

Employment Eye

Higher Education in Focus

March 2019



## Employment, Pensions and Immigration

### 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, disciplinarys),
- 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;
- regular electronic bulletins on key developments in employment and HR law, together with twice yearly HR seminars at our offices with CPD accreditation.

# Employment Eye

## Higher Education in Focus

### March 2019

Welcome to the March 2019 edition of our update on employment law issues of particular relevance to Higher Education organisations. This supplements our regular monthly workforce law update, Employment Eye, and is published in September, December, March and June each year.

Please email [subscriptions@bevanbrittan.com](mailto:subscriptions@bevanbrittan.com) if you would like to sign up to receive our regular employment bulletin, Employment Eye, and if you would like to receive invitations to our free in-house employment law training events.

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Clients are reassured by the team's availability to offer "excellent service and great legal support when needed the most."

**- Chambers UK 2018**



## Chancellor's Spring Statement and academic immigration reforms

Whilst Brexit uncertainty shows no signs of abating at present, the Chancellor's Spring Statement (13 March 2019) acknowledged that the UK's universities are "global powerhouses of discovery and innovation". As such, the Chancellor has announced new immigration measures to support universities. From Autumn 2019, the government will completely exempt PhD-level roles from visa caps. In the ministerial statement which accompanied the Spring Statement, it was also announced that

the government will update the immigration rules on 180 day absences, so that researchers conducting fieldwork overseas are not penalised if they apply to settle in the UK. This will no doubt be welcome news for universities looking to attract and retain overseas talent.

The Chancellor's full Spring Statement is [here](#).

The accompanying ministerial statement is available [here](#).



## University outsourced workers' legal challenge failed

Last month, the Independent Workers Union of Great Britain (IWUGB) launched a legal challenge against the University of London in a bid to obtain trade union recognition for the University's outsourced workers. The action was taken on behalf of security officers, porters, post room workers and receptionists who are employed by Cordant (a facilities management company) to undertake work at the University. The IWUGB applied for a judicial review of a decision by the Central Arbitration Committee (CAC) that the IWUGB should not be recognised by the University. The IWUGB's argument was based on the workers' rights under Article 11 of the European Convention on Human Rights: the right to "freedom of assembly and association", which includes the right to form trade unions.

However, the High Court has now rejected that argument and upheld the CAC's decision that the outsourced workers were not entitled to

collectively bargain with the University, as the end-user client of the workers' employer, Cordant. Rights under Article 11 are not unrestricted; they only operate to the extent that they do not affect the rights and freedoms of others. The High Court said that allowing the workers to collectively bargain with the University would impinge on the University's right and freedom to arrange its economic affairs in the most efficient and beneficial manner, free from the imposition of bargaining arrangements. Therefore, the application for judicial review failed and the CAC's decision that the outsourced workers were not entitled to collectively bargain with the University was upheld. This decision will, no doubt, be widely welcomed amongst employers in the Higher Education sector, and beyond.

The High Court's full decision rejecting the IWUGB's application can be viewed [here](#).



## New gender pay gap reporting guidance

As the gender pay gap regulations have now bedded in and employers will shortly be filing their second annual reports, it is evident that most employers' figures are showing a pay disparity between genders. The Government Equalities Office has now published two new pieces of guidance to help employers close their gender pay gap.

### **“Eight ways to understand your pay gap”**

Addresses how employers may identify areas for improvement.

### **“Four steps to developing a gender pay gap action plan”**

Provides information for employers on practical plans that have been successfully developed and implemented in tackling gender pay gaps.

The two pieces of guidance are intended to be complementary and read alongside one another in helping employers use the gender pay gap reporting requirement to assist with closing any gap that has been identified. The guidance is clear and concise and would form a useful starting point for equalising gender pay.



# Health Education England report: NHS staff and learners report

A new report by Health Education England's NHS Staff and Learner's Mental Wellbeing Commission was published in February 2019, and makes a number of recommendations which are relevant to all those providing healthcare higher education. The report is intended to advance measures which are being implemented as part of the NHS Long Term Plan, and references the importance of promoting and supporting those learning in an NHS setting, as well as NHS staff.

