

The King's Speech triggers the start of the Labour Government's workplace law reforms

The King's Speech was delivered in Parliament on 17 July 2024, setting out the Labour Government's legislative agenda. The speech promised that two new pieces of employment legislation will be introduced: an Employment Rights Bill and an Equality (Race and Disability) Bill.

Although the draft Bills have not yet been published, the background briefing notes to the King's Speech suggest that they will take forward many of the Labour Government's Manifesto promises on workplace law reform.

The Employment Rights Bill

This Bill will deliver the following manifesto promises:

- **Banning exploitative zero-hour contracts** and ensuring that workers have a right to a contract that reflects the number of hours they regularly work and that all workers get reasonable notice of any changes in shifts with proportionate compensation for any late cancellations or changes.
- **Ending 'Fire and Rehire'** by reforming the law to provide

effective remedies and replacing the previous Government's statutory Code of Practice on Dismissal and Re-engagement (which came into force on 18 July 2024).

- **Making parental leave, sick pay and protection from unfair dismissal available from day 1 on the job**, but with employers permitted to operate probationary periods to assess new hires. We discussed the impact of making unfair dismissal a Day 1 right in our briefing [here](#).
- **Strengthening Statutory Sick Pay** by removing the lower earnings limit to make it available to all workers and removing the waiting period.
- **Making flexible working the default from day 1 on the job**, with employers required to accommodate this as far as is reasonable.
- **Strengthening protections for new mothers by making it unlawful to dismiss a woman who has had a baby** for six months after her return to work, except in specific circumstances.
- **Establishing a new Single Enforcement Body**, also known as a "Fair Work Agency", to strengthen enforcement of workplace rights.
- **Establishing a Fair Pay Agreement in the adult social care sector** and, following review, assess how, and to what extent, such agreements could benefit other sectors.
- **Reinstating the School Support Staff Negotiating Body**, to establish national terms and conditions, career

progression routes, and fair pay rates.

- **Updating trade union legislation** by removing restrictions on trade union activity – including the previous Government’s approach to minimum service levels – and ensuring industrial relations are based around good faith negotiation and bargaining.
- **Simplifying the process of statutory recognition** and introducing a regulated route to ensure workers and union members have a reasonable right to access a union within workplaces.

The Equality (Race and Disability) Bill

This Bill will deliver the following manifesto promises:

- **Enshrining in law the full right to equal pay for ethnic minorities and disabled people**, making it easier for them to bring unequal pay claims. We discussed the potential impact of these new equal pay rights in our briefing [here](#).
- **Introducing mandatory ethnicity and disability pay reporting for larger employers** (i.e. those with 250+ employees).

What's missing?

Although ambitious in scope, many of Labour's promises for workplace law reform are missing from these two Bills. In some cases, this is because the nature and impact of the proposals needs to be explored in greater depth (e.g. by way of a "call for evidence" and public consultation) before setting them out in legislation. For example, the proposals to introduce a single worker status and a right for workers to disconnect outside their normal working hours.

In contrast, other proposals may be taken forward by way of secondary legislation (i.e. a statutory instrument) and do not need to be included in a new Act of Parliament. For example, the dual discrimination provisions and public sector socio-economic duty provisions are already contained in the Equality Act 2010 and just need to be enacted. It is possible that other proposals which require relatively minor drafting changes to existing legislation could also be taken forward by way of secondary legislation. For example, the proposals to require employers to publish gender pay gap action plans and to increase the time limits in statutory employment claims from three to six months.

It remains to be seen how, and when, other proposals will be taken forward, including plans to:

- strengthen the new duty to prevent sexual harassment and introduce protection from third party harassment;
- change equal pay law to permit comparisons with outsourced workers and introduce a new enforcement unit;

- regulate the surveillance of employees;
- introduce a right to bereavement leave;
- strengthen the law on whistleblowing and TUPE;
- require employers to publish “menopause action plans”;
and
- change the trigger for collective redundancy
consultation.

Next steps?

Labour promised to introduce legislation on workplace law reform within 100 days of coming into power, meaning drafts of the two Bills should be published on or before 12 October 2024. We will produce a further update once the draft Bills are available.

