employment post

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Welcome to the latest issue of *Employment Post*.

Over recent years, much of our most significant employment legislation has come into effect in October, but not this year. October 2013 was originally earmarked for a root and branch reform of TUPE, but instead we can look forward to more gentle pruning of these provisions early in the New Year. However, an exceptionally busy Summer has more than compensated for a quiet Autumn, with a rush of new provisions taking in effect in June and July, followed up on 1 September by the introduction of a brand new employment status, that of employee-shareholder.

Our legislation tracker in the centre pages provides a quick overview of all these changes. We look in more detail at the TUPE changes in our article on pages 8 and 9, which is followed by an evaluation of the likely impact of some of the changes to employment dispute resolution introduced over the Summer.

While there is always plenty to say about new case law, two particular decisions stand out. One is the Supreme Court’s decision involving the holiday pay of airline pilots, which we are beginning to realise may have significant implications for the way holiday pay is calculated under the Working Time Regulations. The other is a decision of the Employment Appeal Tribunal about collective consultation that arose from the collapse of the Woolworths’ chain of stores and which may involve a complete re-think about how multi-site redundancies are handled.

Finally I’d like to mention some recent new appointments. In June we were joined by two new partners: Sara Barrett, who was formerly head of employment at Manchester firm George Davies and James Kidd, who was promoted from associate. In September we welcomed three newly qualified employment solicitors who trained with the firm: Amy Baird, Jessica Kenny and Laura O’Donnell.

I’m also delighted to announce that Martin Brewer, a partner in our Birmingham office, has been appointed as a part-time employment judge. This appointment is a strong endorsement of Martin’s outstanding skills and experience as an employment lawyer and advocate, as well reflecting the quality of the Mills & Reeve’s national employment law practice.
EAT endorses separate regime for additional holiday leave
There is one set of rules in the Working Time Regulations for the core paid holiday entitlement of four weeks, and another for the extra eight days added in 2007.

As far as the core holiday entitlement is concerned, we now know that workers who cannot take their full leave entitlement in the current holiday year are entitled to carry it forward, regardless of whether they have asked their employer to do so in advance. That’s because the provisions of the Working Time Directive overrule the literal wording of the Regulations, which would appear to rule out carrying forward leave under any circumstances.

However, the new rules on additional annual leave permit carrying forward into the following leave year where this is authorised by a relevant agreement – ie, where this is covered by the worker’s contract, or by the terms of a collective agreement. The Employment Appeal Tribunal has now applied an earlier decision of the European Court of Justice on the scope of the Directive, and ruled that the restrictions on carrying forward additional leave must be applied as drafted, since the Directive applies only to the core four week entitlement.

Holiday pay time-bomb: part two
Tribunals are still dealing with cases where workers have been underpaid because they have not been allowed to carry forward holiday entitlement accrued when they were on long-term sick leave. It now appears there may be another holiday pay time bomb waiting to go off, this time in relation to how holiday pay is calculated.

Under the Regulations, holiday pay is calculated using a week’s pay, cross-referencing to the rather convoluted provisions that go back many years and can now be found towards the end of the Employment Rights Act 1996. Until recently, they had been interpreted as excluding non-contractual overtime from the calculation. However, this approach to calculating holiday pay has been challenged in a dispute over very similar regulations covering the airline sector, which reached the Supreme Court last year after a reference to Europe. It ruled that British Airways should have included flight supplements as well as basic pay in its calculation of holiday pay due to its pilots.

The BA decision has recently been applied by an employment tribunal in a more conventional working time setting. It has said that in order to comply with the Directive, an employee’s holiday pay should be based on “normal remuneration”, which would include non-contractual overtime. Subject to any appeal, that means that many employers will need to re-do their holiday pay calculations, and current workers may be able to bring claims for underpayment of wages going back many years.

Will the Government act?
Arguably the reason for much of the uncertainty that employers have been facing over the past 10 years or so goes back the way the Working Time Regulations were drafted, with insufficient thought being given to the fundamental rights created by the underlying Directive. For that reason an overhaul of the Regulations is long overdue, so that they accurately reflect employers’ actual obligations. However, although revised regulations have long been promised, there is still no sign of them as we go to press.
Towards an anti-establishment approach?

Our domestic legislation provides that the obligation to consult collectively arises where an employer “is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less” (emphasis added). The Employment Appeal Tribunal has now reached the surprising conclusion that employment tribunals should ignore the words in italics when hearing claims for protective awards, because their inclusion prevents the legislation from implementing the Collective Redundancies Directive.

