase the employee's compensation by up to 25%. Conversely, if an employee unreasonably fails to follow it then their compensation can be reduced by up to 25% by the employment tribunal. Employers should ensure that their disciplinary and grievance procedures are in line with the changes made to the ACAS Code of Practice. A link to the guidance may be accessed here.

3: Updated ET1 online claim form

The Ministry of Justice has now made available an updated ET1 employment tribunal claim form. The improvements to the form include the following:

a. A new save and return facility

b. Clearer guidance, using easier to understand language

c. A fee calculator

d. The form can now be saved as a PDF document, however, any attachments to the form still need to be in Rich Text Format.

4: Zero hours contracts?

The number of employees on zero contract hours has continued to rise according to a Labour Force survey which was conducted by the Office of National Statistics (ONS). It found that approximately 697,000 individuals were employed on zero contract hours for their main employment during October to December 2014. This was a 19% increase on the corresponding period from the year before.

The report notes that this increase may be due to the fact that more people are identifying that they are on this type of contract. This in turn may be as a result of media coverage on this topic last year. The government has since introduced legislation which bans exclusivity in zero hours contracts. It is important for employers to ensure their contracts are up to date in this regard.

5: Are reasonable, but not perfect, efforts required to avoid having constructive knowledge of a disability?

Yes, said the EAT in ***Donelien v Liberata UK Ltd.***

The EAT considered whether an employer had constructive knowledge of an employee's disability in a reasonable adjustments claim where the employer had not investigated discrepancies in the occupational health report but had taken other measures.

Ms Donelien was a court officer employed by Liberata UK Limited (Liberata) for almost 11 years before being dismissed, without notice, on 23 October 2009. The three issues were: persistent short-term absences, failure to comply with the absence notification procedure and failure to work her contracted hours. She decided as and when she would not attend work without always informing her employer at the time. She did consult her GP, however, refused to let her employer's occupational health service contact her GP. In the last year of her employment she was absent for 128 days due to a variety of medical conditions including: work-related stress, and hypertension and on one occasion she did not give a reason.

In May 2009, Ms Donelien was referred to Liberata's occupational health service and it concluded in its report issued in July 2009 that she was not disabled but noted how she refused to engage with the questions. Following the report, Liberata did make efforts to find out whether she was disabled including a "return to work" meeting, engaging with her and reviewing correspondence from her GP. Ms Donelien was subsequently dismissed on the basis of unsatisfactory attendance, failure to comply with the absence notification procedures and failure to work her contractual hours.

Ms Donelien made a number of claims including a failure to make reasonable adjustments. The question was whether Liberata had constructive knowledge of the disability, as it was agreed by the parties they did not hold actual knowledge. The Court of Appeal found in ***Gallop v Newport City Council*** that employers must come to their own conclusion on whether an employee is disabled or not and they should not rely solely on the view given by their occupational health service. The tribunal found that Liberata had no constructive knowledge of her disability, for the purposes of failing to make reasonable adjustments, for the following reasons:

Firstly, it was reasonable to conclude that Ms Donelien was not disabled. This was due to the sporadic periods of absence and inconsistent reasons provided such as colds, flu and generalised references to stress and anxiety which would not ordinarily lead an employer to think an employee is disabled.

Secondly, Liberata had done all it could reasonably be expected to do to establish whether there was any disability including: referring her to the occupational health advisor, holding "return to work" meetings, engaging in discussions with Ms Donelien and reviewing the correspondence of her GP.

The tribunal dismissed all the claims. Ms Donelien appealed to the EAT. The EAT upheld the tribunal's decision and concluded that Liberata did not have constructive knowledge of Ms Donelien's disability at the relevant time.

Even though Liberata did not go back to the occupational health service to question the report, they did hold "return to work" meetings, had discussions with Ms Donelien and examined the letters which Ms Donelien asked her GP to write to her employer. It held that an employer who took reasonable steps, but not every step possible, to ascertain whether an employee was disabled, did enough to avoid having constructive knowledge of the disability.

The EAT concluded that:

> "The employer, taken overall, could not be expected to have done more. The test is not set at that height, which is a counsel of perfection. The test is one of reasonableness. The tribunal applied it."

The outcome of this case is reassuring for employers as the tribunal will consider the case as a whole and the employer does not necessarily need to have taken every step to determine constructive knowledge of a disability and therefore make reasonable adjustments. On the other hand, it does not provide any specific rules, so each case will be assessed on its facts. It is important to note that whilst short/sporadic absences are frustrating for an employer it could be a sign of an underlining disability. In particular if stress is given as a reason for absence.