In the meantime, if you would like a refresher on Labour’s plans for employment law, you can revisit our webinar from last month [here](#).

[The King’s Speech 2024](#)

[The King’s Speech 2024 – Background Briefing Notes](#)

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Gross misconduct dismissal of City trader who had applied industry guidance was unfair

In *Weir v Citigroup Global Markets Ltd*, an Employment Tribunal has held that the dismissal of a City trader for misleading the financial markets was unfair because he had been operating in line with industry guidance and his managers knew of his approach. Further, the employer's lengthy disciplinary process was unacceptable, unreasonable and caused significant stress and worry to the employee.

What happened in this case?

Mr Weir worked for Citigroup as a Sales Trader on its Asia-Pacific High Touch trading desk (the **APAC desk**) in London. His role involved providing professional and large-scale investors with market updates, trade ideas and sourcing buy and sell trade ideas in relevant stock. Part of his role involved the identification and publication of "indications of interest" (**IOIs**). IOIs are indications that a client has an

interest in buying or selling particular stock in a particular quantity. The IOIs are published on Bloomberg's financial trading platform with the aim of attracting a counterparty.

Following a regulatory investigation into the activities of the Hong Kong office, Citigroup reviewed the practices of the APAC desk in London. As a result, disciplinary allegations were raised against Mr Weir, chiefly, that he had misled the financial market by publishing certain IOIs without a genuine client interest and that he had failed to tell his line manager that he knew or suspected that misleading IOIs were being published.

Mr Weir maintained that the methodology he used meant that the IOIs he published were supported by a "reasonable expectation of interest" from specific clients, drawn from his own knowledge and experience of those clients and orders already in progress. Mr Weir argued that his approach was in line with industry-wide guidance in place at the time and Citigroup had not provided any training on IOIs, nor issued any internal policy or guidance to the contrary.

After an extremely lengthy investigation and disciplinary process spanning more than two years, Mr Weir was summarily dismissed for gross misconduct. His appeal against his dismissal was rejected. Mr Weir claimed he had been unfairly dismissed.

What was decided?

The Employment Tribunal upheld Mr Weir's unfair dismissal claim. Although Citigroup genuinely believed that Mr Weir had

committed acts of misconduct, the Tribunal found that it did not have reasonable grounds for this belief.

As to the allegation that he had published IOIs without a genuine client interest, the Tribunal held that Mr Weir had acted properly in following industry guidance on IOIs at the time, which required the existence of a reasonable expectation of client interest. Further, the methodology Mr Weir had used was legitimate and ensured that there was a reasonable expectation of client interest. The Disciplinary Committee had failed to grapple with the methodology he had used in full. Further, they had misunderstood the industry guidance or, alternatively, had *“unreasonably and unwarrantedly”* sought to apply a higher standard of genuine client interest, something which had never been communicated to Mr Weir.

As to the allegation that he had failed to tell his line manager what was happening, the Tribunal held that it was unreasonable to find that this amounted to misconduct given that Mr Weir had believed he was behaving appropriately and in line with industry guidance. Further, it was unreasonable in light of the fact that Mr Weir’s “matrix” managers based in Hong Kong had been aware of the methodology being used by the APAC desk. Mr Weir’s direct line manager in London conceded that she did not know which matters needed to be reported to matrix managers and which to line managers, since no formal policy or guidance on this matter had ever been issued by Citigroup.

The Tribunal also held that Citigroup had failed to carry out a reasonable investigation. The process started in September 2019, when Mr Weir was given just two minutes’ notice of an initial “fact-finding” meeting. There was a hiatus until March 2020, when Mr Weir was invited to a same-day

investigation meeting. Seven people attended the meeting on behalf of Citigroup, which spanned two days. Mr Weir was questioned for over 10 hours, on top of his usual workload. The Tribunal was critical about this stage of the process, noting that it was an *"...unreasonable way of conducting an investigation and (Citigroup) demonstrated inadequate regard for the likely impact upon (Mr Weir)"*. The Tribunal said that it was inevitable that a panel interview carried out in such an intensive manner and over a consecutive two-day period would feel hostile and make it more difficult for Mr Weir to explain his actions.