Applying the EAT’s approach to the facts of this particular case, which arose from the collapse of the Woolworths chain of stores, it follows that employees at shops with fewer than 20 staff are entitled to a protective award as well as those working at the larger stores. If this decision is followed, employers proposing 20 or more redundancies over the 90 day period will always need to consult collectively, even if the redundancies are spread across a number of different sites and operations.

The argument that the legislation should be interpreted as broadly as possible to protect employees’ rights is not new. In recent years our courts have got a lot bolder in complying with their obligation to interpret our legislation in a way that gives effect to any EU directive it is designed to implement, and this case is the most extreme example of this new trend.

However not everyone agrees that the Directive is clear enough to justify a radical re-writing of our domestic law. An industrial tribunal in Northern Ireland has taken a different approach. Dealing with a very similar factual situation, where a chain of stores collapsed, the tribunal has decided that a reference to the European Court of Justice needs to be made. That’s because it did not believe the corresponding wording in the Directive was completely clear.

The Government, which is ultimately responsible for picking up the bill for the Woolworths protective awards, will be appealing to the Court of Appeal. In the meantime employers are left with considerable uncertainty. An establishment-free test will make a very significant difference to the point at which the obligation to consult collectively is triggered, particularly with large and complex operations spread across a number of sites.

Cake factory dispute ends on sour note for employer

A long-running dispute over the contractual status of redundancy arrangements at a cake factory in Oldham has led to guidance from the Court of Appeal on how tribunals should approach cases about implied contractual terms. Arguments over implied terms crop up in a number of different contexts, but occur particularly frequently where there is a dispute over whether provisions set out relatively informally in a staff handbook are contractually binding.

Like many employers, Park Cakes did not consider itself legally bound to offer its employees enhanced redundancy terms. However, the evidence was that each time redundancies had been declared in recent years, employees had been given enhanced payments, calculated by doubling the statutory multiplier and ignoring the upper limit on a week’s pay. The main question was whether the mere fact that these payments had been made without exception meant that a contractual obligation could be implied.

The short answer was no, but the full picture is a little more subtle. Of course the regularity and consistency of such payments is a powerful sign...
that they are contractual. However the Court of Appeal stressed that it was important not to lose sight of fundamental contractual principles. That meant the key issue was not what the employer intended, but how its actions could reasonably be understood by the employees. It was therefore important to consider how the terms had been communicated and whether the employees were aware that payment was not automatic but a matter of discretion.

Redundancy selection programme too mechanistic

Formulaic calculations were also in issue in a recent EAT decision that strongly criticised a redundancy selection process that had relied heavily on a series of exercises designed for use in recruitment, but which took no account of past performance. The EAT ruled that the employment tribunal had been right to conclude that the two claimants had been unfairly dismissed as a result.

Although attendance and disciplinary records were also taken into account, employees’ performance in a competency assessment designed by the employer’s HR department was the decisive selection criterion. This comprised a written exercise, an interview and a verbal group assessment, all of which were given equal weighting. None of the team conducting the assessments had any experience of working with the individuals being assessed. In evidence before the tribunal, managers accepted that this process had produced surprising results, with some very good workers being selected for redundancy. However they thought that they had adopted “such a fair and transparent process” that they had to accept the outcome.

The EAT was not surprised that the tribunal had thought that blind faith in process had led the employer to lose touch with common sense and fairness. The lesson for employers is that while the goal of avoiding subjectivity and bias is desirable, it can come at too high a price. In most cases it will be appropriate to give at least some weight to the opinions of managers who know the employees’ work best.

Putting zero-hours contracts into play

Amidst calls from the some quarters to abolish zero-hours contracts, there has been a recent decision from the Scottish equivalent of the Court of Appeal looking at the legal implications of moving employees over to these contracts to cut costs.

There is no generally accepted definition of a zero-hours contract, but in this case it appears that the employer was proposing that their workers should be required to make themselves available for work, but without any guaranteed hours. What the employers did not realise was that if their workers accepted this new contract, they would almost certainly lose their employment status. That in turn would mean any dismissal and re-engagement would not only trigger an obligation to make a redundancy payment, but would probably be unfair.

