



# **Interesting Cases 2020 & UK Employment Law after Brexit**

11 February 2021



# Introductions

# Presenters



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# Technical support



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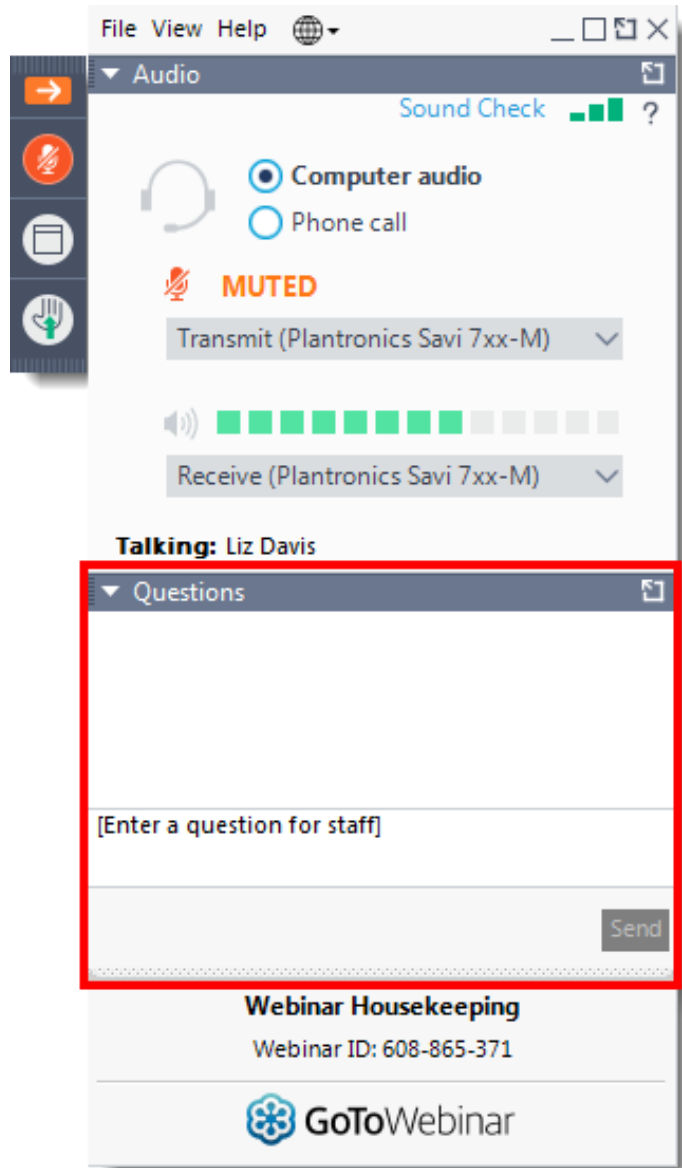
A group of diverse professionals are seated in a modern office environment, likely attending a meeting or training session. In the center, a man with a beard and glasses, wearing a grey cardigan, has his right hand raised high, indicating he wants to ask a question or make a point. To his left, a woman with long dark hair is looking towards him. Behind them, other participants are visible, some looking forward and others slightly to the side. The background features large windows with green plants and a bookshelf. The overall atmosphere is professional and collaborative.

# How to ask questions





# GoToWebinar Housekeeping: Time for Questions



## Your Participation

- Please continue to submit your text questions and comments using the Questions panel







# **Interesting Cases 2020 & UK Employment Law after Brexit**

11 February 2021

# Agenda

- Impact of leaving the EU
- Interesting Cases 2020
- Employment Tribunal Statistics
- Important case rulings to look out for in 2021



# Impact leaving the EU

- Significant amount of UK employment law underpinned by EU Directives
- Full independence in setting own domestic legislation
- Commitment to maintaining high standard of workers rights
- UK continue to be bound by the existing standards until the UK amend or remove them
- UK Employment Tribunals unable to refer new matters to the European Court of Justice