At end of investigation meeting, Mr Weir was told that the investigation process would be completed by the end of March 2020, however, this was not the case. Again, there was a hiatus. Between March and November 2020, Mr Weir asked for updates about the process and was repeatedly told that a resolution was "coming soon". The Tribunal found that the investigation process and lack of information had caused Mr Weir's mental health to deteriorate, leading him to go off sick with work-related stress. By February 2021, Mr Weir felt better and asked to return to work on a phased basis. Citigroup responded the next day by suspending him and notifying him that a decision had been taken to pursue disciplinary proceedings against him.

The Tribunal had this to say about the investigation process: *"The length of time taken to complete the investigation was unacceptable and unreasonable, causing significant stress and worry for (Mr Weir)"*. They also firmly rejected Citigroup's explanation that Covid had contributed to the delays noting that: *"We do not find it credible that a global organisation such as (Citigroup) with all its human and technical resources, was unable to progress the...situation in a timely manner or respond to...requests for updates in an*

accurate or timely manner”.

The disciplinary process eventually began in April 2021. Before the disciplinary hearing took place, the in-house lawyer who had led the investigation met with the Disciplinary Committee and inaccurately represented Mr Weir's position on the disciplinary allegations. The disciplinary hearing took place on 7 April 2021. The Disciplinary Committee was made up of a four-person panel, contrary to the terms of the Disciplinary Policy that had been given to Mr Weir (which said that two people would attend from Citigroup). The hearing lasted for 90 minutes and focussed on one allegation, which was ultimately not upheld. The hearing was adjourned and reconvened a few days later. It was at this second hearing that the two allegations which went on to be upheld were discussed. That hearing lasted for just 30 minutes.

After the hearing, one of Citigroup's Employee Relations specialists was tasked with undertaking further investigations on a particular issue. She met with Mr Weir on 21 April 2021, but used the incorrect "script template", with the result that she told him the meeting was a further disciplinary hearing, rather than an investigatory meeting. At the meeting, she failed to probe the particular issue in any detail and later misrepresented Mr Weir's position to the Disciplinary Committee (suggesting he had been definitive when, in fact, he had been equivocal). Mr Weir was dismissed for gross misconduct on 10 June 2021.

An appeal hearing took place on 2 September 2021 but was adjourned for over four months before reconvening on 22 January 2022. On 16 February 2022, the appeal officer upheld the Disciplinary Committee's decision to dismiss. Yet the

Tribunal held that the appeal conclusion was at odds with what had been said in the dismissal letter, reached conclusions that were unsupported by evidence and demonstrated an acceptance of the in-house lawyer's inaccurate representations of Mr Weir's position (despite the fact that minutes of meetings which had been available to the appeal officer showed Mr Weir's true and consistent position).

The compensation to be awarded to Mr Weir is yet to be decided. However, the Tribunal held that Mr Weir had complied with industry guidance and had been co-operative throughout the investigation and disciplinary process. Therefore, it could not be said that his conduct had contributed his dismissal, meaning there will be no reduction in his compensation. Nor was there any prospect that Mr Weir would have been dismissed fairly had Citigroup conducted the process in a reasonable manner, again, meaning there will be no reduction to his compensation.

What are the learning points for employers?

This decision underlines the importance of employers not allowing disciplinary decisions to be clouded by wider external events, such as regulatory censure. The evidence must be assessed objectively, and employers should look for and consider evidence which supports the employee's position, and not focus only on evidence which would support the issuing of a disciplinary sanction. This is all the more important where the employee stands to lose their job (and, in regulated professions, potentially their career).

It also illustrates the importance of keeping internal policies and practices under review to ensure that they comply

with the law and any regulatory rules and expectations. Such policies and practices should be set down in writing, communicated to staff and training offered as appropriate. Failing to stay on top of this and simply hoping for the best may mean your hands are tied when it comes to disciplinary action later down the line. As seen in this case, trying to change the rules after the event will not justify a disciplinary sanction.

