Employment Law News
March 2011

Here is our latest Employment Law newsletter . We hope you will also visit our web site at www.oxford-employment-law.co.uk which now includes a comprehensive and regularly updated free employment law section available for you to use whenever and as often as you like to find answers to basic employment law questions. We will, of course, be pleased to assist you with individual advice when that is required.

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1. Summary of forthcoming changes

Here is an outline list of eight employment law related changes (and non-changes) announced by the Government due in the near future. The last three are of sufficient general importance to merit separate consideration - provided by the next following three items in this newsletter.

The outline list is as follows:

1. Time off to Train - the Government has now announced that this right will **not** be extended to employees of small businesses in April 2011. Almost a year ago the previous government introduced a right for employees to request time off for training, phased in from April 2010. This started last April for employees of larger employers (250+ staff) and was to be extended to employees of any size of employer in April 2011. The Coalition government announced in November that firms with fewer than 50 employees would remain exempt. It has now announced (on 16th February) that **all** further implementation is to be deferred *"to allow further, thorough discussion, scrutiny and evaluation".*

2. Bribery Act deferred - implementation of the Bribery Act 2010 was also due for April 2011. This has been postponed to, at the earliest, June 2011. The Ministry of Justice has yet to issue final "guidance" and has promised that the Act will not come into force until 3 months after the guidance is issued.

3. Visa reform (non EU workers) - Currently businesses are given an annual allocation for the number of foreign workers they can bring into the country. On 16th February the government announced a new system under which employers will have to apply to the UK Border Agency for a certificate of sponsorship for a specific post. Subject to Parliamentary approval this will come into force on 6th April 2011.

4. Flexible working - the age limit of children in respect of whom employers must seriously consider requests by employees for flexible working is increased from 17 to 18 as from 6th April 2011.

5. Equality Act 2010 - the provision allowing "positive action" in recruitment and promotion (s.159) comes into force on 6th April, as does the "public sector equality duty" (s.149).

6. Criminal record checks and vetting of employees - see notes below under heading "Protection of Freedoms Bill".

7. Additional Paternity leave - see notes below.

8. Abolition of "default retirement age" - see notes below.

- *For further information generally click here on Time off work / training and/or Acts of Parliament etc / Bribery Act 2010 and/or Immigration / a general introductory note and/or Flexible working / 2003 rules and/or Equality Act 2010 to go to notes on our website.*

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(return to top)

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2. Protection of Freedoms Bill

The "Protection of Freedoms Bill" is a government Bill. It had its first reading on 11th February and is likely to be law by the end of 2011. It covers a variety of matters, including placing restrictions on wheel clamping of cars, use of CCTV and removal of restrictions on times for marriage and civil partnership ceremonies. From an employment law angle the most significant part of the Bill is Part 5, headed "Safeguarding Vulnerable Groups, Criminal Records etc".

This Part of the Bill will try and strike a sensible balance between protection of vulnerable adults and children on the one hand and counter-productive, often unnecessary and expensive, authorisation requirements and CRB checks on the other. After the Soham murders, public disquiet about the ease with which a paedophile could get a job in a school led to the Bichard inquiry followed by the passing of the Safeguarding Vulnerable Groups Act 2006. It soon became obvious that the pendulum had now swung too far in the opposite direction - for example the vetting and criminal records checks required for almost anyone other than close family to have contact with school children made it impossibly difficult for some perfectly sensible activities to continue: school play groups were affected as was the ability of parents to club together to arrange for collecting children after school.

The Protection of Freedoms Bill aims to get a better balance. It will retain some parts of the present system so it will continue to be an offence for a barred person to work with vulnerable groups in regulated activity roles. It will also still be an offence for an employer or voluntary organisation knowingly to employ a barred person in a regulated activity role. However the requirement for registration will be scrapped and there will be no ongoing monitoring. The Criminal Records Bureau and the Independent Safeguarding Authority will be merged. The new regime will retain current arrangements for referrals to the state barring body (currently the ISA) where individuals have demonstrated a risk of harm to children or vulnerable adults and, where relevant, barring will continue to apply to both paid and unpaid roles - barring will be automatic where a serious offence which provides *"a clear and direct indication of risk"* has been committed.

There is a useful official explanatory note on the Bill on a government web-site.