The employer won the appeal but on the narrow ground that the employment tribunal had been wrong to assume that a legal mistake of this nature necessarily made the dismissal unfair. However the case will now be remitted to the employment tribunal, and it would not be surprising if the end result is the same. The main lesson to learn is that employers need to assess not only the commercial advantages of zero-hours contracts, but also their effect on employees’ status. Given that the dividing line between worker and employee status is often hard to discern, this is not always a straightforward question to determine.
<table>
<thead>
<tr>
<th>Estimated/actual date in force</th>
<th>Description</th>
<th>Current position (October 2013)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 February 2013</td>
<td>Increase in employment protection limits</td>
<td>A week’s pay rose from £430 to £450 and the maximum compensatory award increased from £72,300 to £74,200.</td>
</tr>
<tr>
<td>8 March 2013</td>
<td>Parental leave</td>
<td>Implementation of new Parental Leave Directive, which raises the minimum period of parental leave from 13 to 18 weeks.</td>
</tr>
<tr>
<td>6 April 2013</td>
<td>Collective redundancies</td>
<td>Minimum consultation period for large-scale collective redundancies reduced from 90 to 45 days.</td>
</tr>
<tr>
<td>25 June 2013</td>
<td>Whistleblowing</td>
<td>New requirement that disclosures must be in the public interest introduced. Removal of the requirement of “good faith” in making a disclosure. Vicarious liability imposed on employers for acts of victimisation by co-workers.</td>
</tr>
<tr>
<td>25 June 2013</td>
<td>Unfair dismissal</td>
<td>Removal of two year qualifying period where the main reason for dismissal is the employee’s political opinions or affiliations.</td>
</tr>
<tr>
<td>29 July 2013</td>
<td>Tribunal rules</td>
<td>A radical overhaul of employment tribunal rules was implemented. As well as dealing with the introduction of fees, they have been designed to be simpler to use and include new measures to weed out weak claims and defences.</td>
</tr>
<tr>
<td>29 July 2013</td>
<td>Tribunal fees</td>
<td>Fees were introduced for all claims issued in the tribunal, and for certain types of application. There will also be separate hearing fees.</td>
</tr>
<tr>
<td>29 July 2013</td>
<td>Unfair dismissal</td>
<td>New earnings-related cap introduced to compensatory award. New limit is the lower of the existing cap and 52 weeks’ pay.</td>
</tr>
<tr>
<td>29 July 2013</td>
<td>Settlements</td>
<td>New ACAS code on settlement agreements (formerly compromise agreements) came into force, as well as measures to increase the confidentiality of pre-termination discussions.</td>
</tr>
<tr>
<td>1 September 2013</td>
<td>Employee-owner contracts</td>
<td>New employment status introduced, whereby unfair dismissal and redundancy rights can be swapped for at least £2,000 worth of free shares in the employer organisation, attracting certain tax benefits.</td>
</tr>
<tr>
<td>1 October 2013</td>
<td>Equality Act</td>
<td>Repeal of third-party harassment provisions.</td>
</tr>
<tr>
<td>January 2014</td>
<td>TUPE</td>
<td>Transfer of Undertaking Regulations to be amended. Contrary to earlier indications, service provision changes will stay, subject to minor amendments. There will also be a number of other changes, including in relation to collectively agreed terms and TUPE-related redundancy consultation.</td>
</tr>
<tr>
<td>April 2014</td>
<td>Flexible working</td>
<td>Right to request flexible working for all employees with 26 weeks’ service.</td>
</tr>
<tr>
<td>April 2014</td>
<td>Acas conciliation</td>
<td>Mandatory Acas conciliatory process before a claim can be submitted to the tribunal.</td>
</tr>
<tr>
<td>April 2014</td>
<td>Sickness absence</td>
<td>New sickness management rules including a state-funded assessment by occupational health professionals for employees who are off sick for four weeks or more and revised guidance on fit-notes.</td>
</tr>
<tr>
<td>April 2014</td>
<td>Equality Act</td>
<td>Repeal of questionnaire procedure.</td>
</tr>
</tbody>
</table>
## Tribunal fees (from August 2013)

| Type A claims (eg working time/deduction from wages) | £160 (issue) £230 (hearing) |
| Type B claims (eg unfair dismissal/discrimination) | £250 (issue) £950 (hearing) |
| Application to reconsider judgment | £100 (£350 for final type B judgments) |
| Application for dismissal of claim | £60 |
| Employer’s contract claim | £160 |