Crucially, this decision reminds employers of the importance of getting the investigation and disciplinary process right. As seen here, Tribunals will have little patience for employers who have plenty of expertise and resources at their disposal but get things wrong. The key takeaways from this case are:

- **Deal with the issues promptly and without unreasonable delay.** This is a core principle set down in the statutory Acas Code of Practice. To the extent that there is a legitimate delay, tell the employee the reason for it and be clear about when the process will resume. And be prepared to “think outside the box” – could the process be accelerated in a different way? For example, by way of a virtual meeting, conference call, or by allowing the employee to make written representations.
- **Know your own policies and procedures and apply them correctly.** This may seem like an obvious point, but this case demonstrates how even an extremely well-

resourced employer can get it wrong. Make sure meetings are labelled accurately and are convened in the right way. Be mindful just how stressful the situation is for the employee. Where appropriate, be flexible about the process, for example, allow the employee to be accompanied by a friend or family member.

- **Conduct the meetings in a reasonable manner.** Give reasonable notice of meetings and keep them to a sensible length. Equally, don't rush through important meetings. The best approach is to try to agree the length of the meeting with employee in advance but, again, stay flexible. If the employee is upset, offer to take a break or adjourn to another day. Do not turn up to meetings "mob-handed" since this is quite likely to intimidate the employee and have a negative impact on their evidence.

- **Make sure all parties involved in the process understand the scope of their role.** Investigators are there to gather evidence in an even-handed way and report it neutrally to the disciplinary panel. It is not their role to construe the information in a certain way or lobby for a particular disciplinary outcome. The decision on outcome is for the disciplinary and appeal panels. Those decision-makers should weigh up the evidence carefully and take care not to adopt a broad-brush approach in order to get to a desired outcome.

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Maternity leave and redundancy: the risks of assuming an internal reorganisation justifies a redundancy dismissal.

An internal reorganisation which led to an employee's part-time role being subsumed within a broader full-time role did not necessarily mean the role was redundant. Given that the employee was on maternity leave, if the role was not redundant, it raised the prospect that the process was a sham motivated by the maternity leave.

What happened in this case?

Ms Ballerino began working for The Racecourse Association as a part-time Financial Accountant in August 2018. She was

engaged to work from home for 40 days per year, although she felt that the role really needed her to work more than double that amount. The employer agreed to review the role when a new Chief Executive was in post the following year. As Ms Ballerino was pregnant when she started employment, she began a period of maternity leave in December 2018.

In February 2019, the new Chief Executive, Mr Armstrong, came on board. He undertook a review of the business and decided that a new full-time, office-based role of "Finance Manager and Business Analyst" should be created. The new role would subsume Ms Ballerino's duties. In late June 2019, two candidates attended second-round interviews for the new role.

Around the same time, the employer contacted Ms Ballerino (who was on maternity leave) to inform her that she was at risk of redundancy because of the decision to amalgamate her duties within the Finance Manager and Business Analyst role. She was provided with a job description for the new role and invited to apply for it, but, at the same time, was given a draft settlement agreement governing the terms of her exit from the business. Ms Ballerino did not apply for the new role and, after settlement negotiations had broken down, she was dismissed.

Ms Ballerino claimed that the redundancy process was a sham designed to exit her from the business because of her maternity leave or sex. In the alternative, she argued that if there had been a genuine redundancy situation, the dismissal was automatically unfair because the employer had failed to allocate the new role to her, which it should have done given that it was (she said) a suitable alternative vacancy and she had been on maternity leave at the time.

The Employment Tribunal rejected the discrimination claims, finding that there was an acceptable business reason for the reorganisation and the redundancy was not a sham. It also rejected the automatic unfair dismissal claim, finding that the new role was not a suitable alternative vacancy because its main focus was on business analysis rather than financial accounting. Further, it was a full-time, office-based role rather than a part-time, home-based role. As such, the employer had not been obliged to offer it to her ahead of other potential candidates.

Ms Ballerino appealed to the Employment Appeal Tribunal.

What was decided?

The EAT upheld the appeal.

