

The BDBF Podcast: Lessons from history – 1997 vs 2027

Can Blair's 1997 employment law reforms help the sector prepare for the seismic changes coming with the Employment Rights Act?

In this episode of The BDBF Podcast, Managing Associate [Tom McLaughlin](#) sits down with Managing Partner [Gareth Brahams](#) to explore the striking parallels between Tony Blair's early employment reforms and the major shifts on the horizon.

Drawing on over three decades at the forefront of employment law, Gareth connects the dots between the reduction in unfair dismissal qualifying periods, rising compensation limits, the introduction of the Working Time Regulations and what these historical moves reveal about the road ahead

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Lessons from history - 1997 vs 2027



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**High Court considers legal
advice privilege regarding
intra-client communications**

In [Aabar Holdings SARL v Glencore plc \[2026\] EWHC 877 \(Comm\)](#)

the High Court found that legal advice privilege can apply to communications between internal members of the 'client' group where they are sent or created for the dominant purpose of seeking legal advice.

How does legal advice privilege work, and what is the 'client' group?

Legal advice privilege applies to communications between client and their lawyer which are made for the dominant purpose of receiving legal advice.

Under the landmark Court of Appeal case of *Three Rivers District Council v Bank of England (No 5)* [2003] EWCA Civ 474 (**Three Rivers**), a narrow definition applies to the term 'client' in this context. The 'client' group for the purpose of legal advice privilege only includes those individuals within the client entity who are specifically tasked with seeking and receiving legal advice. Communications or documents from anyone outside this group, such as other employees in the broader company, will generally not attract privilege.

This decision placed significant limitations on the scope of legal advice privilege and causes practical difficulties for large corporate entities when seeking to obtain confidential advice and make internal decisions. This is most important where the context is non-contentious, meaning separate litigation privilege is unlikely to apply.

What happened in this case?

The pertinent facts in Aabar concerned a dispute between the first defendant (Glencore plc (**Glencore**)) and the claimant (Aabar Holdings SARL (**Aabar**)) over the scope of legal advice privilege that Glencore had sought to assert during a disclosure process.

When giving their final tranche of disclosure, Glencore's lawyers, Clifford Chance LLP, had asserted that they had approached the determination of privilege on the basis that the decision in Three Rivers had been wrong. Specifically, they had treated legal advice privilege as applying more widely to all communications made for the dominant purpose of seeking or receiving legal advice.

Aabar's lawyers, Quinn Emanuel Urquhart & Sullivan UK LLP, responded that this approach was not consistent with Three Rivers as it treated every employee as being part of the 'client' and had not confined the privilege to communications between the lawyer and 'client' (or those that disclosed legal advice). Glencore responded to confirm that they maintained their position but would reconsider relevant documents and make an application for any that they decided to withhold.

Glencore subsequently wrote to Aabar conceding that they would no longer approach privilege on the basis that Three Rivers had been wrongly decided, and therefore they no longer contended that every employee should be treated as part of the 'client'. As a result, Glencore produced 885 documents that had previously been withheld, as well as re-producing 290 documents.

However, Glencore maintained that legal advice privilege *could* apply to documents which were not communications between the

client and lawyer but were instead communications or documents made *within* the 'client' group. This was the question that the High Court was asked to determine.

What was decided?

Counsel for Aabar considered that it was a basic tenet of legal advice privilege that it applied to communications between the lawyer and the client, and the evidence of such communications. It could therefore only apply to limited communications within the client group (and not with the lawyers), namely, where they either: (i) evidenced the content of communications with the lawyer; or (ii) were "*inchoate communications*" as described in *Three Rivers* (i.e. documents which were *intended* to be communicated to the lawyers by the client but were never sent).

Nevertheless, Picken J agreed with counsel for Glencore, and found that privilege "*applies to any intra-client document which is sent between or created by members of the "client group" for the dominant purpose of seeking legal advice*".