- *For further information generally click here on Bills before Parliament / Protection of Freedoms Bill 2010-11 and/or Actsof Parliament etc / Safeguarding Vulnerable Groups Act 2006 to go to notes on our website.*

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(return to top)

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3. Additional paternity leave

Employed new fathers who have completed 26 weeks continuous employment with their employer already have the right to two weeks' paternity leave with statutory paternity pay.

New, additional, paternity leave rights come into force in relation to children whose expected week of birth (or matching for adoption) begins on or after **3rd April 2011** (the detail is in the Additional Statutory Paternity Pay (Weekly Rates) Regulations 2010). The general idea is that where parents of a child are both working, then once the mother goes back to work (which for this purpose cannot be before the baby is 20 week's old), the father can then take up to 26 weeks of "additional paternity leave".

The additional paternity leave is in addition to the two weeks which the father is entitled to take under existing law during the 8 weeks after the baby is born. The additional paternity leave must be completed before the child's first birthday and must be one continuous period. The right is only available to the husbands/partners of working mothers (self-employed counts - technically the requirement is that the mother must be entitled to one or more of the following: (i) maternity leave; (ii) statutory maternity pay; or (iii) maternity allowance. The right is only available if - and after - the mother returns to work.

An important point is that the right to additional paternity leave is NOT a right to share the 52 weeks maternity leave available to mothers - in practice it may have that result but in law the father's right to additional paternity leave is separate from the mother's right to maternity leave. Therefore the total taken by both mother and father can exceed 52 weeks. Thus

if the mother starts maternity leave on the earliest possible date (11 weeks before her expected week of childbirth) and goes back to work 20 weeks after the child is born she will have had 31 weeks of maternity leave (assuming the birth happened when expected). The father can then take 26 weeks additional paternity leave - this will expire before the child's first birthday and thus fulfil that condition. The total of the maternity leave and additional paternity leave will then add up to 57 weeks and on top of that the father will have been able to take the normal two weeks' paternity leave available under previous law. This means that in total on this example, between them the mother and father will have had 59 weeks leave. They will of course also have their normal holiday entitlement.

There is a limited right for fathers to be paid during additional paternity leave. The father can in effect claim any unpaid statutory maternity pay which the mother has forfeited by returning to work. As statutory maternity pay is limited in both amount (£128.73 as from 11th April 2011, or 90% of earnings if less) and duration (39 weeks) it follows that from a financial point of view it will only make sense for a man to take his full entitlement to additional paternity leave if the mother is going back to a well paid job.

The new right is available to the husband or partner of the mother and is available to adoptive parents. There are provisions to avoid fraud but interestingly the partners can be same sex partners leading to the result that a woman can claim paternity leave - as Humpty Dumpty said to Alice: *'When I use a word, it means just what I choose it to mean - neither more nor less'.*

Finally, it is worth noting that this new right to additional paternity leave may be subsumed in due course into new overall "family-friendly" rules which are likely to follow from a Government consultation due to start in March 2011.

- *For further information generally click here on Paternity leave / 2010 Additional Paternity Leave to go to notes on our website.*

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(return to top)

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4. Abolition of default retirement age

The basic position is now clear, but the detail is causing some confusion. The government announced in January that it was not going to back down on proposals to abolish the so called "default retirement age" on 1st October 2011. Draft regulations issued in February are being replaced by revised draft regulations due to be issued on 4th March. This note, although written before 4th March, takes into account our understanding of what the new draft will provide.

On the basic position, many had argued that increasing the age from 65 to some higher age would be a better solution than removing an age limit altogether. This was argued on grounds of simplicity, of reducing the number of tribunal claims and of "humanity" (a default retirement age avoids the unpleasantness of having to tell an ageing employee that he is no longer up to the job). However that is not to be. Instead, to escape liability if a retirement against the will of the employee results in the employee bringing proceedings, the employer will have to justify the forced retirement as "a proportionate means to achieve a legitimate aim".

Current law allows an employer to require an employee to retire at age 65 or over without facing the risk of a tribunal claim provided the employer has complied with statutory conditions, notably giving between 6 and 12 months notice. That right will be removed with effect from 6th April 2011, subject to a transitional arrangements.

Although this basic position is clear there has been some confusion over the detail of the transitional arrangements. The new draft regulations due to be published on 4th March are expected to clarify the transitional position. Specifically they address the anomaly that the transitional arrangements, as originally drafted, did not apply to employees who had already reached retirement age before 6th April 2011 and to whom employers might have already legitimately issued notifications of retirement. The amended Regulations will rectify that position. There are still a few uncertainties, but they are mainly of a technical nature - any employer thinking of giving a retirement notice should do so on or before 30th March 2011 to minimise risk of being caught in a technical trap. It would be prudent in any event to take expert advice once the final draft of the regulations is available.

