Harvey on Industrial Relations and Employment Law

This Bulletin covers material available to **1 April**.

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LEGISLATION

Second and third commencement orders

April sees the next tranche of provisions of the Employment Rights Act 2025 coming into force. The Commencement No 2 Regulations SI 2026/323 brings into force on 6 April those relating to disclosures of sexual harassment, dismissal following family leave, extension of the protected period for collective redundancies equality action plans, working time records and amendments to the statutory recognition procedure. On 7 April, the extensive provisions of Part 5 permitting the establishment of the new Fair Work Agency are brought into force. Oddly, these regulations do not bring into force ss 10 and 11 (ss 12 and 13 in Northern Ireland) on the removal of the waiting days and lower earnings limit for SSP; this has been done separately in the Commencement No 3 Regulations SI 2026/373. These changes will be made in Divs Q and R in Issue 334.

New Codes of Practice

Reissued codes of practice to take into account changes in the Employment Rights Act 2025 came into force on 5 March 2026. These cover picketing and industrial action ballots and notice to employers. They have been incorporated into Div S in Issue 332.

Benefits up-rating

The annual increases in employment-related benefits are contained in the Social Security Benefits Up-rating Order 2026 SI 2026/148. Statutory Maternity Pay goes up to £194.32, as from 5 April. Statutory Sick Pay goes up to £123.25, as from 6 April. Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay, Statutory Parental Bereavement Pay and

Statutory Neonatal Care Pay go up to £194.32, as from 6 April. These changes will be made in Div Q and Div R in Issue 334.

Bereaved partner's paternity leave introduced

A new scheme of bereaved partner's paternity leave, available for up to 52 weeks upon the death of a primary carer, is introduced by the Bereaved Partner's Paternity Leave Regulations 2026 SI 2026/237. Part 2 of the regulations sets out the scheme, including the necessary notices to be given. Part 3 then contains the usual employment protection provisions, covering continuing terms and conditions, the right to return, rights on redundancy and protection from detriment or dismissal. The regulations come into force on 6 April 2026 and will be incorporated into Div J and Div R in Issue 334.

Annual up-rating of limits

The Employment Rights (Increase of Limits) Order 2026 SI 2026/310 effects the annual up-rating of employment rights limits, as from 6 April 2026. They are raised by 4.5%, in line with RPI. Various minima are raised, but the most important changes are that the maximum amount for a week's pay for statutory purposes is raised from £719 to £751. This gives a maximum statutory redundancy payment and basic award for unfair dismissal of £22,530. The compensatory award is raised to £123,543, which together with the new basic award gives a maximum figure in an ordinary unfair dismissal case of £146,073.

These changes will be made in Div Q in Issue 334 and in Div DI in Issue 335.

National minimum wage up-rating

The National Minimum Wage (Amendment) Regulations 2026 SI 2026/357 raise the national living wage to £12.71 and the rates of the NMW to £10.85 and £8.00. The accommodation limit is raised to £11.10. These changes came into effect on 1 April and will be incorporated in Div R in Issue 334.

Vento bands increased

As from 6 April, the *Vento* bands for injury to feelings awards for discrimination go up to:

Lower band	£1,300 – £12,600
Middle band	£12,600 – £37,700
Upper band	£37,700 – £62,900

DIVISION CIII WHISTLEBLOWING

Qualifying disclosure; public interest; other motives

CIII [42]

***Bibescu v Clare Jenner tla Jenners [2026] EAT 30* (*24 February 2026, unreported*)**

Public interest has been a key test in whistleblowing cases since 2013. This decision of Lord Fairley P in the EAT establishes an important sub-rule here,

namely that if a disclosure satisfies this requirement, it continues to be a qualifying disclosure even if it is shown that the claimant had other, personal motives for making the disclosure.

The facts show this well. The claimant had worked as an accountant, but issues were raised as to her performance. The employer brought in a third party to consider this. Dissatisfied with this, she made disclosures to the employer that this person was not a member of a professional body and, more seriously, that he had been disqualified as a director but was still registered as such. On her dismissal for poor performance, she claimed automatically unfair dismissal and detriment under the whistleblower laws. The ET rejected both claims and she appealed. The EAT dismissed her appeal on the dismissal point because the ET had been entitled to find on the facts that the operative reason was her performance, but it allowed the appeal on detriment. The key point was that the ET had held that her motive for making the disclosures was to discredit the third party conducting the investigation into her and so was not made in the public interest. That was not the correct test, which was whether she had believed that they were made in the public interest and if so whether that belief was reasonable, regardless of any other motivation she may have had.