On the automatic unfair dismissal claim, the Employment Tribunal had formed the impression that there was a genuine redundancy situation and had then jumped straight to the question of whether the new role was a suitable alternative vacancy. Yet, the Tribunal had failed to interrogate the legal question of whether the employer's need for employees to carry out financial accounting work had, in fact, ceased or diminished or was expected to do so. Although that short-cut may be permissible in some situations, that was not the case here. Ms Ballerino's role was still relatively new and there had been a debate about how many working hours the role really required. In these circumstances, the fact there was some internal reorganisation and a need for additional tasks to be performed, did not necessarily mean that her role was no longer required.

On the discrimination claims, the Employment Tribunal had accepted the employer's explanation for the dismissal at face value i.e. that she was redundant. However, this decision was problematic because the Tribunal had not properly scrutinised the question of whether her role was, in fact, redundant. That question needed to be answered – because if her role was *not* redundant then this would bolster her argument that the dismissal was a sham.

The case has been remitted to the Employment Tribunal to examine the question of whether the role was genuinely redundant.

What are the learning points for employers?

This decision reminds employers (and Employment Tribunals) of the need not to make assumptions in business reorganisations. Expanding a role in terms of hours and/or duties does not necessarily mean that the requirement for the original duties has ceased or diminished. This is particularly so where the original role is relatively new, fluid and subject to review, as was the case here.

In internal reorganisation situations, the best advice for employers is to take care to undertake the necessary groundwork. Create a job specification for the new role setting out its scope and duties in full. This is especially important where duties are to be reallocated from existing roles to a new role. Having proper documentation in place helps to overcome suggestions that the whole exercise is a sham designed to exit specific employees. Ensure that appropriate redundancy consultation is undertaken, and that careful consideration is given to whether any new role amounts

to a suitable alternative vacancy for a woman on maternity leave, who will have priority for such vacancies (as do certain other employees). If an employee who has priority is denied such a role, they may be able to claim that they have been automatically unfairly dismissed and/or they have suffered pregnancy and maternity or sex discrimination.

[Ballerino v The Racecourse Association Ltd](#)

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Trainee solicitor left unsupervised and given the workload of two qualified lawyers was unfairly dismissed for blowing the whistle

A Tribunal has ruled that a trainee solicitor left unsupervised in a chaotic working environment was unfairly

dismissed for blowing the whistle on the way the firm was run. Although she only had ten months' service, she was able to claim automatic unfair dismissal and was awarded over £36,000 compensation.

What happened in this case?

Ms Kaur was employed as a trainee solicitor by Gillen De Alwis Solicitors (**the firm**). Before she even started work, the firm began to hand case files over to her to work on. Upon starting employment, she received no meaningful induction. The day after she started, Ms De Alwis, one of the founding partners of the firm, handed over to her the caseload of two qualified lawyers. During her first few weeks of employment, Ms De Alwis put pressure on Ms Kaur to complete tasks, despite the fact that she had sustained a back injury and was in pain. Ms Kaur was told that her training contract would be in jeopardy if she did not get things done.

Ms Kaur's back injury caused her to take sick leave between 19 July and 24 September 2021. During her sickness absence the firm required her to carry out work in order to be paid Statutory Sick Pay. She was not paid her normal salary for the time that she worked. When she returned to work, the department was still operating in a chaotic manner. There was no appropriate management or supervision and Ms Kaur and an intern were frequently left unsupervised to deal with matters and approve contracts without them being checked by a qualified lawyer.

After her return to work, Ms Kaur was also subjected to bullying and harassing treatment. She was criticised for not completing work which she had, in fact, completed. She was

unreasonably blamed for delays on client matters. She was screamed at on the telephone and spoken to in a belittling, rude and insulting way. She was also moved between departments with no notice.

Ms Kaur raised her concerns about the way the practice was being run to senior colleagues and partners within the firm on numerous occasions between October 2021 and February 2022. She also contacted the Solicitor's Regulatory Authority (**SRA**) by telephone on three occasions and eventually made a written report to them. In early March, Ms Kaur told the firm's newly appointed HR manager that she wished to raise a formal grievance and that she was considering raising the matter with the SRA (when, in fact, she already had). Around the same time, Ms Kaur saw a doctor in relation to work-related stress and anxiety and went on to take two weeks' sick leave.