The reasons given for the decision were as follows, which largely reflected the submissions of Glencore's counsel:

- *Three Rivers* had concerned communications between three officials of a Bank, who were found to be the 'client' unit for the purposes of privilege, and an external inquiry. It had not been relevant on the facts of the case to look at whether communications within that 'client' group were protected by privilege; the question

had been whether documents prepared by other employees and sent to the 'client' group (and/or the lawyers acting for the company) could attract privilege.

- Three Rivers was therefore not concerned with the issue in this case, namely whether privilege could apply to communications *between* members of the 'client' group or documents created by a member of that group; it was solely authority for the position that privilege could not apply to non-client documents. The other authorities and commentary quoted by counsel for Aabar also did not address this point. There was therefore no binding authority on the question, leaving it open for the High Court to determine as a matter of principle.

- Picken J agreed that whilst legal advice privilege is usually described as applying to 'communications' passing *between* client and lawyer, it was well-recognised that it could apply to documents that do not actually pass to the lawyer where they are part of the process of seeking or giving legal advice. Key examples of this would be the categories noted by counsel for Aabar above, namely a document that discloses the substance of communication between the client group and the lawyer, or a document that is intended to be communicated to the lawyer but is never sent.

- On this basis, legal advice privilege should also be available in respect of documents or communications within the client group whose *“dominant purpose is to identify an issue on which the client proposes to seek advice from a lawyer but at a time at which advice has not yet been sought from the lawyer in relation to the issue identified”*. It would be illogical to try and distinguish such documents from, for instance, engagement or instruction letters to the lawyers (which were well-established as being privileged). This category should also include intra-client documents whose purpose was to identify facts that they intended to communicate to the lawyer for the purpose of the advice, even if the document itself was never intended to be sent. In any event, such documents would inevitably evidence the substance of any later privileged communications where the client eventually sought the advice from the lawyer.

- Picken J concluded that such documents would in effect be the equivalent of a lawyer’s working papers, which were clearly subject to privilege. If such working papers were privileged on the side of the lawyer, there was no reason to not attach privilege to the working papers of the client which were, in effect, the *“mirror image”*.

- This result was considered to be consistent with the earlier case of *R (on the application of Jet2.com Limited v Civil Aviation Authority* [2020] EWCA Civ 35, which had considered drafts of a letter prepared by the client group to be privileged where the document was prepared for the seeking of legal advice.

Following these findings, Picken J concluded that Glencore was entitled to assert legal advice privilege in respect of intra-client documents, provided that those documents were created for the dominant purpose of seeking legal advice.

What does this mean for employers?

This decision helpfully confirms for employers that communications *within* a group designated as the 'client' for the purposes of receiving legal advice can be subject to privilege, so long as they meet the dominant purpose test.

Three Rivers remains strong authority that this 'client' group are the only individuals whose communications with the lawyers can attract privilege, and as a result employers would be wise to clearly define this group when seeking any advice. Designating this group clearly will be of even greater importance following the *Aabar* decision, as communications or documents shared within that group may also be able to benefit from privilege. This could include documents recording concerns, fact patterns and timelines of events, as well as questions designated for legal advice, and can apply before legal advice has formally been instructed. The risks when

sharing information outside of this group will nevertheless remain.

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The dangers of springing an “off the record” settlement discussion on an employee

The EAT’s recent decision in *Tarbut v Martello Piling Ltd* clarifies the scope and limits of the protected conversation regime under s.111A of the Employment Rights Act 1996. It reminds us of the limited nature of the protection and highlights that when assessing whether there has been “improper conduct” Tribunals must consider the full circumstances surrounding the conversation. Ambushing an employee and denying them the chance to have a companion may mean protection is lost.

What is the background law?