To sum up, from a practical point of view (and assuming the new regulations come into force on 6th April 2011 as expected) the overall position is that an employer can still take advantage of the current law to require an employee to retire without the employee having unfair dismissal and/or age discrimination rights if but only if (i) the employee has or will have attained age 65 (or normal retirement age if higher) on or before **30th September 2011**; (ii) the employer has given the employee the required 6 to 12 months notice of retirement/dismissal before 6th April 2011 (to avoid risk of falling foul of one of the remaining technical uncertainties it will be safer to think of **30th March 2011** as the final day for giving a notice); and (iii) all normal "forced retirement" procedural requirements have been complied with, including giving the employee the right to request reconsideration.

- *For further information generally click here on Age discrimination / retirement to go to notes on our website.*

(return to top)

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5. Territorial jurisdiction

The Court of Appeal has ruled that BA cabin crew, based in Hong Kong but flying to and training in London, worked partly at an establishment in Great Britain: accordingly they are entitled to bring claims under the Race Relations Act 1976 and the Employment Equality (Age) Regulations 2006.

Mrs Mak and 15 colleagues of Chinese origin worked as cabin crew for British Airways. They were ordinarily based in Hong Kong; they worked on BA flights to London (in the case of Mrs Mak an average 28 round trips per year) and would stay in hotels in London. They also had to attend compulsory training courses in London. Mrs Mak and her colleagues brought claims for unlawful direct and indirect race discrimination and age discrimination. The preliminary question arose as to whether an employment tribunal had jurisdiction to hear the claims. For the tribunal to have jurisdiction it had to be satisfied that their employment counted as being at an establishment in Great Britain.

At a Pre-Hearing Review an employment judge ruled that the claimants worked at least partly in Great Britain and so under the relevant statutory wording counted as being at an establishment in Great Britain. The employment tribunal therefore had jurisdiction. British Airways appealed to the EAT but lost. They appealed on to the Court of Appeal and have lost again.

The arguments put forward by BA were mainly technical, based on the precise wording of the relevant sections and regulations and how they should be properly interpreted. Those arguments are not considered further here but there was also an important general point. BA argued that the amount of "work" done by Mrs Mak in Great Britain was so small that it should be disregarded. The original tribunal had accepted that compulsory training time and standby time were both in GB and were both work. It was now agreed by all parties that standby time took place in Hong Kong and not in GB.

The Court of Appeal dismissed BA's argument. Compulsory training time in Great Britain was work and was not trivial. In terms of time taken it was relatively small but it was a regular and crucial part of Mrs Mak's role, which she could not have done without. It was therefore not trivial.

editor's note: As from 1st October 2010 Equality Act 2010 has repealed the Race Relations Act 1976 and revoked the relevant parts of the Employment Equality (Age) Regulations 2006. There is no specific provision in Equality Act 2010 to define its territorial scope. Presumably under that Act normal common law rules will therefore apply as they do in unfair dismissal cases (essentially meaning that the test is a general test of whether an individual's employment relationship is sufficiently closely connected with Great Britain to make it appropriate that he should be able to bring a claim in Britain, as explained by the House of Lords in the leading case of Lawson v Serco [2006] ICR 250 and subsequently developed).

- *For further information generally click here on Equality Act 2010 / race and/or Equality Act 2010 / age to go to notes on our website.*

(return to top)

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6. TUPE avoidance blocked by the EAT

A leading article in the Times of 23rd February 2011 was headed "*The TUPE regulations are a barrier to open services that needs to be removed*". The Times was making the point that the TUPE regulations make it practically impossible for local councils to achieve efficiency savings by outsourcing functions but there are also serious implications for business.

A main effect of the TUPE regulations is that they automatically transfer contracts of employment of staff performing a particular function to any another enterprise which takes over that function. The regulations make it unlawful for the new operator to dismiss any of the transferred staff, to reduce their wages or otherwise impose less beneficial terms of employment (even if the staff agree, which they might well do if the alternative is redundancy). One effect is that it is practically impossible for a private enterprise taking on a staff intensive function from a local authority to do the job at lower cost. It is not hard to see that the end result of a well meaning attempt to protect employees can thus sometimes be to create even bigger problems than it solves.