# Impact leaving the EU

- Review of current workers rights?
- What changes could we see?
- Nothing confirmed – all guesswork in the HR/Legal field
- Reintroduction of tribunal fees?
- Working Time Regulations?
- TUPE consultations?
- Agency Workers Rights

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# Employment Status: Uber BV v Aslam

- **Summary:**
  - Group of Companies providing private hire booking service. Passengers connect directly with drivers through an app.
- **Claims:**
  - Drivers argue they are “workers” and entitled to NMW, WTR, paid leave and other statutory rights
  - Uber argues the drivers are 3<sup>rd</sup> party contractors
- Employment Tribunal, Employment Appeal Tribunal, Court of Appeal = deemed as workers
- Supreme Court July 2020 = ?

# Employment Status: Uber BV v Aslam

- **Practical Implications?**
- Definition of worker contained within the ERA 1996 section 230
- Personal service
- Mutuality of obligation
- Control



# Working Time: Harris and 8 others v Kaamil Education and Dillgent Care Services

- **Summary:**
  - It is a case about how time should be treated when having to travel and/or wait between appointments
- **Claim:**
  - Unison argued that time taken to travel to and then wait for appointments should be classed as working time and therefore be paid
- ET ruled that travel and wait time of up to 60 minutes is working time
- **Practical Implications** – by including travel and wait time it took the claimant's significantly below the national minimum wage.

# Redundancy Consultation: UQ v Marclean Technologies SLU

- **Summary:**
  - This tested what the threshold should be to determine when collective redundancy consultation is triggered.
- **Claims:**
  - UQ argued her redundancy dismissal formed part of a series of covert collective redundancies. Challenged existing Spanish law which requires dismissals that predate a dismissal to be used when determining at what point collective redundancy is triggered.



# Redundancy Consultation: UQ v Marclean Technologies SLU

- European Court of Justice examined how collective consultation should be measured
  - Was a backward looking approach right?
  - Was the UK's approach correct?
- Judgement = the need for backward and forward looking when managing a redundancy process
- **Practical Implications:**
  - The reference period includes the relevant dismissal and which contains the greatest number of dismissals
  - **NOT** determined by how many are proposed
  - Reminder for UK employers to look back as well as forward

# Discrimination: Royal Bank of Scotland plc v AB

- **Summary:**
  - This considered what constitutes bullying and harassment in the workplace and reasonable adjustments may look like
- **Claims:**
  - Claimed constructive dismissal following a 6 year career Shouted at and being called “stupid”
  - Suffered with severe depression as a result
  - Occupational therapy not provided
  - Failed to adjust workstation according to needs
  - Coerced into a demotion
  - Denied transfer to a new branch



# Discrimination: Royal Bank of Scotland plc v AB

- Employment Appeal Tribunal found she had been discriminated against on the grounds of her disability and for a failure for making reasonable adjustments
- **Practical Implications:**
  - Reminder of the importance of being aware of Equality laws
  - Legal requirement to make reasonable adjustments
  - What constitutes bullying and harassment
  - The importance of Occupational Health
  - Medical records and understanding the extent of an employees medical condition

# Discrimination: Mrs K. Higgs v Farmor's School

- **Summary**
  - This case deals with the posting of personal views on social media and whether to dismiss can be a reasonable response in the circumstances
- **Claims**
  - Claimed religious belief discrimination, having been dismissed for sharing view on LGBT and unfair dismissal having been harassed in connection to her investigation process
  - Employer argued that it was reasonable to believe the negative views would impact on staff, parents, and children



# Discrimination: Mrs K. Higgs v Farmor's School

- **Judgement**
  - No underlying connection between her beliefs and the way the school treated her
  - Her actions to post views in private could have reasonably led people to believe she was homophobic or transphobic
  - Warranted in taking a reasonable belief that the negative views would impact the school community
- **Practical Implications**
  - Reminder that whilst social media used personally, can still be a trigger for formal action by an employer
  - Once posted, content is in the public domain
  - Caution still advised as there is still a balancing act with the right to privacy