Section 111A of the Employment Rights Act 1996 allows an employer or employee to initiate a “protected conversation”

about terminating employment on agreed terms on a confidential basis, without that conversation being admissible as evidence in any subsequent ordinary unfair dismissal claim. It operates in a similar way to the common law “without prejudice” principle, but with two key distinctions. First, without prejudice protection applies only where there is an existing dispute between the parties, whereas section 111A protection can apply even where no dispute has crystallised.

Second, without prejudice protection can apply across all proceedings, whereas s.111A protection is confined to complaints of ordinary unfair dismissal and does not extend to other claims an employee may bring

Both protections are subject to an “impropriety” exception, whereby the protection may be lost. Without prejudice communications lose their protection where there has been “unambiguous impropriety” such as fraud, perjury or blackmail. However, section 111A protection may be lost where a Tribunal considers there has been “improper behaviour”. The [Acas Code of Practice on Settlement Agreements](#) gives examples of improper behaviour including harassment, bullying, intimidation, discrimination, victimisation, physical threats, and putting “undue pressure” on a party. Examples of undue pressure include failing to allow a reasonable time to consider the proposed settlement agreement (with Acas suggesting at least 10 calendar days) or telling an employee they will be dismissed if they reject the offer before any dismissal process has begun. Where improper conduct occurs, the Tribunal may allow evidence of the discussion to be admitted in an ordinary unfair dismissal claim to the extent it considers just.

What happened in this case?

Mr Tarbuc (**the Claimant**) began working for Martello Piling Limited (**the Respondent**) as an Estimating Engineer on 19 February 2018. In April 2024, an issue arose about the Claimant's entitlement to a bonus. On 23 April 2024, the Claimant was unexpectedly called into a meeting with the Managing Director Mr Macklin (**the 23 April discussion**). At the outset of the meeting, Mr Macklin told the Claimant that the discussion was a "protected conversation". When the Claimant queried what that meant, Mr Macklin said it was a "legal term".

The Claimant said Mr Macklin went on to accuse him of being "entitled", said that he "did not trust him" and that he wanted him to leave the business. He then passed the Claimant an envelope setting out the terms of a settlement offer and told the Claimant that he did not have to accept it but, if he did not, a redundancy process would follow, and he would "guarantee" that the Claimant would come last (i.e. that he would be made redundant). The Claimant also alleged that Mr Macklin said that he had offered three months' salary which was more than he thought the Claimant was worth and that the Claimant would not receive a discretionary bonus due to his "entitled attitude". The Claimant immediately declined the offer, and he was dismissed on 13 June 2024.

In August 2024, the Claimant brought claims for ordinary unfair dismissal, unlawful deductions from wages and less favourable treatment for being a part-time worker. In his claims, the Claimant referred to the 23 April discussion. The Respondent argued that the 23 April discussion was a protected conversation and was, therefore, inadmissible in the proceedings. In response, the Claimant argued that it was not protected because the Respondent had behaved improperly by:

- threatening him with redundancy if he did not accept the offer;
- not giving him advance notice of the meeting or a right to refuse to go;
- not giving him the option to bring a companion; and
- immediately moving to make him redundant once he had declined the offer.

Mr Macklin disputed the Claimant's account of the 23 April discussion. He denied threatening the Claimant or saying that he would "guarantee" that he would come last in any redundancy process. However, he accepted that he had said that if the Claimant did not accept the offer, then a redundancy process *may* follow and that if he (Mr Macklin) were tasked with the scoring – which he said he would not be – then the Claimant would *likely* come last. He also noted that the Claimant did not complain about the conduct of the 23 April meeting at the time.

A Preliminary Hearing was held in March 2025. The Employment Tribunal preferred Mr Macklin's version of events. It was satisfied that he had genuine concerns about the Claimant's performance and attendance and made the offer as an attempt to bypass the unrest that a redundancy situation would cause. In conclusion, the Tribunal was satisfied that there was no improper conduct. As a result, the 23 April discussion was a protected conversation and was not admissible. The Tribunal Judge ordered all references to the 23 April discussion to be

redacted from the pleadings, documents and witness statements and directed that the Respondent did not need to disclose related documents.

