

### **Viewed objectively the employer's conduct inferred a right to enhanced redundancy payments**

In [Peacock Stores v Peregrine, Norman & Matthews](#) the EAT had to consider whether a tribunal had been entitled to find that three former employees were contractually entitled to enhanced redundancy payments when, throughout the period of their employment, contractual redundancy procedures were in place, but there was no written provision stating whether a redundancy payment was to be restricted to the statutory scheme or enhanced in some other way.

The evidence before an Employment Judge (EJ) showed that the consistent practice in a number of redundancies between the 1980s and 2002 had been to make redundancy payments based on statutory terms but without a cap on either years of service or the amount of a weekly wage, and there was some generalised evidence as to the same position between 2002 and 2006. The evidence as to the position between 2006 and 2012 (when the redundancies giving rise to the claims arose) was not so clear cut, and could be said to show an inconsistency of practice.

The test which the EJ had to apply was set out by the Court of Appeal in [Park Cakes Ltd v Shumba and others](#), i.e. whether an employer has, objectively viewed, so conducted himself by word or deed that it is to be inferred that a term has been agreed between the parties. The EJ held that a contractual term that redundancy payments would be made without either cap could be inferred because by 2006 he thought the term to be agreed and nothing since then showed that that term had lawfully been varied. The EAT agreed with the EJ's conclusions. The EJ had been entitled to find that a term giving the right to enhanced payments was to be inferred, there were no circumstances from which the EJ could properly infer that what had been agreed had been superseded and therefore a departure from that term would represent a breach, unless it was varied by agreement.

The EAT's decision highlights that if enhanced redundancy pay is to be discretionary, then that should be made absolutely clear, but even then remembering that where a specific decision is made on each occasion, this is only relevant to the extent that viewed objectively an employee would appreciate that this is the employer's approach.

### **Children and Families Act provides leave for parents in surrogacy arrangements**

In last week's News Update we reported the case of *C. D. v S. T.*, where the ECJ ruled that a receiving mother in a surrogacy arrangement is not entitled to maternity leave under EU law. However, while such leave and pay is not required under EU law, the UK has recognised the 'parental' issues surrounding surrogacy arrangements in the Children and Families Act 2014 which has now received Royal Assent. [S.122 of the Act](#) makes provision for intended parents in surrogacy arrangements, who are entitled and intend to make an application for a parental order under S.54 of the Human Fertilisation and Embryology Act 2008, to be entitled to paternity leave and pay and to adoption leave and pay in respect of the child who is the subject of the order. Provisions are also made for parents in such circumstances to qualify under the new shared parental leave scheme, which the Act will introduce. The provisions are due to come into force in April 2015.

### **Zero hours contracts consultation closes with over 30,000 responses**

The Government's [consultation on zero hours contracts](#) has now closed, having received more than 30,000 responses. The 12 week consultation was launched following a review of evidence on the extent of the use of zero hours contracts conducted in the summer of 2013. The consultation focused on 2 key issues that were raised in the summer review: exclusivity in employment contracts and lack of transparency for employees. The Government will publish its response to the consultation "in due course". In the meantime Business Secretary Vince Cable confirmed that the Government doesn't think that people should be tied exclusively to one employer if it unfairly stops them from boosting their income when they are not getting enough work to earn a living and wants give employees and employers more guidance and advice on their rights and responsibilities around these types of employment contracts.

### **Commission launches consultation on new age discrimination guidance**

The Equality and Human Rights Commission has launched a six-week [consultation](#) on draft guidance covering legislation banning age discrimination against people using public or private services. The Commission has a statutory duty to provide guidance and support to help businesses, public authorities, courts and everyone who needs to understand in depth - or apply in practice - equality legislation. Before publishing a new age supplement to the existing statutory Code of Practice on Services, Public Functions and Associations, the Commission is carrying out this consultation to gather feedback and in particular assess whether compliance will have a cost impact for businesses. The guidance has an impact on employment issues since employees will need to be trained in accordance with the guidance principles to ensure that age discrimination does not take place in the provision of services.

### **Davies report shows that women now account for 20.7% of FTSE100 board positions**

Lord Davies of Abersoch has published the [third annual progress report into Women on Boards](#). Three years on from the Davies' review in 2011, the report shows a growing number of women in decision-making roles. The latest figures show that women now account for 20.7% of board positions in the FTSE100 - up from 12.5% in 2011 and 17.3% in April 2013. In all, women account for 231 of the 1,117 FTSE100 board positions and women account for 28% of all board appointments in 2013/14. Lord Davies originally set a target in 2011 of achieving 25% in 2015. In the FTSE 250 the figures show that women now account for 15.6% of overall board directorships, up from 13.2% in 2013.

#### **Content Note**

*The aim is to provide summary information and comment on the subject areas covered. In particular, where employment tribunal and appellate court cases are reported, the information does not set out all of the facts, the legal arguments presented by the parties and the judgments made in every aspect of the case. Click on the links provided to access full details. Employment law is subject to constant change either by statute or by interpretation by the courts. While every care has been taken in compiling this information, SM&B cannot be held responsible for any errors or omissions. Specialist legal advice must be taken on any legal issues that may arise before embarking upon any formal course of action.*