Although not referred to, the Times article may have been prompted by a decision of the Employment Appeal Tribunal just a week earlier. That decision has effectively blocked what for a while appeared to be a loophole in the TUPE regulations. The regulations apply, of course, to commercial organisations as well as to local authorities and the possible loophole which has been blocked was one which could be relevant for them rather than for local authorities.

The new EAT decision is *OTG Ltd v Barke and ors* on 16th February 2011. The "loophole" which it has blocked was opened by a previous EAT decision (*Oakland v Wellswood on 5th November 2008*). The 2008 decision appeared to enable administrators of a company which was in difficulty to set up a "pre-pack" arrangement which would enable them to sell the business of the company as a going concern without TUPE being applicable. This was on the basis that use could be made of an exemption from TUPE designed to protect jobs when a company is put into liquidation. In 2008 the EAT had held that this exemption applied not only when a company is put into liquidation but also when administrators sell the business of a company as a going concern. For technical insolvency law reasons the point was a difficult one but the Court of Appeal later hinted that the 2008 EAT decision was probably a wrong interpretation of the law. The EAT has now, in February 2011, confirmed that.

The result is that "pre-pack" sales by company administrators are caught by TUPE in the same way as other transfers of undertakings.

While not knowing whether this result has had any part in the recent failure by administrators of the Cheshire based company Auto Windscreens to find a buyer for the business as a going concern, the fact that the possible TUPE loophole has now been blocked cannot have helped. It is reported that as a result over 1,000 staff are being made redundant (see BBC News 25th February 2011).

It is important to note that the TUPE regulations are there to implement an EU directive and in one form or another TUPE has been in place for many years. The latest 2006 version is a possibly unfortunate example of "gold-plating" by Britain of EU requirements. Notwithstanding that, and notwithstanding a recent Government promise not to "gold-plate" EU Directives when transposing them into British law, the Government indicated in November 2010 that it had no plans to make any changes to TUPE. Whether a combination of matters such as the recent EAT decision noted above, the Times leading article and the redundancies at Auto Windscreens may cause the Government to think again is an open question.

- *For further information generally click here on Transfer of business or undertaking / insolvent transferor to go to notes on our website.*

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(return to top)

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7. Corporate manslaughter

Alexander Wright, a junior geologist working for a company called Cotswold Geotechnical Holdings Ltd, was killed in September 2008 when a pit or trench from which he was taking trial soil samples collapsed on top of him. The company was prosecuted under the Corporate Manslaughter & Corporate Homicide Act 2007, the first prosecution of a company under that Act (which had recently come into effect, in April 2008).

Under the Act an organisation is guilty of corporate manslaughter if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a duty of care to the person who died. A substantial part of the breach must have been in the way activities were organised by senior management. A conviction can lead to an unlimited fine and guidelines from the Sentencing Advisory Panel have recommended that a fine on conviction under the Act should rarely be less than £500,000, and *"may be measured in millions of pounds*".

Given the events leading to the passing of the the Act it is of some note that this first prosecution under it is of a small company - it is understood that Cotswold Geotechnical Holdings had only 8 employees. The Act itself was prompted by deficiencies in previous law which had led to the dropping of charges against very large organisations on grounds that the evidence would not be sufficient for a jury to convict under then existing law (notably Network Rail, aka Railtrack, arising from the Hatfield Rail crash in 2000, and Townsend Thoresen after the 1987 capsizing of the Herald of Free Enterprise ferry).

In June 2009 Stroud magistrates remitted the Cotswold Geotechnical Holdings case to Bristol Crown Court. The trial was due to begin there in August 2009 but was adjourned until February 2010. It was then further adjourned three more times because of the ill-health of a director, Mr Peter Eaton (charges of gross negligence manslaughter and an offence under the Health and Safety at Work Act against Mr Eaton were permanently stayed on account of his ill health).

Eventually the trial took place at end January 2011 at Winchester Crown Court. The jury found Cotswold Geotechnical Holdings Ltd guilty, finding that the system of digging trial pits used by the company was unnecessarily dangerous and that

well-recognised industry guidance had been ignored. The Court imposed a fine of £385,000 but has allowed this to be paid off over ten years (£38,500 a year).

Given the sentencing guidelines noted above that fine may seem modest. However the Court took into account what it referred to as the company's "parlous financial state" and no doubt recognised, as suggested above, that the thinking behind the Act was directed more at prosecution of big companies than of a small one such as Cotswold Geotechnical Holdings Ltd.

Cotswold Geotechnical Holdings Ltd is said to be considering an appeal.