She submitted a grievance on 11 March 2022 but received no response. She submitted a data subject access request on 5 April 2022. Three days later, she was summarily dismissed without any investigation or disciplinary procedure having been followed. Various reasons were given including that she had failed to follow reasonable instructions and was incapable of being trained or meeting the practice skill standards. Ms Kaur claimed that she had been automatically unfairly dismissed for blowing the whistle. The firm went into voluntary liquidation at the end of 2023.

What was decided?

The Employment Tribunal found Ms Kaur to be committed to her profession and an intelligent and diligent person. She had

not been given proper training or supervision and had been held to an unreasonably high standard. It found that any failures in the service provided to clients were primarily down to the firm's failure to manage its practice appropriately or to train and supervise its staff. The Tribunal concluded that Ms Kaur had not been guilty of gross misconduct entitling the firm to summarily dismiss her.

The Tribunal went on to find that the disclosures that Ms Kaur had made amounted to protected disclosures. They contained information and Ms Kaur reasonably believed that they tended to show that the firm was in breach of its duties (in particular, certain sections of the SRA's Code of Conduct for Solicitors). She also reasonably believed that it was in the public interest to raise these matters. In particular, she was concerned about the negative impact on clients of the firm who were receiving a poor service.

Having found that she had made protected disclosures, the question was whether they were the principal reason for her dismissal. In light of the fact that the firm did not carry out an investigation or disciplinary process, and the finding that Ms Kaur was not guilty of misconduct, the Tribunal drew an inference that the firm did not genuinely consider this to be a misconduct case. Coupled with the timing of the dismissal, the Tribunal was satisfied that it was more likely than not that the real reason for the dismissal was the protected disclosures.

The Tribunal awarded compensation of £36,062, which included an uplift to compensation of 25% to reflect the firm's "complete failure" to comply with the Acas Code of Practice on disciplinary and grievance procedures. The compensation award was relatively low as a result of the fact that the firm went

into voluntary liquidation, meaning Ms Kaur's employment would have come to an end around that time in any event.

What are the learning points?

Whilst the facts of this case are at the more extreme end of the scale, it does demonstrate the need for employers to have effective practices for managing and supervising junior staff in place, including inductions, workload management and day to day supervision. A failure to do is likely to generate a stressful working environment, leading to disengagement, sickness absence and employment claims. Here, the claimant was able to rely on breaches of a regulatory code in order to qualify as a whistleblower. However, non-regulated employees could argue that an unmanageable and chaotic working environment and/or bullying endangers the health and safety of staff, and this may well be enough to get them over the hurdle of qualifying as whistleblower.

The decision also underlines the need for employers to follow proper dismissal procedures for new staff in appropriate cases. Here, the claimant had under two years' service and so could not bring an ordinary unfair dismissal claim. As a result, it appears that the firm dispensed with any form of investigation or disciplinary procedure prior to dismissal and ignored the minimum requirements in the Acas Code. However, the firm failed to spot that the claimant had unlocked the door to bring an "automatic" unfair dismissal claim as a whistleblower – a claim which may be brought from Day 1 of employment. Employers wishing to dismiss employees with under two years' service should always check that there are no aggravating factors present which may mean the employee could still bring claims about the dismissal. It should also be remembered that the new Labour Government has indicated that

it plans to remove the two-year service requirement for unfair dismissal claims. If this happens, proper dismissal procedures will need to be followed in every case.

Although it is unlikely that the claimant will ever recover her compensation, the outcome of this case is still extremely valuable to her. She gave evidence to the Tribunal that the stigma of having been dismissed directly contributed to her being turned down for employment. This decision means she may now say that she was unfairly dismissed, and, indeed, that she was commended by the Tribunal for her professionalism and ability.

[Kaur v Gillen De Alwis Solicitors Ltd \(in Creditor's Voluntary Liquidation\)](#)

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