DIVISION L EQUALITY

Direct discrimination; cause or reason; relevance of motive

L [274.01]

Omooba v Michael Garrett Associates [2026] EWCA Civ 253

The facts and the decision of the EAT in this case are set out at **L [274.01]** where the criticism is made that it arguably confuses reason with motive, only the former being relevant in a claim for direct discrimination. The claimant had an acting role to play a lesbian withdrawn in the light of a media storm when her religious views became known that homosexuality is sinful. She claimed direct belief discrimination, but the ET ruled against her on both. That decision was upheld by the EAT on the basis that the reason for the dismissal was concerns about the commercial effect of the controversy on the production, not her beliefs. Had this been a simple unfair dismissal claim, that might not have been difficult, but in relation to direct discrimination, the argument is that the ET had given too much credence to the agency's motivation, rather than what was 'the reason', thus lessening the protection of the law for beliefs unpopular in some circles.

The claimant sought to appeal but permission to do so was refused by Bean LJ on the basis that the decision was one that the ET was entitled to come to. The claimant applied to have her appeal reinstated, arguing that the EAT decision was now inconsistent with *Higgs v Farmor's School* [2025] EWCA Civ 109, [2025] IRLR 368, [2025] ICR 1172. Hearing this application, the Court of Appeal held that there was no such incompatibility, because that case concerned the manifestation of belief/unacceptable means of doing so

divide, not this primary question of what was the reason in the first place. The case is however possibly complicated by its form. This was not an ordinary appeal from the EAT, but instead was an application to reopen a final determination of an appeal which under CPR 52.30 can only be done if: (a) it is necessary to do so to avoid real injustice; (b) the circumstances are exceptional; *and* (c) there is no alternative effective remedy. The judgment makes it clear that this is a very high bar and that this case does not surmount it. Strictly speaking, that is the ratio of the case. On the other hand, even if the rest is obiter, it must be highly persuasive, since the court clearly upheld the EAT's decision and also addressed the *Higgs* point directly.

DIVISION PI PRACTICE AND PROCEDURE

ACAS conciliation; effect of COT3; supervening appeal

PI [693]

Turner v Western Mortgage Services Ltd [2025] EAT 191, [2026] ICR 257

The width generally of a COT3 settlement was emphasised recently in *Darlington v London Borough of Islington* [2026] EAT 11 (13 January 2026, unreported), reported in **Bulletin 572**. The instant case before Judge Auerbach in the EAT establishes a more specific point about the interplay between a COT3 and an appeal to the EAT.

The claimant was in receipt of PHI payments for long-term sickness. When the employer stopped these, he brought ET proceedings based on breach of contract. He subsequently resigned and discontinued the claim. However, he then brought anew proceedings based again on contract but also on disability discrimination. The ET struck out the former for estoppel and the claimant appealed against that. He then appealed against the striking out but also agreed a COT3 settlement of the new claim, on a 'full and final settlement' of 'all and any claims' basis. When the appeal reached the EAT, the employer objected that it was prevented by the COT3 but the claimant argued that it was separate and should go ahead. The EAT held for the employers and rejected the appeal. This was partly on the basis (as in *Darlington*) of the construction of the wording of the COT3, but the judgment also holds that in these circumstances an existing appeal is also compromised. At [44] it states:

> 'Where, as I have concluded in this case, the words of a settlement agreement, objectively construed, compromise a complaint which has been struck out, the natural and logical implication is that they also compromise a related appeal, which is part of the ongoing litigation by which a party has sought to be enabled, after all, to continue to pursue that same complaint in the tribunal.'

Reconsideration of judgments; general; new evidence

PI [1139]

Mayanja v City of Bradford MBC [2025] EAT 160, [2026] ICR 147

This is an interesting example of the operation of the power to reconsider a judgment where new evidence comes to light. There are also interesting obiter concerning the danger of making too sweeping conclusions about the reliability of a witness.