## Compensation limits (from August 2013)

| A week’s pay | £450 |
| Compensatory award for unfair dismissal | £74,200 or 52 weeks’ pay (uncapped) if lower |
| Basic award for unfair dismissal | £13,500 |

## Costs and deposit orders (from August 2013)

| Maximum deposit order | £1000 |
| Max specific amount order (no limit on assessed costs) | £20,000 |
| Hourly rate for preparation time order | £33 |

## Tribunal statistics (year to 31 March 2012)

| Total number of claims | 186,300 |
| Number of unfair dismissal claims | 46,300 |
| Mean/median award for unfair dismissal | £9,133/£4,560 |
| Number of discrimination claims | 28,550 |
| Mean/median award: race discrimination | £102,259/£5,256 |
| Mean/median award: sex discrimination | £9,940/£6,746 |
| Mean/median award: disability discrimination | £22,183/£8,928 |

## Useful links

| Fees order | www.legislation.gov.uk/uksi/2013/1893/contents/made |
| ACAS | www.acas.org.uk |
TUPE’s steady evolution

Andrew Secker summarises proposals for reform in the context of some recent cases on service provision changes and collective consultation.

A vision for TUPE in 2014

The Government has refreshed its plans for “improving” TUPE. Central is the u-turn in relation to the regulations on service provision changes, originally earmarked for repeal but now described as an example of “good regulation”. First introduced in 2006, this was one of the few areas of the regulations that could have been changed without infringing EU law, which is why the Government originally targeted these provisions as part of its “red tape challenge”. In its recently published response to the consultation on the proposed changes, it says it was persuaded by arguments that these provisions should be kept, since they have promoted certainty for employers as well as conferring additional protection on workers.

That’s not to say that TUPE’s service provision rules will remain completely untouched. One change being made is the inclusion of an express requirement that the service remains “fundamentally or essentially the same” in order to remain within scope. The intention is for the change to be in line with existing case law.

There are also a number of other changes that will apply to both species of TUPE transfer – ie, the “classic” business transfer as well as the newer service provision change. The most topical is an amendment concerning collectively agreed terms, which reflects the room for manoeuvre created by the recent decision of the European Court of Justice in Alemo-Herron. The regulations will be amended to stipulate a “static” approach to collectively agreed terms. This will mean that only those terms agreed at the date of the transfer will bind the transferee: transferred employees will not have the benefit of terms agreed after the transfer as part of the pre-transfer collective bargaining machinery.

Another important change will be to widen the scope of the “ETO” defence, which prevents a transfer-related dismissal being automatically unfair when it is for an “economic, technical or organisational reason entailing changes in the workforce”. Under current case law, a change in the location of the workforce alone can not count as an ETO reason. Transferees can, therefore, be exposed to claims for automatically unfair dismissal even if transferred workers want to relocate. The Government will amend the definition of an ETO reason to make it clear that it also covers changes in location where there are no headcount reductions.

The rules on collective redundancy consultation will also be amended to allow a transferee to start consultation prior to the transfer with the co-operation of the transferor. This often happens informally in any event, but it has been unclear whether this counts towards the minimum consultation period.

This and much more will be contained in regulations the government promises will be laid before Parliament in December. We can therefore expect the new regime to take effect early in the New Year.

What is an organised grouping of employees?

Employees do not transfer under TUPE’s service provision changes unless they from part of an organised grouping of employees whose principal purpose is to carry out the service in question.

There was an important case about the organised grouping requirement last year, involving workers at a meat-packing plant fulfilling orders for supermarkets. The employer, Eddie Stobart, had organised its workforce into day and night shifts in order to meet all of its operational needs, not those of any particular client. When the contract on which the night shift spent most of their time working was lost, the Employment Appeal Tribunal concluded that there had been no service provision change. The night shift had not been organised to work...
on behalf of the client. It was just a by-product of the split between day and night working that the night shift spent most of their time working for one client.

The strict approach exemplified in the Eddie Stobart case has now been taken a stage further in a case involving a Scottish outbound logistics operation. In that case the dispute centered around one employee, Mr Moffat, who worked exclusively for one client, and deliberately so. Other team members worked for multiple clients. No-one else spent more than 30 per cent of their time working for the same client.

The Court of Session ruled that where a team of employees undertake activities on behalf of one client and all of those activities are to transfer, the collective purpose of all team members needs to be assessed. In this case the purpose of the outbound logistics operation was to deal with multiple clients. While Mr Moffat spent all of his time working for one client, it was inappropriate to look at his role in isolation in determining whether the organised grouping condition had been met.