- *For further information generally click here on Acts of Parliament etc / Corporate Manslaughter and Corporate Homicide Act 2007 to go to notes on our website.*

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(return to top)

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8. HMRC's view as to whether an individual is an "employee" is not conclusive.

A recent case reemphasises that just because the taxman regards a person as being an employee it does not follow that that is the correct position in law.

Mark Fitzpatrick is a designer in the aerospace field. He set up his own company, of which he was the sole director and only employee, to provide his services. The company (MBF Design Services Ltd) then contracted with Airbus, via two intermediaries, to provide his services to Airbus in connection with the design of their A380 aircraft. MBF received fee income from Airbus.

MBF had a history of contracting out Mr Fitzpatrick's services of the kind featured in this appeal to a number of different clients, including Westland Helicopters, Strachan & Henshaw and Western Design Systems, both before and after the period when he worked for Airbus.

HMRC considered that Mr Fitzpatrick was liable to PAYE income tax and employee NICs on the monies received by MBF from Airbus in the years 2001-02, 2002-03, 2005-06 and 2006-07. He worked a 35 hour week for Airbus under the direction of Airbus management at the Airbus factory at Felton, using the company's equipment. HMRC took the view that under what is known as "IR35" monies paid to MBF were for tax purposes employment income of Mr Fitzpatrick personally.

Mr Fitzpatrick appealed to the tax tribunal.

The issue before the tribunal involved applying what is called the statutory hypothesis to the facts of the case. The statutory hypothesis required the tribunal to establish whether, if the arrangements with Airbus had taken the form of a contract between Mr Fitzpatrick and Airbus, they would have resulted in his being (i) an employed earner of Airbus for the purpose of National Insurance Contributions and (ii) an employee of Airbus for income tax purposes. It was agreed that for the purposes of the appeal the two tests are not materially different.

Mr Fitzpatrick, or more accurately, MBF Design Services Ltd, won.

The tax tribunal found that, on applying the statutory hypothesis, MrFitzpatrick was not a hypothetical employee of Airbus but was an independent contractor providing services to Airbus. In other words, the hypothetical contract between Mr Fitzpatrick and Airbus was a contract for services, not a contract of service.

The critical point was that the tribunal found that there was no "mutuality of obligation", essential for a finding of employment as an employee rather than as an independent contractor. The tribunal pointed out that an obligation on the employer to provide work, or in the absence of available work to provide pay, is a touchstone or feature one would expect to find in an employment contract and whose absence would call into question the existence of such a relationship. An important point was that Airbus had no obligation to provide payments in the absence of available work.

Other key points were that Airbus was entitled to cancel MBF's contract without notice and that there had been occasions when due to computer failure Mr Fitzpatrick was sent home without pay whereas Airbus's own employees had to remain on-site. Mr Fitzpatrick worked alongside Airbus employees and other contractors and while the proportion of one to the other varied, it was mostly about 4 to 5 contractors to one Airbus employee. Also Mr Fitzpatrick was entitled to do his own research (and did so both at Airbus and at home in his own time) and he was not subject to Airbus disciplinary or grievance procedures. Keeping core hours was strictly speaking a definite requirement by Airbus but in practice was not enforced so

long as work done by Mr Fitzpatrick and other contractors was effectively coordinated with work done by the rest of the establishment.

A link to the full text of the tribunal judgment is available here for those interested. It must be borne in mind however that this type of case is very fact specific - in particular systems in the aircraft building industry are not typically replicated elsewhere. Nonetheless the case has been hailed by the anti-IR35 Professional Contractors' Group as *"a significant victory for the freelance community"* and is clearly of considerable significance, not only in the context of IR35 but also in other situations (such as unfair dismissal claims) where the question of whether a worker does or does not count as an "employee" is relevant. Given the increasing use of freelance workers generally, this is an important question of law which has to be considered quite frequently and expert legal advice should be taken if there is any doubt.

- *For further information generally click here on Employee / employee or self-employed? and/or Tax / avoiding PAYE and IR35 to go to notes on our website.*

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(return to top)

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9. Hugely significant pensions case in Europe

As widely publicised the European Court ruled in early March in an important Belgian case that it will soon be unlawful sex discrimination for pension providers in the EU (and insurance companies in the EU generally) to take into account that women generally live longer than men when calculating premiums and benefits including annuity rates. A lot of the publicity has been about the effect on car insurance premiums going up for young women, but the consequences for employees and employers are likely to be more significant.

