



# Employment Eye

Higher Education in focus  
March 2017

# Bevan Brittan

## Employment, Pensions and Immigration

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### Can we help?

Our dedicated team of 17 employment, pensions and immigration lawyers, including 5 partners is nationally recognised as a top tier law supplier in the Chambers and Legal 500 Directories.

We provide practical, high quality and commercially relevant legal and HR management advice and support on all workforce law issues.

We offer a collaborative working approach and provide a full support service covering the entirety of the relationship between your organisation and its employees. In particular we provide:

- practical support in relation to day-to-day employment issues (attendance, sickness, performance, disciplinaries),
- commercial advice in relation to equality and diversity issues, bullying and harassment, grievances and the provision of alternative dispute resolution;
- strategic support and advice in restructuring projects, reorganisations, redundancies, implementation of change including changing terms and conditions;
- advice in relation to exit strategies, maintaining confidentiality and restrictive covenants;
- transactional and project support on the workforce related aspects of M&A, outsourcing and high level TUPE advice;
- drafting and advising on the full complement of contractual documentation including agreements, policies, procedures and tailored remuneration arrangements;
- a dedicated 'Associates Network' of independent high level HR professionals providing an internal investigations service, and support on specific and ongoing HR projects;
- bespoke training programmes and documentation;
- representation at Employment Tribunals and Court;
- monthly electronic bulletins on key developments in employment and HR law, together with twice yearly HR seminars at our offices with CPD accreditation.

“ Without exception I have always found them to be responsive and reassuring in their advice. ”

Chambers UK 2017



## Employment Eye

### Higher Education in focus | March 2017

Welcome to the very first edition of our new quarterly update on employment law issues of particular relevance to Higher Education institutions. This supplements our regular monthly workforce law update, Employment Eye and will be published in March, June, September and December each year. We will be looking at employment and workforce issues which affect all employers across Higher Education.



### Increased costs on their way for the education sector

Many higher education institutions will be busy preparing for the off-payroll working rules which will require them (amongst other public sector bodies) to take responsibility for assessing and paying income tax and national insurance for 'off-payroll' workers, such as consultants and contractors. These changes will bite from 6 April 2017.

In anticipation of this change, HMRC has published a new landing page ([available here](#)), containing a summary of the new off-payroll taxation obligations for public sector bodies. A link to a new HMRC employment status service will be inserted into

the guidance when the service becomes available – we understand that this is due to launch by the end of this month.

Steps to comply with this new taxation regime need to be taken now, if not already completed. Please [click here](#) for a full explanation, and details of how we can help.

### Professor refused injunction to prevent disciplinary procedures

The High Court has refused to grant an injunction to a Professor of Law and Executive Dean at Birkbeck College, who sought to prevent disciplinary proceedings being pursued against her and have her suspension set aside.

The Court noted that it could not 'micromanage' disciplinary proceedings, unless there had been serious irregularity. Their decision follows the well-known case of *Chhabra v West London Mental Health Trust* (Supreme Court, 2013), in which irregularities in an NHS trust's disciplinary proceedings against a doctor cumulatively rendered its convening of a conduct panel unlawful, as a material breach of her contract of employment.

However, in the *Tuitt* case, the Court weighed up the relative risks of injustice in allowing or refusing the application for an injunction, and decided that there was a greater risk of injustice if it prevented the proceedings from going ahead. Professor Tuitt argued that there had been a breach of contract and that the disciplinary panel had been wrongly convened; as she was an 'appointed teacher' there should be five nominated members, rather than three.

However, the Court found that Professor Tuitt was not an 'appointed teacher' of the University of London (she was appointed by Birkbeck College). Professor Tuitt also said that the panel was wrongly constituted. However, the college's evidence was that no decision had been made on the panel's constitution. In conclusion, the High Court felt it was not possible to say that there was a high degree of assurance that the disciplinary proceedings had been wrongly pursued and they should, therefore, be allowed to go ahead (*Tuitt v Birkbeck College, University of London*, QBD, 2017, unreported).



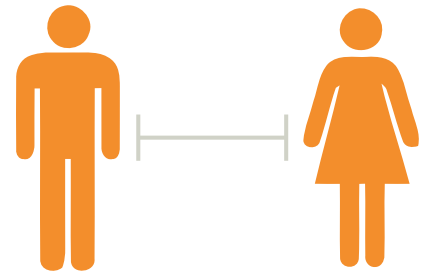


## Scholarship loan repayable on redundancy

In *Nazir Ali v Petroleum Co of Trinidad & Tobago* (February 2017), the Privy Council has held that an employee who received a living allowance loan whilst studying abroad on a scholarship from his employer had to repay it when he took voluntary redundancy some 18 months after his return to work. The letter offering the loan provided that repayment would be waived if the employee returned to work for the employer for a period of five years. The Privy Council found that there was an implied term that if the employer prevented the employee without cause from serving out his five years, it would be obliged to waive repayment.