This doesn’t mean that a single employee can’t be an organised grouping in his or her own right. Equally employers can’t assume that employees spending 100 per cent of their time delivering a service for a client will necessarily transfer.

**Who to consult?**

Where there is a relevant transfer under TUPE, a transferor is obliged to inform and, in certain circumstances, consult with appropriate representatives of “affected employees”. Failure to do so can result in claims for protective award of up to 13 weeks pay per affected employee.

The definition of “affected employee” refers to employees affected by the transfer or the measures taken in connection with it. Previous case law says that affected employees can be those who will be or may be transferred, those whose jobs are in jeopardy by reason of the transfer itself, or who have job applications pending at the time of the transfer.

Most recently the EAT has considered this question in the context of a business that comprised two distinct parts but where only one part was transferred. It concluded that the sale of one part of a business did not of itself render those employed in other parts “affected employees”. Here there was no obligation to consult the workers in the part of the business that did not transfer, even though it had become less viable as a result of the sale, since they were not directly affected by the transfer itself.

This is not to say that employees who do not transfer can never be affected employees. Those who spend part of their time working in the business being transferred could be affected employees where the transfer results in the loss of work. A common example is where the transfer of part of a business results in the reduction in work of central support services, such as finance, HR or administration.

The EAT’s decision also confirmed that claimants cannot bring complaints for a breach of the obligation to inform or consult unless a TUPE transfer actually takes place. This is clearly a logical reading of the regulations, but most employers will not wish to use the possibility that a deal may fall through as a reason for failing to start consulting in good time.
ACAS set to promote industrial peace

Jog Hundle draws together some disparate threads on the dispute resolution front.

What’s in a name?
There was a flurry of activity in lawyers’ offices and HR departments across the country as they all got ready for the re-branding of compromise agreements on 29 July. In obedience to our new laws they are now known as settlement agreements. But is that all there is to it? Almost, but not quite.

Compromise/settlement agreements need to comply with a precise list of legal formalities in order to be legally effective to compromise statutory claims. Among them is the somewhat circular obligation to state in the agreement itself that these requirements have been satisfied.

Assuming that the substantive requirements have been met, it is a little unclear whether it matters whether the wording in the agreement refers to compromise agreements instead of settlement agreements or vice versa. Our view is that it is better to be on the safe side and make sure that the right label is used, but apart from that the change in name has made no legal difference at all.

What about pre-termination discussions?
The name change from compromise to settlement was originally planned to signal a new approach to settling employment disputes. In the end all that remains from a much more ambitious set of proposals is a limited extension of the rules governing the confidentiality of discussions about ending the employment relationship.

Under the old rules it was always possible to explore ways of settling an existing dispute under the “without prejudice” rubric. Subject to limited exceptions, evidence of without prejudice negotiations cannot be given if the matter ends up in court.

However in an employment context it is fairly common for an employer to want to explore ending an employment relationship before there is a formal dispute with the employee. Clearly there is no problem if an agreement is reached. However, when opening these discussions, there is always a risk that the employee will use them as the basis for a constructive dismissal claim.

The new rules on pre-termination discussions are designed to address this problem. In effect they extend the without-prejudice rule to cover these discussions, provided the employer has not done anything “improper”.

ACAS has published a new code of practice to help clarify how this requirement is to be interpreted. Ultimately this is a question for the employment tribunal, but clearly bullying and other heavy-handed tactics to secure the employee’s agreement are out. It is also likely to be improper to fail to put the offer in writing and give the employee a reasonable time to consider it.

These new rules extend only to ordinary unfair dismissal claims. If the discussions lead to a claim for automatically unfair dismissal, or indeed any other kind of claim against the employer, then the employer will only have the protection of the traditional without prejudice rule to fall back on. Given this limited degree of protection, it is doubtful how widely employers will take advantage of this new regime.

How about the introduction of fees?
If pre-termination discussions are not going to make a big difference, will the introduction of fees lead to a reduction in the number of disputes reaching the tribunal? The Government’s decision to set the combined issue and hearing fee for unfair dismissal, discrimination and other similar claims at over £1000 will undoubtedly give potential claimants pause for thought. However, it is not clear whether the introduction of fees will necessarily lead to a measurable drop in claims.