6: Can an employer summarily dismiss an employee for repudiatory breach of contract for sending a pornographic email?

Yes, said the High Court in Williams v Leeds United Football Club.

Mr Williams was employed as technical director by Leeds United Football Club (the club) from August 2006 until 30 July 2013. He was summarily dismissed for gross misconduct. He had no written employment contract and the terms of his employment were agreed orally. The terms included an entitlement to 12 months' notice.

From around 18 June 2013, the senior managers of the club had decided to try to find a way to

avoid paying Mr Williams his 12 months' notice pay entitlement. The club instructed a firm of forensic investigators on or around 18 June 2013 to investigate Mr Williams' computer.

Following a restructure of the club, on 23 July 2013 the club gave 3 months' notice of redundancy to Mr Williams in accordance with its standard senior management contract. The club had only learned of the email on 24 July 2013, the day it wrote to Mr Williams setting out the disciplinary allegations. Mr Williams was not provided with, and had not had sight of, the club's code of practice on internet and email use.

The next day Mr Williams received a letter concerning two allegations of gross misconduct and inviting him to a disciplinary hearing. The first allegation concerned Mr Williams storing an email on computer equipment provided by the club and sending this to a friend at another football club on 28 March 2008, five years previously. The email was alleged to contain pornographic images. The second allegation was that Mr Williams had forwarded confidential information to his personal email account. At the hearing held on 29 July, he was found guilty of the allegations and on 30 July he was dismissed by the club without notice or pay in lieu of notice.

Mr Williams appealed his dismissal which was heard by Mr Hunt, Chief Executive, who held that by sending the email it was misuse of the club's computer equipment, a fundamental breach of Mr Williams' duties to the club and gross misconduct, and ultimately had the effect of destroying the relationship of trust and confidence between the club and Mr Williams.

Mr Williams issued a claim for damages in the High Court in respect of his 12 months' notice pay, loss of pension, other contractual benefits and a statutory redundancy payment. It then came to light that Mr Williams had also sent the email containing the pornographic images to two other people: a junior female employee at the club and to another male friend at another club.

The court dismissed Mr Williams' claim and held that sending a pornographic email from a work account was a repudiatory breach of contract, as it amounted to a breach of the implied term of mutual trust and confidence entitling the club to summarily dismiss. This was despite the fact that it was discovered several years later as part of a "fishing exercise" to find a reason to summarily dismiss. The court held that the club was entitled to rely on its discovery of further gross misconduct after the dismissal to justify its decision to dismiss applying Boston Deep Sea Fishing. The court acknowledged that if the club had known of the email on 23 July 2013 when it sent the letter notifying Mr Williams of his redundancy then the letter would have amounted to an affirmation of contract. However, the evidence showed that the club did not find out about the email until the following day.

The court was guided by the Court of Appeal's judgment in *Glencore Rotterdam BV v Lebanese Organisation for International Commerce* which reaffirmed the basic rule that a party who terminates a contract and subsequently discovers conduct which would have also entitled them to terminate, is entitled to rely on the later conduct to resist a claim for damages for breach.

In making its decision the court considered all the circumstances of the case including the following:

1. The nature of the contract;
2. The relationship it creates between the parties;
3. The consequences of the breach; and
4. In an employment context, the relevant circumstances include the nature of the employer's business and the position held by the employee.

In this particular case the following facts were important:

- Mr Williams was in a senior management position;
- The images attached to the email viewed objectively were capable of causing offence;
- The email being sent to a junior, female, employee by a senior manager, who had significant influence over her career, might well have caused offence and left the club vulnerable to a harassment claim. The court considered that this action by Mr Williams was sufficiently serious in itself to constitute a repudiatory breach;
- The email was sent from his work email account containing the club's details which could have affected their reputation by being associated with the contents of the email. The media would have likely been interested in the story which in turn could have affected its ability to retain and attract sponsors;
- The fact that Mr Williams had not been provided with a copy of club's email and internet policy was not important due to him being in a senior management position. He should have known that the club's email system should not be used to send obscene and pornographic images; and
- The time that had elapsed was not important but the issue was whether Mr Williams' conduct was sufficiently serious to amount to a repudiatory breach when it was discovered by the club.

In conclusion, the fact that the employee was a senior member of staff and the employer was a football club, in the public eye, appeared to be pivotal in this case and the court deciding in favour of the employer.

Employers in a similar situation should be very careful to avoid doing or saying anything that may be taken as an affirmation of contract which might negate their right to rely on the employee's breach.