However, the implied term had not been triggered because the employee voluntarily left his employment. Although this case concerned an employee of a company, it is likely that an employment tribunal or court would follow similar principles if asked to rule on living allowance loans offered to employees of higher education providers whilst undertaking research or study whilst, for example, on sabbatical or on study leave.

## Gender pay gap reporting – new guidance published



Remember that the first 'snap-shot' date for large public sector employers' gender pay gap reports is fast approaching: **31 March 2017**. This will cover most publically funded educational institutions, including universities and Further Education colleges. The first snap-shot date for private sector employers is **5 April 2017**, and this will cover privately funded education providers and educational charities. Both the private and public sector requirements only apply to organisations with more than 250 employees.

In advance of the first snap-shot data gathering exercise, Acas has now published new guidance, a factsheet and suggested wording for a notification to employees about the new reporting obligations. The new Acas documentation can be [accessed here](#). Please [click here](#) for our briefing which explains the final version of the regulations, practical steps to take and what to do if you find you have a gender pay gap.



## Annual payment increases – April 2017

### *National Minimum Wage*

Increases to the National Minimum Wage and National Living Wage have been announced. With effect from 1 April 2017 minimum hourly wage rates will be set as follows.

- National living wage (workers aged 25 and over): £7.50.
- Standard adult rate (workers aged between 21 and 24): £7.05.
- Development rate (workers aged between 18 and 20): £5.60.
- Young workers rate (workers aged under 18 but above the compulsory school age who are not apprentices): £4.05.
- Apprentices: £3.50.

## *Compensation limits and minimum awards*

Compensation limits and minimum awards payable under employment legislation will increase from 6 April 2017 as follows.

- The limit on compensation for unfair dismissal will increase from £78,962 to £80,541
- The maximum level of a 'week's pay' for the purposes of calculating (amongst other payments) statutory redundancy payments and the basic award for unfair dismissal, will increase from £479 to £489 per week.
- The minimum unfair dismissal basic award for health and safety dismissals, acting as an employee representative, trade union, or occupational pension trustee reasons will increase from £5,853 to £5,970.

## Greater employment tribunal exposure

Educational institutions would be wise to note that employment tribunal decisions for all employers are now available and searchable online – making it much easier for students, staff, prospective staff, and the general public to view any cases concerning an establishment, whether positive or negative. The database can be accessed [here](#), but decisions will also now form part of searches undertaken in general search engines, such as Google. Although employment tribunal decisions have always been a matter of public record, until now the only way to obtain a copy of a decision was to apply to the Bury St Edmunds Employment Tribunal and pay a fee. Now that all employment tribunals will be readily available for free on the internet, increased exposure is inevitable.

## Save the date – forthcoming training events

### Employment Law Updates

Our next series of free Employment Law Updates will be taking place on the following dates at the following locations:

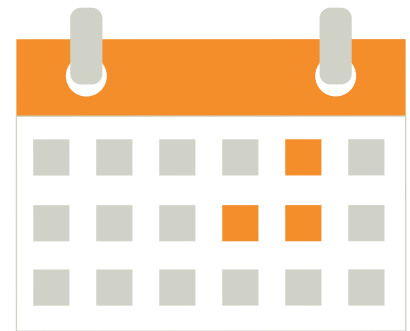
- London: 24 May 2017
- Leeds: 6 June 2017
- Bristol: 7 June 2017
- Birmingham: 8 June 2017

### Immigration law conference

As the triggering of Article 50 looms, we are offering an immigration law conference in London on 14 June 2017 which will look at the consequences for EU nationals and what action they and employers can potentially take now, and other key issues for employers engaging foreign staff.

To attend any of the above events, please contact **Lilly Drakoulakou** at [events@bevanbrittan.com](mailto:events@bevanbrittan.com) for further information.

Alternatively, further details of topics and how to book will be posted on our website shortly – please keep an eye on the [events page](#) of our website or email [events@bevanbrittan.com](mailto:events@bevanbrittan.com) to be added to our employment law training mailing list.



**Ashley Norman heads our employment law services to the higher education sector and would be pleased to discuss any issues relating to employment law, immigration and student matters.**




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