The report is clear that higher education organisations which are providing healthcare courses have a key role to play in supporting and the wellbeing of students, particularly as they transition from school to university and from university

to clinical placements and / or onto post-graduate training. Particular areas of concern are as follows:

- ensuring that students with learning difficulties are able to access information about additional support more easily. This information is often stored under 'disability' sections of university websites, making it hard to find, and the continuation of support is often a major concern for students with learning difficulties moving on to university (recommendation 6)
- students transitioning to higher education should be given support with self-awareness, wellbeing support and suicide risk prevention (recommendation 7)
- wellbeing 'check ins' are recommended for healthcare students within two weeks of starting a clinical placement or post-graduate training (recommendations 8 and 13) and monitoring should take place whilst on clinical placement, because this is a particularly stressful time
- further work needs to be undertaken by universities offering healthcare courses on the financial and wellbeing impacts of students on clinical placements and rotations, given the disruption this can cause to students' lives.

The full report is available [here](#).

The summary report is available [here](#).



# Universities Superannuation Scheme – ill health early retirement decisions

The High Court has overturned a decision of the Pensions Ombudsman on a member's entitlement to early retirement benefits on ill health grounds under the Universities Superannuation Scheme (USS). The High Court found that the scheme trustee was not bound by the university's conclusion as to whether the member suffered from incapacity; the trustee had to come to its own decision, notwithstanding that the employer supported the scheme member's application for ill-health early retirement.

[In Universities Superannuation Scheme Limited v Scragg](#) (January 2019), the respondent, Mr Scragg, was employed by Dundee University until his dismissal in December 2016 on the grounds of ill-health.

Prior to his dismissal, the university had supported Mr Scragg's application for an ill-health early retirement pension. However, the application was rejected

by the trustee of the USS. Medical evidence provided to the trustee suggested that redundancy/capability/non-medical early retirement were more suitable options for Mr Scragg and, furthermore, there was a possibility that his condition may improve in future.

Mr Scragg complained to the Pensions Ombudsman. The issue was whether, once the university had formed the opinion under rule 15.1.2 of the USS that the member was suffering from incapacity, the trustee's task under rule 15.1.3 was either

- limited to determining whether that incapacity was total or partial (as argued by Mr Scragg), or
- it was entitled first to determine whether the member was suffering from incapacity at all (as argued by the trustee).

The Ombudsman found in Mr Scragg's favour, but that decision was overturned by the High Court. The



High Court said that the trustee was not bound by the university's opinion as to whether Mr Scragg suffered from incapacity. It must come to its own decision as to whether he suffered from partial incapacity or total incapacity and that included the possibility to determine that he did not suffer from incapacity at all.

This case illustrates the sometimes complex situations which can arise when employment practices and pension scheme rules overlap. The definition of ill-health dismissal and the

requirements for ill health retirement under a pension scheme may be asymmetrical. This decision is, therefore, a useful reminder that the test for a fair dismissal on ill health grounds may not be the same as the test for incapacity under the employee's pension scheme. It also illustrates the important role of the USS trustee in protecting the assets of the scheme, which must be weighed against the interests of an employer which wants to support a loyal employee in accessing a valuable benefit.

## April increases

From 6 April 2019, annual increases to statutory payment and compensation limits will take effect.

	Current rate / limit	From 6 April 2019
Maximum limit on a week's pay	£508	<b>£525</b>
Maximum compensatory award for unfair dismissal	£83,682	<b>£86,444</b>
Minimum basic award for certain unfair dismissals (dismissals for reasons of trade union membership or activities, health and safety duties, pension scheme trustee duties or acting as an employee representative or workforce representative)	£6,203	<b>£6,408</b>

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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They are very pragmatic,  
responsive and flexible when  
extra support is needed.

– **Chambers UK 2019**

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