The Claimant appealed to the Employment Appeal Tribunal (EAT) on the following key grounds:

- Ground 1 – that the Tribunal erred by determining inadmissibility applied globally to all of his claims (both existing and pending claims) and failed to recognise that protected conversations are inadmissible in ordinary unfair dismissal claims only.

- Ground 2 – that the Tribunal failed to give proper consideration to the Acas Code of Practice on Settlement Agreements when reaching its decision. In particular, it failed to consider the cumulative effect of the Respondent's conduct, including being ambushed before the meeting, not being given a chance to take a companion and the short timeframe of five days to consider the offer.

Separately, the Claimant applied to amend his claims to add on an automatic unfair dismissal claim (on several different grounds) and a whistleblowing detriment claim. That application was refused and is the subject of a separate

appeal to the EAT.

What was decided?

Ground 1 – was the 23 April discussion inadmissible for the ordinary unfair dismissal claim only?

On Ground 1, the EAT held that the Tribunal Judge had erred in failing to recognise that the 23 April discussion was inadmissible in his ordinary unfair dismissal claim but *admissible* in his unlawful deductions from wages and part-time worker claims. This left the Tribunal with the “*very difficult task of analytical compartmentalisation*”, noting that “*mental gymnastics*” would be required to decide the case. The EAT Judge went on to order the Respondent to disclose documents concerning the 23 April discussion for the purposes of the unlawful deductions from wages and part-time worker claims.

Further, as part of Ground 1, the EAT also considered whether the Claimant had pleaded the factual basis for an *automatic* unfair dismissal claim and, if so, whether the Tribunal had erred in failing to identify the claim and confirm that the 23 April discussion was admissible in relation to it. However, the EAT Judge found that the factual basis for such a claim was *not* clearly set out in the original claim (and, even if it had been, the Tribunal Judge would not have erred in failing to identify an un-labelled claim of her own motion).

Ground 2 – was proper consideration given to whether the conduct of the meeting was improper?

On Ground 2, the EAT held that the Tribunal Judge had approached the improper conduct question too narrowly, focusing exclusively on the content of what Mr Macklin said in the meeting and how he said it. She had not engaged at all with the circumstances in which the meeting was called. The EAT accepted that in a previous case (*Gallagher v McKinnon's Auto and Tyres Ltd*) it had been held that a very short notice meeting without a companion was *not* improper conduct. However, that did not create a hard and fast rule. Such conduct may still be improper in other cases, when combined with other conduct.

However, the EAT discounted the argument that only being given five days to consider the offer was improper. The EAT said this was a “red herring” because the Claimant had rejected the offer outright in the course of the 23 April discussion. Therefore, the five-day window did not place him under any pressure. In any event, the Acas Code recommendation of 10 calendar days for consideration related to the formal written terms of a settlement agreement, not to heads of terms contained in an initial offer letter (as was the case here).

The EAT Judge remitted the question of whether there was improper conduct to a different Employment Tribunal Judge to consider.

What does this mean for employers?

This decision reminds us that section 111A protection does not provide blanket protection across all claims (as without prejudice protection does). If an employee has *other* claims alongside an ordinary unfair dismissal claim (e.g. an automatic unfair dismissal claim or a discrimination claim),

then evidence of the protected conversation will be admissible in relation to those other claims, even if it remains excluded for ordinary unfair dismissal purposes. Employers should plan for this from the outset and ensure any such conversation is conducted carefully.

Importantly, the decision highlights that the *manner* in which a protected conversation is initiated matters as much as what is said in it. Ambushing an employee with no notice, no companion and no warning of the meeting's purpose will all be relevant to an assessment of improper conduct. On top of this, what is said in the meeting will also be relevant. Telling an employee, even in qualified terms, that they will come last in any redundancy selection if they reject a settlement offer is risky. Employers should seek legal advice before any such meeting and keep a clear record of what was said (and be mindful that the employee may covertly record the meeting).