7: In a suspected misconduct case does an employer have to investi gate every single line of defence put forward by an employee?

No said the Court of Appeal in ***Shrestha v Genesis Housing Association Limited.***
In this case the claimant was employed as a floating support worker required to travel by car to see clients at their home address. An audit of his expenses claims for a three month period in 2011 revealed excessive mileage. For example the total claim for July 2011 was for 197 miles whereas the AA figures for the same journeys totalled 99 miles.

The claimant asserted that the high mileage he claimed were due to a number of factors, namely difficultly in parking, one way road systems and road works causing closures or diversions.

The employer did not put each specific journey to the claimant and analyse the suggested reasons for the additional mileage. This was because every single journey that the claimant had made was above the AA suggested mileage. It concluded that it was simply not plausible that there was a legitimate explanation for each and every journey. The employer concluded that gross misconduct had occurred and the claimant was dismissed.

The employment tribunal dismissed a claim for unfair dismissal, a decision which was upheld by the EAT and Court of Appeal. According to the Court of Appeal the tribunal was required to apply the test in *British Home Stores Limited v Burchell* [1980] ICR 303, which includes the employer carrying out as much investigation into the matter as was reasonable in the circumstances.

But the band of reasonable responses test applies to an investigation into suspected conduct as well as to the reasonableness of the decision to dismiss.

The Court of Appeal considered that the employer's investigation was reasonable and should not be interfered with. According to the Court, to say that each line of defence put forward by the claimant must be investigated unless it is manifestly false or unarguable is to adopt too narrow an approach and would add an unwarranted gloss to the *Burchell* test. The investigation should be looked at as a whole when assessing the question of reasonableness.

8: Is an act of constructive dismissal in itself an act of harassment for the purposes of the Equality Act 2010?

No, said the EAT in ***Timothy James Consulting Ltd v Wilton.***

The claimant had a successful career in the recruitment industry and joined Timothy James, a smaller business.

Tensions arose, and several incidents occurred involving a director, Mr O'Connell, with whom the claimant had previously had a personal relationship. Amongst other things, the claimant was subjected to "a tirade of criticism" and described as "a green eyed monster". This was with reference to an alleged jealously of another female colleague with whom Mr O'Connell had now formed a relationship. The tribunal concluded that the treatment afforded to the Claimant was because she had previously had a relationship with Mr O'Connell. It was therefore related to the protected characteristic of sex. The employment tribunal found three such incidents of sexual harassment.

In the end the claimant resigned claiming constructive dismissal. The employment tribunal also found that the constructive dismissal was in itself an act of harassment under the Equality Act 2010. The EAT disagreed on this point. On a correct interpretation of the Equality Act, an act of constructive dismissal does not, in itself, fall within the meaning of harassment.

The employment tribunal made an order of £10,000 for injury to feelings for the harassment that did occur. It went on to gross this up to take into account income tax. The employer appealed on the grossing up point. The EAT upheld the appeal. On the true construction of the Income Tax (Earnings and Pensions) Act 2013 an award for injury to feelings under the Equality Act 2010 is not liable to income tax. The EAT relied upon a decision of HHJ McMullen QC in *Orthet Limited v Vince-Cain* [2005] ICR 324 in which the learned judge set out a lengthy and detailed consideration of the relevant case law and principles. This was to be preferred over contrary decisions of lower tribunals dealing with tax appeals.

9: Is an act of constructive dismissal in itself an act of harassment for the purposes of the Equality Act 2010?

In ***Hart v St Mary's School (Colchester) Ltd*** the EAT has held that a part-time teacher suffered a repudiatory breach of contract when her school imposed a change to her working hours that required her to spread her hours over five days, rather than three.

The new hours, which were prompted by a change in the school timetable, were imposed in

reliance on a contractual provision which required the teacher to work at such times as necessary,

in the reasonable opinion of the Headteacher, for the proper performance of her duties. There was a further clause which stated that, for part-time staff, working hours may be "subject to variation, depending upon the requirements of the school timetable".

The EAT found that the employment tribunal had misconstrued the contract of employment as conferring a unilateral power of variation on the school. The variation clause was not sufficiently clear or unambiguous to allow for unilateral variation. The EAT also overturned the tribunal's alternative finding that the teacher did not resign in response to any repudiatory breach, and remitted that issue to a differently constituted tribunal.