Claimants who have strong claims (or who believe they have) will be tempted to borrow the money, or enter into a no win no fee agreement with a provider.
who will offer up-front funding. Unions and legal expenses insurers are also likely to offer funding solutions if the claim has merit and value.

Employers will also be aware that once the fees have been incurred, claimants are likely to want them reimbursed as part of any settlement. Their hands are strengthened by a new rule that will give tribunals the power to order respondents to reimburse the winner’s tribunal’s fees, even if they have not behaved unreasonably in defending the case. In some circumstances the new fees factor could make it harder, not easier, to settle claims.

The bigger picture: pre issue conciliation

Many consider that while nothing that has been introduced so far will be a game-changer, the same cannot be said of the ambitious plans to introduce compulsory pre-issue conciliation through ACAS. This new regime is likely to be introduced in April 2014.

Based on what has been published about the proposals so far, the Government appears to have learnt from the ill-fated statutory dispute resolution procedures, which were introduced in 2004 only to be repealed in 2009. The new proposals will require all potential claimants to notify their claim to ACAS before proceeding in the tribunal.

Registration will involve lodging a simple form that will not require any details of the claim to be given, unlike the compulsory pre-issue grievance required under the old dispute resolution rules. Initially, the form will trigger a call from ACAS to enquire whether the claimant would like to explore conciliation. If the claimant says no, that will be the end of the matter.

Where both parties have agreed to participate, a conciliation officer will generally have a fixed period of a month to promote a settlement. The time limit for bringing proceedings will be frozen from the point that details are lodged with ACAS until the issue of an early conciliation certificate from ACAS marks the end of the process, whether it succeeds in a concluded settlement, or cannot be progressed any further.

As a result of these new measures all claimants will be given, at the very least, an opportunity to explore a settlement without having actively to seek out ACAS. Similarly, all respondents can be sure of a phone call if the claimant has indicated that they are open to exploring settlement. Assuming these promises can be delivered, this is likely to be a considerable improvement on the current situation.

The ACAS conciliation role will continue post-issue. However, given the greater emphasis on their role before proceedings are issued, the existing wide-ranging duty to promote a settlement in these circumstances will be down-graded. It will be engaged only if either party requests the involvement of ACAS, or if the officer considers that there are reasonable prospects of reaching a settlement.
Zeroing in on zero-hours contracts

A head of steam is building up for doing something about zero-hours contracts. However, there is no consensus about what they are, let alone what to do about them. One idea would be to make certain more one-sided terms unenforceable, particularly those which tie a worker to one employer without any guarantee of work. This appears to be where the Labour party is going, judging by Ed Miliband’s speech at the Lib-Dem conference, with the announcement of a consultation about how to tackle abuse of these contracts.

The Zero Hours Contracts Bill 2013, which will receive its second reading in the New Year, is likely to adopt the more radical approach of abolishing these contracts entirely. As a private member’s bill, it has little chance of becoming law, but it might provide an opportunity to flush out the Government’s final position on these contracts.

You’re fired!

Recent reports in the press about termination payments, most recently about the BBC, appear to overlook the fact that few employees who are summarily dismissed are likely to agree to go quietly just for their notice pay. They will expect to receive something in return for signing away their right to claim unfair dismissal and other statutory rights, even though any notice pay would normally be set off against the compensatory award. If anything employees’ hands have been strengthened by a recent decision of the Supreme Court that says that a summary dismissal in breach of contract is not effective to end the contract if the employee chooses to affirm it.

Who needs employee-shareholders?

The new employee-shareholder status, which was brought into effect on 1 September, offers the possibility of by-passing unfair dismissal rights altogether. The initial response to these new contracts has been far from overwhelming. However, although originally designed for smaller start up companies, it is beginning to emerge that they might also be used for senior executives in larger, more established organisations. It would then be possible to dismiss them for just their notice pay, which might make the allotment of £2,000 worth of shares, plus all the rather troublesome paperwork, a price worth paying for higher earners who could potentially qualify for the maximum compensatory award of nearly £75,000.

A legal debut for Linked-In

It’s not news any more for postings on Facebook to be scrutinised as part of the recruitment process, or to feature in disciplinary hearings. What is new is for the management of social networking sites to be an issue when an employment relationship ends. This was first considered in a case over the Summer, when a former employer was granted an interim injunction to regain control – at least temporarily – of Linked-In accounts managed by a departing employee in her own name, but effectively as part of her employment duties. This case only begins to answer the difficult legal issues which arise from untangling workplace and private use of social media sites.