An employer seeking to safely conduct a section 111A discussion should:

- Give the employee reasonable notice of the meeting and make it clear that the purpose of the discussion is about a proposed settlement intended to end employment on agreed terms. The employee should also be told that this is voluntary and they are not required to engage with or accept the proposal.
- If the employee agrees to the meeting, consider whether any reasonable adjustments are needed if the employee has a disability. Also consider whether flexibility in the arrangements is required to accommodate any caring

commitments or part-time / hybrid working pattern.

- Hold the meeting at the agreed time and place and allow the employee to bring a colleague or trade union representative.
- At the start of the meeting, explain to the employee that the conversation is off the record and explain the meaning of a section 111A protected conversation (and of without prejudice if appropriate). Ask the employee to confirm that they understand.
- Conduct discussions professionally and avoid harassment, bullying, intimidation, offensive language, aggression, threats or victimisation.
- Avoid the risk of placing undue pressure on the employee. If the employee is vulnerable, unwell, or visibly distressed suggest an adjournment.
- Allow reasonable time to consider the proposal. As a general rule, allow at least 10 calendar days to consider the written settlement terms and obtain independent advice, unless both sides agree otherwise. Although a shorter amount of time may be given to consider heads of terms, this should also be reasonable.
- Present the reasons for the proposal neutrally and factually. While it is permissible to explain possible alternatives, including that a dismissal process may commence if there is no settlement, do not say that dismissal is inevitable.
- Mark all written communications “Without Prejudice” and

“Subject to Section 111A ERA 1996” where appropriate, especially if there may already be a dispute.

[Tarbuc v Martello Piling Limited](#)

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Failure to dispel an employee's confusion and offering sham alternatives meant redundancy dismissal was unfair

The Employment Tribunal's reserved judgment in *Crawford-Thomas v Collinson (Central Services) Limited* offers a useful reminder that a genuine business case for redundancy is not, on its own, sufficient. Where the consultation process is inadequate, a finding of unfair dismissal will follow.

What happened in this case?

The Claimant, Mr Crawford-Thomas, was employed as Financial Crime Manager by Collinson, a global travel benefits company, from February 2009 until his dismissal on 14 March 2024. He had approximately 40 years' employment history in financial crime and fraud work.

In October 2023, Ms Smith joined as Vice-President of Risk and Compliance and became the Claimant's new line manager. She was tasked with evaluating the company's safeguarding strategy to protect against cyber-crime and emerging artificial intelligence (AI) risks (including anticipated compliance obligations under the EU's AI Act) and she conducted a "gap analysis" of her team's competencies.

As part of that exercise, she asked the Claimant to set out what elements of his role he currently performed. She concluded that of his 11 listed activities, seven could be handled by the company's existing Refinitiv automated system, two could be absorbed into her own role, and two were already performed by other colleagues. She determined that a new higher-grade role of 'Head of Risk and Assurance Manager' was required to address future AI and cyber risk and ensure compliance with the EU AI Act. She formed an early view that the Claimant was not qualified for this role.

The Claimant was placed at risk of redundancy on 31 January 2024.

The first consultation meeting was held on 7 February 2024. The Claimant said he did not understand how his role was at

risk of redundancy. Ms Smith referred him to selected slides from a business-facing slide deck. She also said he would be sent the job description for the new Head of Risk role and that he could apply for any suitable roles on the company's website. The Head of Risk role was then advertised externally before the Claimant had fully considered whether to apply, and he discovered that Ms Smith had also invited a former colleague to apply for it. This discovery made the Claimant suspicious about the authenticity of the process.