The claimant's case rested on his assertion that he had been made a job offer by the respondent. The ET required the latter to prepare a court bundle. This did not include anything relating to a job offer and the management insisted that none had been made. In the light of this absence of evidence, the ET found that the claimant was not reliable, rejected his claims and made a costs order against him. Subsequently, the claimant made further inquiries and found an email containing the job offer. He applied for a reconsideration; the ET accepted the email and rescinded the costs order but refused to rescind the substantive decision.

Allowing his appeal the EAT held that, given that the respondent had had primary responsibility for the preparation of the court bundle, the claimant had been entitled to expect, and to rely on, the respondent to disclose the relevant documentary evidence and had assumed that there was no email offering him the job, as none had been disclosed. Further, having permitted the claimant to rely on the new evidence when amending the costs judgment, it had been incumbent on the employment tribunal to consider the claimant's application to rely on it in relation to the substantive judgment. Here, the fundamental reason for the substantive decision, and the rejection of all the claimant's complaints, was that the claimant was lacking in credibility, since there was no evidence of the job offer that the claimant relied on, and that the manager's evidence was to be preferred in all respects. The decision was therefore fundamentally unsafe and the case was remitted for rehearing.

The judgment adds that the case demonstrates the risk of making an over-arching assessment of credibility that is then relied on in *all* further assessments. The decision of the tribunal was 'built on foundations of sand' because it adopted the approach of preferring the evidence of the manager to that of the claimant where there was *any* conflict.

Issues on hearing an appeal; new points; issues that an ET should consider anyway

PI [1606.01]

***Whitaker v White Rose Academic Trust [2026] EAT 43* (*20 March 2026, unreported*)**

There has long been a tension between older ideas of an inquisitorial function for an ET (generally, but especially in relation to litigants in person) and the more recent tendency to opt for an accusatorial approach ('we are here to determine what you put before us, and nothing more'). The weight of

authority is now for the latter. However, one residue of the former can be seen as the approach in *Langston v Cranfield University* [1998] IRLR 172, EAT where Judge Peter Clark held that there are some employment law principles that are so fundamental that an ET should if necessary consider them, even if not specifically relied on by the claimant. That case concerned the rules on conducting a fair redundancy. As the text points out at **PI [1606.01]**, this was then extended to certain other areas, which are listed there. However, as the text goes on to state, there has been a recent tendency to restrict this approach. The instant case before Judge Auerbach is another example of this. The claimant brought proceedings, including for whistle-blowing detriment and dismissal. The ET rejected these on the basis that he was not an employee or worker under the ERA 1996 s 230. On appeal, the claimant argued that the ET should have gone on to consider if he was a worker under the specific whistleblowing provisions of s 43K, even though he had not raised this point. The EAT rejected this, distinguishing *Langston* on the basis that this was not such a fundamental issue that fairness demanded it be considered anyway, and seeing that case as the high watermark of this development and citing later cases critical of it. Reliance is also placed on *Moustache v Chelsea and Westminster Hospital NHS Foundation Trust* [2025] EWCA Civ 185, [2025] IRLR 470, [2025] ICR 1231 which emphasised the adversarial approach at ET level (see **PI [293.06]**).

So far, the trend has been for courts and tribunals to limit the applicability of *Langston* to areas where case law has hitherto applied it and refuse to apply it elsewhere, but a question may arise before long as to whether there will be further movements to roll it back even there.

REFERENCE UPDATE

Bulletin	Case	Reference
567	*Royal Embassy of Saudi Arabia (Cultural Bureau) v Alhayali*	[2026] ICR 196, CA
569	*Secretary of State for Business and Trade v Sahonta*	[2026] ICR 219, EAT
570	*Micro-Focus Ltd v Mildenhall*	[2026] IRLR 241, EAT
570	*Gurney v Randall*	[2026] IRLR 267, EAT
570	*Chaudhry v Paperchase Products Ltd*	[2026] IRLR 273, EAT
571	*Odusanya v Pennine Care Foundation Trust*	[2026] IRLR 265, EAT
571	*London Ambulance Service NHS Trust v Sodola*	[2026] IRLR 282, EAT

Bulletin	Case	Reference
571	*Maritime and Coastguard Agency v Groom*	[2026] IRLR 293, EAT
572	*Scottish Ambulance Service Board v Chapman*	[2026] ICR 118, EAT

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