# Exceptional Fair Dismissal: M Gallacher v Abellio Scotrail Ltd

- **Summary**
  - This case examines whether a fair dismissal can occur even without a procedure followed
- **Claims:**
  - Gallacher claimed his dismissal without a proper procedure was unfair
  - Employer argued that any process would not help the situation
- **Practical Implications**
  - Does not give the green light for not following a procedure when dismissing
  - Exercise extreme caution seek HR advice
  - It may, in extreme circumstances, be a realistic option

# Unfair Dismissal: Miss C Robinson v Mind Monmouthshire Ltd

- **Summary**
  - This case deals with protected disclosures (whistleblowing), where no formal grievance had been raised at the time, and allegations of discrimination and unfair dismissal.
- **Claims**
  - Robinson claimed she had been automatically unfairly dismissed and discriminated against for having complained about colleagues mocking those with disabilities.

# Unfair Dismissal: Miss C Robinson v Mind Monmouthshire Ltd

- Employment tribunal found the claim of unfair automatic dismissal and treatment amounted to disability related harassment under the Equality Act
- **Practical Implications**
  - Reminder that where there are complaints of discriminatory issues, treat issues seriously
  - Exceptional circumstances do not need a formal grievance raised, action should be a matter of course
  - Whistleblowing is relevant now



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- **Employment Tribunal Statistics**
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# Employment Tribunal Claims 2019/20

[Government Statistics 2019/20](#)

Claim	Maximum Award	Average Award	Median Award
Unfair Dismissal	£118,842	£10,812	£6,646
Race Discrimination	£30,330	£9,801	£8,040
Sex Discrimination	£73,619	£17,420	£14,073
Disability Discrimination	£265,719	£27,043	£13,000
Age Discrimination	£243,636	£38,794	£11,791
Sexual Orientation	£96,645	£9,245	£27,936



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- **Important case rulings to look out for in 2021**

# Important 2021 Case Rulings to look out for

- Lee v Asher's Baking Co. **Discrimination**
- Royal Mencap Society v Tomlinson-Blake – awaiting judgement – **employment status**
- Uber BV v Aslam – awaiting judgement – **employment status**
- Kostal UK v Dunkley (Supreme Court 18 May) – **collective bargaining**
- Flowers v East of England Ambulance Trust (22 June) – **holiday pay**
- Harpur v Brazel (Supreme Court 9 November) – **holiday entitlement**

# Changes for 2021

- Consultations ending in February
  - Post Termination non compete disclosures
  - Extending the ban on exclusivity clauses
- Coronavirus Job Retention Scheme ends April?
- Annual changes to NLW and NMW
- Annual changes to statutory rates
- Changes to IR35 rules
- Good Work Plan
- Carers Leave and Neonatal Leave and Pay



# Changes for 2021

- Data Protection – UK GDPR
- US Privacy Shield
- Kickstart Scheme
- 2021 Employment Law Seminars
- [Further information](#)







# UPCOMING WEBINARS

## **How to Bridge the Development Gap**

16 February, Tuesday | 2pm – 3pm

## **Coming Soon....IR35: Are you Ready?**

18 February, Thursday | 10am – 11am

## **Health & Safety at Work: Safeguarding**

24 February, Wednesday | 12pm – 1pm

## **SME Challenge: Marketing to secure new business**

25 February, Thursday | 2pm – 3pm

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# UPCOMING WEBINARS

**Absence Management: How to deal with mental health absences**

11 March, Thursday | 10am – 1pm

**NEW!** Managing cyber security

18 March, Thursday | 2pm – 3pm

**Health & Safety at Work: General Fire Safety**

24 March, Wednesday | 12pm – 1pm

**Data and GDPR – Compliance and Implications after Brexit**

15 April, Thursday | 10am – 11am

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**Further questions?**

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**After the webinar, we shall be sending a short survey to capture your feedback, it would be appreciated if you could complete this survey so that we can constantly improve.**





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