The second consultation meeting was held on 26 February 2024. At the meeting, the Claimant said he was still unsure why there was a need to make him redundant and little was said or done to address that concern. He also said he was interested in the Head of Risk role and asked whether he could have a trial period. Ms Smith did not agree to this (without explaining why) but said that he was at liberty to apply for the role.

The third and final consultation meeting was held on 7 March 2024. The Claimant said he was still struggling to understand why his role was at risk of redundancy and why aspects of it were no longer required. Ms Smith attempted to clarify the position, but the Claimant disagreed with her rationale. He asked further questions about the restructure but did not understand the answers given. Ms Smith referred him back to the slides he had previously been given. He asked to see the gap analysis, but Ms Smith refused and said the rationale had already been explained. He also asked whether he could be "mapped" into the new role with additional training and support. This was also refused.

The Claimant was dismissed on 14 March 2024, and his appeal was rejected. He brought claims for unfair dismissal and

direct age discrimination.

What did the Employment Tribunal decide?

Unfair dismissal

The Tribunal had little difficulty finding that a genuine redundancy situation existed. The Claimant's core functions had been substantially automated by the Refinitiv system, remaining tasks had been redistributed, and there was a credible business need for a differently skilled role. The requirements of the business for work of the Claimant's particular kind had diminished within the meaning of s.139 Employment Rights Act 1996.

The Tribunal found that the Respondent had attempted a genuine redundancy consultation process: three meetings were held, HR was present throughout, and the Claimant was offered access to job search support. However, the Tribunal identified two areas where the process fell critically short.

First, Ms Smith had formed an early view, following her very first one-to-one with the Claimant, that he lacked the skills and qualifications needed for the new Head of Risk role. Given that she was new to the company, she had little independent knowledge of his broader career or competencies. Although she reviewed his Linked In profile, the Tribunal notes that this was *"not a satisfactory way to obtain a full picture of the abilities of an employee within her own team."* The Tribunal found that once that view was formed, subsequent meetings became meaningless in respect of alternative employment. Ms Smith was holding out the Head of Risk role as

a potential alternative while having already concluded that the Claimant was unsuitable for it.

However, the Tribunal accepted that the Respondent reasonably believed the new role required urgent filling by a suitably qualified candidate, and that an upskilling period was not a viable option. That was a reasonable business position. The problem was not the decision itself, it was that the consultation presented a false choice.

Second, Ms Smith's only method of explaining the restructure was to refer the Claimant back to slides that he had already said he did not understand. This was not adequate or meaningful. She made no attempt to find an alternative explanation when it became clear the slides were not adequate. She concluded that the Claimant was merely trying to elongate the process, and she effectively disengaged. As a consequence, the Claimant did not fully understand the process he was going through and this detrimentally impacted his ability to suggest ways to mitigate the risk of his role being made redundant.

Despite upholding the unfair dismissal complaint, the Tribunal accepted the Respondent's submission that a fair process would ultimately have resulted in redundancy. A *Polkey* reduction to compensation will, therefore, be made, though remedy has not yet been determined.

Age discrimination

The Tribunal held there was no evidence suggestive of the Claimant's age being the reason for the difference in

treatment compared to a hypothetical comparator. Therefore, the burden of proof did not pass to the employer. If wrong about that, the Respondent had provided reasonable and adequate explanations for its treatment of the Claimant and none of them indicated discriminatory conduct on grounds of age.

What does this mean for employers?

This decision makes it clear that managers must not approach consultation processes with a fixed mindset, particularly in respect of alternative roles. Redeployment searches based solely on a self-reported job description and a quick look at the employee's LinkedIn profile are unlikely to be sufficient, particularly for a long-serving employee.

In this case, a trial period with support and training was not viable due to the urgency involved, but in a non-urgent case then a reasonable approach may be to allow a trial period plus training. Alternatively, where there are reasonable grounds to consider that an alternative vacancy would not be suitable for an employee, then it should not be put forward as an option during consultation.