10: TUPE: service provision change

Whether there is a service provision change TUPE transfer depends on whether activities on behalf of a client cease to be undertaken by one person and are, instead, taken over by a new person on behalf of the client. It is established law following the EAT decisions in *Hunter v McCarrick* [2013] ICR 235 and *SNR Denton UK LLP v Kirwan* [2012] IRLR 966 that the client referred to in this definition must be the same. In other words, if the services, after the change over are carried out for a different client, TUPE will not apply. In ***Ottimo Property Services Limited v (1) Duncan (2) Warwick Estate Properties Limited*** another point arose as to whether "a" or "the" client, for the purposes of a service provision change TUPE transfer was to be understood solely in the singular or whether it could allow for there to be (providing they remain identical) more than one client.

The facts were that on 1st May 2007 Mr Duncan was employed as a site maintenance manager by Chainbow Limited based at Britannia Village (BV) an estate which comprised different blocks of residential housing, each block being named "BV1", "BV2" and so forth. There was also a separate resident's management company and a separate general management company which dealt with common parts of the estates. This company was described in the decision as "BVG". As at 2007 Chainbow had contracts to provide property management services at BV1-10, BV12 and for BVG. Each was a separate contract with the separate management company. BV11 had entered into a property management contract with a different entity.

In the period 2009 to 2011 the resident's management contracts for BVs 4, 8 and 10 moved from Chainbow to another company, leaving Chainbow with contracts to provide property management services for BVs 1, 2, 3, 5, 6, 7, 9 and 12 and BVG.

In February 2012, Trinity Estates acquired the residential property department of Chainbow and subcontracted the on site property maintenance work to Ottimo. Mr Duncan's employment was treated as having transferred from Chainbow to Ottimo under TUPE.

In early 2012 the management contracts for BV2 and 9 and for BV12 moved to other companies. Ottimo was left providing property maintenance services to BVs 1, 2, 5, 6, 7, 10 and BVG. For Mr Duncan however things looked the same as before. He still worked out of an office on the BV estate, which kept him occupied.

In the period May to August 2012 Warwick Estate Properties acquired the property management contracts for BVs 1, 3, 5, 6 and 7. Warwick employed another property manager. It declined to take on Mr Duncan as it assumed that TUPE did not apply. Mr Duncan was therefore dismissed from Ottimo and never physically employed by Warwick. The question was whether there was a TUPE transfer between Ottimo and Warwick for the purposes of protecting Mr Duncan's

acquired rights.

First it was common ground that regulation 3(1)(a) of TUPE did not apply. There was no transfer of an economic entity retaining its identity because no assets transferred from Ottimo to Warwick and no employees were voluntarily taken on. So for there to be a TUPE transfer it had to be a service provision change. The question was whether activities ceased to be carried out by one contractor on a client's behalf and, instead, were carried out by a subsequent contractor *on that client's* behalf. The contractors concerned were Chainbow and Warwick. The client was each of the BVs 1, 3, 5, 6 and BVG all of which were separate legal entities which had entered into separate contracts. But the employment tribunal held that the service provision change rules could not apply when there was a multiplicity of clients. There had to be a change over of activity carried on, on behalf of one single client. Thus:

> "It is not permissible for a number of contracts with different clients to be added together to make one overall service provision change. Recent cases have made it clear that [this] section of TUPE is to be given a literal interpretation. The relevant wording…clearly refers to "a client" and "the client" throughout, which means [that] a single client is being referred to - not a group of two or more clients".

It was possible there might have been a service provision change in relation to each individual contract with each BV and BVG but Mr Duncan would not have been assigned to any one particular contract. It was therefore important that the clients are being considered cumulatively.

Before the EAT, the employment tribunal decision was overturned. This was indeed a novel point. The issue had not been considered in either *Hunter v McCarrick* or *SNR Denton UK LLP v Kirwan*.

In issue was section 6 of the Interpretation Act 1978 which provides that "in any act, unless the contrary intention appears…words in the singular include the plural and ones in the plural include the singular". So the question was whether TUPE demonstrates an intention that "a client" or "the client" should be understood in the singular and not the plural.

It was not necessary to take a "purposive" approach to regulation 3(1)(b) to achieve the right result in this case. Identity of the client or clients must remain the same before and after the service provision change but might involve more than one legal entity subject to the caveat that it would be necessary to discern the intention of the client for these purposes. It was a requirement therefore that the clients were sufficiently linked so as to permit the ascertainment of a common intention for regulation 3(3)(a)(ii) purposes

11: Client Briefing: hiring an employee

This client briefing highlights the key legal issues an organisation needs to consider when recruiting a new employee.