The ruling takes effect from 21st December 2012. It will of course apply only within the EU.

In more detail, what has happened is that the European Court has overruled a specific 2004 provision in EU law which provides an exemption from anti-sex discrimination rules. Under this exemption insurance companies are allowed "*... to permit proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data*..." (Article 5 of Directive 2004/113/EC). The Court has ruled in favour a Belgian consumer organisation, the Association Belge des Consommateurs Tests-Achats, which argued that this provision should now be declared invalid because it infringes more fundamental provisions, specifically Articles 21 and 23 of the Charter of Fundamental Rights of the European Union.

The full court's ruling followed a preliminary opinion of the European Court's Advocate General Kokott, handed down in late September 2010. He recommended that the ful Court should decide as it has done, pointing out that *"The Court would be keeping good company if it delivered such a judgment: more than 30 years ago the Supreme Court of the United States of America held in connection with pension insurance funds that the Civil Rights Act of 1964 prohibits different treatment of insured persons on the basis of their sex".* For those interested here is a link to an EC Press Notice of 1st March 2011: Sex Discrimination in Insurance Contracts , released after the decision was handed down.

Unsurprisingly most commentators in the UK have been horrified by the decision. It may therefore be of interest to suggest how it may have come about.

From an "overall social policy" point of view it is probably fair to say that discrimination (sex, race, age, religion etc) always falls into one of 3 categories - harmful, beneficial or neutral. As examples on the sex discrimination front one might consider discrimination to be harmful where it prevents people getting a job because of their gender, to be beneficial when it prevents men sharing changing rooms with women and to be neutral when it covers matters such as those which concerned the European Court in this case.

Bringing the law into the equation should mean that the first category ("harmful") is illegal, that the second ("beneficial") is encouraged and that the default position in the third "neutral" category should probably be "don't get involved". What seems to have happened in this case is that the ECJ has taken a different, more logical view about the default position for the third, "neutral" category.

It is easy to see why. Discrimination law has been constructed to make harmful discrimination unlawful. For good practical reasons the way it is drafted is essentially to make all discrimination relating to what in the UK is now called a protected characteristic unlawful unless it can be justified. The result is that the default position for the third "neutral" category of discrimination is "ban it". That's perfectly logical so it is understandable the European Court should have taken that line. However taking that logical approach means that the law which should be a tool to implement social needs is turned into a driver to determine what social needs are. The result appears to be that the legal tail in this sphere is now wagging the social dog.

As noted above, one result of the judgment will be that annuities payable to men will drop. Happily, from the point of view of those in the UK with personal pension plans, the Coalition government has already confirmed that in April 2011 it will abolish the long standing rule that at least 75% of their pension fund must be used to buy an annuity by the time they reach the age of 75.

- *For further information generally click here on European Law / directives etc / equal treatment directive to go to notes on our website.*

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(return to top)

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10. New cases and Statutory material

You can find on our website summaries of all employment law cases reported in the most recent editions of the monthly ICR and IRLR case reports (the two leading series covering recent developments in employment related case law).

You can also find on our website notes on employment law related Acts of Parliament, statutory instruments and employment related **Bills before Parliament** (of which there are a perhaps surprisingly large number)**.**

- *For further information generally click here on Industrial Cases Reports (ICR) and IRLR and/or Acts of Parliament etc (employment law related) and/or Bills before Parliament (employment law related) to go to notes on our website.*

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(return to top)

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11. And finally...

Taking the law into your own hands is always dodgy. For Simon Cremer, who runs a flooring company in Witham, Essex, taking a thief to the law (in the shape of the local police station) turned out to be expensive as well.

It may have seemed a good idea at the time but Mr Cremer must now regret that when he discovered one of his employees had stolen money from the company he frog marched him down to the police station with a cardboard sign around his neck reading: *"THIEF. I stole £845 am on my way to police station."* The employee concerned, a Mark Gilbert, admitted that even he was surprised when his boss was arrested. For those interested, the full story of what happened, including a photograph, is in the Daily Mail of 26th November 2008.

Mr Gilbert then took the matter to court, claiming for two years' lost earnings and the "distress" he suffered after being walked through the town to the police station. He also repaid the stolen money.

Obviously a practical man as well as perhaps somewhat impetuous, Mr Cremer reckoned that the time and cost of fighting the case was more than it was worth. He is now (February 2011) reported to have settled out of court, paying £5,000 to Mr Gilbert plus costs.

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