HR and managers must also take care to ensure employees understand the process. Where an employee repeatedly says they do not understand the rationale for their redundancy, the answer is not to keep referring them back to the same document. Employers must find alternative ways to explain the position (even if where they are cynical about the employee's motives for pleading ignorance).

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Employer who reneged on CEO's promise about share options must pay ex-employee £442,000

In *Dixon v GlobalData plc* the High Court awarded a former employee approximately £442,000 in equitable compensation after his employer reneged on assurances that his share options would continue to vest on the same basis as other plan members following termination of employment. The Court rejected a higher market-price valuation in favour of the strike price used for other option holders.

What happened in this case?

The Claimant was a long-serving employee of Canadean Ltd, a market research firm later acquired by GlobalData. During his exit negotiations, the Claimant received verbal and written assurances from the group's CEO, Mr Pyper, that he would retain his share options, and they would "vest in line with

current conditions.” The options were subject to performance targets being met.

Relying on Mr Pyper’s assurances, the Claimant agreed to settlement terms under which his employment would be extended by four months beyond the initial proposed termination date, and he would be bound by post-termination restrictive covenants. The assurances about the share options were also incorporated into the settlement agreement. The Claimant assumed that this meant the position regarding the share options was “watertight.” He did not review the underlying share plan rules, nor were they mentioned during negotiations.

The share options were divided into three tranches.

- The first tranche of share options vested before the Claimant’s employment ended in 2014 and the Claimant went on to exercise these options. There was no dispute about this tranche.

- The Claimant attempted to exercise the second tranche of share options in 2020. However, the company argued that his options had lapsed when he left the company because the necessary discretion had not been exercised to permit the continued exercise of the share options post-termination. The Claimant sought an order that he was either entitled to exercise the options or receive damages.

- Due to the impact of COVID, it was clear that the performance targets for the third tranche of options would not be met, meaning that those options would lapse. In response, in 2020, the company introduced a replacement share plan to compensate the affected employees, including those who had left employment and had approved good leaver status. The Claimant was excluded from the replacement plan on the basis that the company believed his options had lapsed when he left the company. The Claimant argued that he was entitled to participate in the new scheme and, if not, his exclusion amounted to an irrational exercise of discretion for which he should be compensated.

What was decided at the liability stage?

At a liability hearing held in August 2025, the High Court concluded that the discretion under rule 7.1 of the share plan had not been exercised in the Claimant's favour, as there was no evidence that Mr Pyper had sought to permit the continued exercise of the options post-termination, nor had he specified the basis on which they could be exercised – any purported exercise would in any event have been void for uncertainty.

The Court nevertheless found for the Claimant on the alternative basis of "proprietary estoppel", concluding that Mr Pyper had given clear and unequivocal assurances on which the Claimant reasonably relied to his substantial detriment by continuing to work for four months and agreeing to restrictive

covenants, making the Company's refusal to honour those assurances unconscionable.

You can read our full briefing on the liability decision [here](#).

What was decided at the remedy stage?

At a separate remedy hearing in April 2026, the High Court reached the following decision:

Tranche 2: strike price, not market price

The Claimant argued for compensation assessed by reference to the market price of GlobalData shares on 16 November 2020, being the date the company communicated its refusal to allow him to exercise. That date coincided with a spike in the share price.

The Court rejected that approach. The purpose of proprietary estoppel is to remedy unconscionability, not to place a claimant in a better position than the promise would have delivered. The Claimant's reasonable expectation under the assurance was to be treated the same as other option holders.

Other option holders had exercised and sold through a bulk sale process at a fixed strike price, not at the market price prevailing on any particular date. Awarding compensation by reference to the market price on the date of refusal would have gone beyond making good Mr Pyper's promise.

Equitable compensation for tranche 2 was awarded at

approximately £175,000, calculated by reference to the strike price net of broker's commission and employer's National Insurance contributions.