Before advertising

- Make sure all staff involved in the recruitment process have had equal opportunities training (and they continue to receive it whilst working for the organisation).
- Draw up the following documents:
  - A job description which sets out the title, the main purpose of the job, the place of the job holder within the organisation and the main tasks or responsibilities for the post; and
  - A person specification which details the experience, know-how and qualifications, skills

and abilities necessary for the job in question. The requirements can be split between those that are "essential" for the job and those that are merely "desirable".

- Ensure that none of the requirements in either document discriminates against any groups of employees. In particular, consider whether any requirements for specific qualifications, working hours or times, travel, age ranges or dress are necessary for the job in question.
- Consider whether the job needs to be full time or whether it is open to part time, home working, flexible working or job sharing. If an organisation specifies that the job is full time it may need to be able to justify its decision.

The advert

- Decide whether the job should be advertised internally, externally or both.
- Consider using specialist publications, websites and agencies to target different communities, ages and sexes.
- Think carefully when writing the advert. Protection from discrimination because of a protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation) covers all areas of employment including job adverts. For example, avoid using language that might imply only someone of a certain age would be suitable (for example "mature" or "experienced" or "young").
- Ensure any employees absent from work (including women on maternity leave or those on long term sick leave) are informed of the vacancy to enable them to apply. Failure to do so could amount to discrimination.

The application

- Use a standard application form to enable individual applicants' answers to be directly compared against the selection criteria more easily and help avoid potential unlawful discrimination claims.
- Draw up a short list using the same criteria used in the job description and person specification. Every applicant should be marked against the same criteria to help avoid any potential unlawful discrimination claims.
- If an organisation is making redundancies it must consider applications for suitable vacancies from employees selected for redundancy ahead of external applicants. Women selected for redundancy whilst on maternity leave are entitled to be offered a suitable alternative vacancy (where one is available) and priority over other potentially redundant employees.

Pre-employment health questions

- In most cases, an organisation is prohibited from asking potential recruits questions about their health (for example, organisations should avoid asking questions about an applicant's sickness absence record).
- However, there are some circumstances where an organisation is entitled to ask health related questions. For example asking an applicant for a job in a warehouse whether they have any health problems that may prevent them from lifting or handling heavy items. Organisations can also check whether an applicant has any special requirements it needs to take into account when making the arrangements for interview, such as wheelchair access.

The interview

- Think when and where the interview should take place. For example:
  - Check whether the interview venue has access for disabled candiates;
  - Holding an interview during a religious holiday could discriminate against applicants from that particular religion;
  - Candidates with children may require the interview to be conducted at a particular time.

- Ideally all shortlisted candidates should be asked the same or similar questions to allow answers to be compared and to avoid the possibility of a discrimination claim.

- Avoid asking questions about a candidate's personal life unless they are directly relevant to the requirements of the job (for example, it is unacceptable to ask a female candidate whether she plans to have children).
- Keep a paper trail throughout the process to demonstrate how the organisation reached its decision to select the successful candidate. This should include:
  - Selection criteria;
  - Notes on the shortlisting process;
  - Interview questions;
  - Notes of panellists' assessments of the interviewees.
- It is good practice to provide feedback to unsuccessful candidates if it is requested. A failure to do so could indicate that a decision was based on discriminatory grounds.

The offer

- Make a written offer to the successful candidate. Consider whether to set a time limit on acceptance and specify that acceptance should be in writing.
- An organisation can make the offer conditional on a range of criteria, provided that they are not discriminatory. For example:
  - Providing satisfactory references; or
  - Confirmation that the employee is free to work in the UK or has an appropriate work permit or immigration approval to work.
- Before making a job offer, ensure the applicant confirms they are not bound by any restrictive covenants from their previous job; otherwise the organisation could be sued by their former employer. Restrictive covenants are used in employment contracts to protected an employer's business by restricting activities of an employee generally after the employment has ended.

The contract

- Consider whether the contract should be permanent or for a fixed term. If an organisation decides that a fixed term contract is appropriate it may need to justify why it reached that decision.
- Remember that an employee on a fixed term or part-time contract should not be treated less favourably than a permanent employee (for example they should be allowed access to a bonus scheme or receive an equivalent benefit).

Probationary periods

- A probationary period can be included in the contract. This will enable the organisation to assess the employee and vice versa. It also gives it the flexibility to dismiss using a shorter notice period of at least one week.
- Probationary periods typically last between three to six months and can be extended with the consent of the employee at the end of the term (for example, if the employee was sick and the organisation was unable to adequately assess their performance, it may want to extend the period).

If you'd like to contact us please email john.mcmullen@wrigleys.co.uk