

IN FOCUS

Nothing but the truth

The importance of ensuring an even-handed investigation into allegations of misconduct has been highlighted in a recent Court of Appeal decision. In *Salford Royal NHS Foundation Trust v Roldan*, the Court of Appeal made it clear that when assessing the reasonableness of an investigation, tribunals should take into account the gravity of the consequences for the employee. Where the consequences are serious (in this case, the employee lost the right to remain in the UK), the investigator must look for evidence in favour of the accused as well as evidence against them.

In this case, a nurse was alleged to have abused a patient, and a colleague claimed to have witnessed the event. The employer was criticised by the tribunal because they had not in any way sought to question the reliability of the evidence of the witness when in fact some elements of that evidence needed further enquiries and other employees should have been questioned.

Therefore, employers should note that:

- the more serious the consequences of dismissal for an



employee, the more careful the investigation should be; and

- where there is a conflict of evidence it is not always necessary to decide to believe one person and not the other. The difference could be merely one of perception and both parties are telling the truth as they see it. Alternatively, it is possible to decide that the conflict cannot be resolved and the accused should be given the benefit of the doubt.

All bar one

The Vetting and Barring Scheme, mentioned in the Winter edition of In Focus, has been halted and will be fundamentally remodelled.

In particular, the requirement for individuals working with children or vulnerable adults to register with the Independent Safeguarding Authority (ISA), which was due to begin with voluntary registration from 26 July 2010, will no longer come into effect.

The Vetting and Barring Scheme had received a lot of criticism and the new Government intends to create a more workable system. However, whilst registration with the ISA

has been halted, some other aspects of the scheme that remain in place are:

- the two barred lists, one for children and one for vulnerable adults, will continue to be maintained by the ISA;
- it will continue to be a criminal offence to employ barred individuals;
- the duty to refer information to the ISA (e.g. about emotional or physical harm or risk of harm) will continue to apply.

Here comes the bribe

The Bribery Act was due to come into force in October 2010 but has now been delayed until April 2011. It will have wide reaching implications for employers. A new corporate offence will be introduced and all businesses should ensure that they review existing procedures and put into place

adequate anti-corruption measures to avoid potential liability. More information is available in our briefing at http://www.burges-salmon.com/news/The_Bribery_Act_2010.pdf

Visit our website at www.burges-salmon.com

Welcome

Welcome to the summer edition of **In Focus**, our quarterly update keeping you informed of the latest developments in employment law.

For further information on employment issues, please email chris.seaton@burges-salmon.com

Green issue

In future we intend to distribute our publications by email to reduce our environmental impact. This also has the advantage of eliminating the delay in printing and posting.

For some of you this will be the first time that you have received one of our publications by email. If it is, we hope you agree with our policy.

If you have received this newsletter by post, please let us have an email address for future mailings.

To contact us with your email address or if you have a particular need to continue to receive a copy by post, please email marketing@burges-salmon.com or write to Jayne Taylor at our Bristol address over the page.



Over the limit

The Home Secretary has announced that a new limit will be imposed to control the number of workers entering the UK from outside the EU. It is intended that net migration will be scaled back to tens of thousands rather than hundreds of thousands. Consultation on the details of how this will be achieved will take place until 17 September 2010, with the intention that permanent limits will be put into place by 1 April 2011.

To avoid a large number of applications between now and April next year, the Government has decided to impose an

interim limit with effect from 19 July 2010 to ensure that the number of visas issued under Tiers 1 and 2 of the points-based system are below that issued in 2009. These changes may have a significant effect on the number of skilled workers from overseas that you can employ. More details of the proposals and the consultation document are available from www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/limits-on-non-eu-migration/

All aboard!

A revised UK Corporate Governance Code has been published by the Financial Reporting Council and will apply to Official List companies with a premium listing, for accounting periods beginning on or after 29 June 2010. The new Code will also be of interest to companies listed on AIM or the plus quoted market.

Of particular interest, in an HR/employment context, are the changes related to best practice for executive remuneration and executive accountability. The Code also addresses the issue of diversity, in particular the lack of women in boardrooms, by stating that appointments to the board, whilst based on merit, should take account of the benefits of diversity, including gender.



More details about the Code are available in our briefing at www.burges-salmon.com/Practices/corporate/Publications/New_UK_Corporate_Governance_Code.pdf

What's new?

The new Government has stated that it plans to "review employment and workplace laws, for employers and employees, to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for enterprise to thrive".

We set out some areas of employment law where employers are likely to see change in our email alert 'How do the new Government's plans affect employers?' which is available at http://www.burges-salmon.com/practices/employment/news/news_item.aspx?id=8305

Seminars

Our annual seminar programme is due to start slightly earlier than usual, in September. More details are available at

<http://www.burges-salmon.com/seminars/default.aspx>

News in brief

- The Government Equalities Office and ACAS have issued some guides for employers on the aspects of the Equality Act that are due to come into force in October. These guides are available from <http://www.equalities.gov.uk/default.aspx?page=1631>. We will be discussing what the Equality Act means for employers at our seminar in September.
- In the Budget, the Government confirmed that it will phase out the default retirement age of 65 starting from April 2011. Consultation will begin shortly on how quickly it will remove the default retirement age.
- The Government intends to extend the right to request flexible working to all employees and will soon begin consultation on how best to do so.
- A leading economist, Will Hutton, has been commissioned to conduct an independent review of fair pay in the public sector. This review will investigate pay scales across the public sector and make recommendations on how to ensure that no public sector manager can earn more than 20 times than the lowest paid person in their organisation. An interim report will be produced in the Autumn with a final report due in March 2011.

In the office

We are delighted to announce that our employment team was awarded third place in the Employment Team of the Year category at the Lawyer Awards 2010. This was the second time that we had been shortlisted for this award in the last four years.

Welcome to **Frank Morton** who joined our employment team as a consultant in June. Frank brings considerable experience with a particular focus on financial services. He will continue to work with Heather McNeice, who is an employment law specialist now based in Australia, providing UK and multi-national companies with a 24/7 employment law service.

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