Tranche 3: form cannot defeat substance in equity

The Court found that the assurance given to the Claimant in 2014 was that he would be treated the same as other plan members. All other continuing plan members were admitted to the replacement scheme and received their tranche 3 entitlements. There was no principled reason to treat Mr Dixon differently.

More significantly, the Court found that the Company had deliberately structured the replacement scheme to maximise the chances of defeating the Claimant's claim. Internal emails (including one referring to the "opportunity to cleanse" the option list of former employees who had "come out of the woodwork") and contemporaneous communications with Deloitte showed that excluding Mr Dixon had been a material factor in how the scheme was designed. The Court held that equity cannot be defeated by a promisor choosing one legal form over another to achieve that result: to do so would be to place form over substance in a manner wholly inconsistent with the nature of proprietary estoppel.

Equitable compensation for tranche 3 was awarded at approximately £267,000, again by reference to the applicable strike price.

Interest

Interest was awarded at 2% over base rate, running from the dates when other option holders received their entitlements in the bulk sale process. The Court accepted that it was unrealistic to assume the Claimant would simply have kept the proceeds on deposit, and that a modest premium above base rate was a conservative but appropriate rate.

What are the learning points for employers?

Key takeaways for employers include:

- Verbal and informal assurances about share schemes made during exit negotiations can bind the company in equity. Exit conversations involving share options should always be handled by those with authority and knowledge of the plan rules and any agreed treatment should be properly documented and implemented at the time.

- Once a claim is in play, restructuring or replacing a scheme so as to exclude an ex-employee will not provide a safe exit route. Courts will look through the legal form to the substance of what was promised and at what other plan members received. Deliberate exclusion will reinforce a finding of unconscionability rather than defeat a claim.

- Internal record-keeping failures can be costly. Evidence showed that the Claimant's options had effectively disappeared from the Company's records because no one had properly implemented the agreed arrangements set out in his settlement agreement. The Court was critical of those administrative shortcomings.
- Compensation will reflect the expectation created by the promise, not to an ex-employee's most favourable valuation scenario. Where options are exercised through a fixed-price bulk sale process, that strike price is likely to be the measure of recovery.
- Interest at 2% over base rate from the date other option holders received payment provides additional recovery and should be factored into any assessment of the overall claim value.

[Dixon v GlobalData Plc – Remedy Judgment](#)

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Victims and Courts Act 2026: Future changes to NDA prohibitions receive Royal Assent

On 29 April 2026, the Victims and Courts Act 2026 was given Royal Assent, sealing it in final form and securing the protections intended to benefit victims of crime. This includes amendments to the Victims and Prisoners Act 2024, meaning further restrictions will soon be placed on the ability of non-disclosure agreements (NDAs) to prevent victims of crime from speaking up.

Previous regime

Under Section 17 of the Victims and Prisoners Act 2024 (VPA 2024), since 1 October 2025 individuals have been able to lawfully make “permitted disclosures” even if they have signed an NDA purporting to restrict their ability to do so.

A disclosure will be ‘permitted’ if it is made by a victim of crime (or a person who reasonably believes that they have been a victim of a crime) about criminal conduct, where that disclosure is made to certain specified persons or regulatory

bodies for the purpose of seeking their support or co-operating with them. For more information on these existing measures, please see our article [here](#).

What is changing?

In October 2025, the Government announced that these provisions were only intended to be temporary, and that the VPA 2024 would be amended in due course to expand the scope of “permitted disclosures” even further. We looked previously at these changes in our article [here](#), following the Government’s announcement and during the progress of the Victim and Courts Act 2026 (the **Act**) through Parliament.

Now in its final form, the Act removes the existing provisions of Section 17 VPA 2024 regarding NDAs (as described above) and replaces them with new broader provisions that place further restrictions on the ability of NDAs to preclude victims of crime from speaking out.

In summary, the changes are as follows:

- Victims of crime (or those who reasonably believe they are a victim) will be able to make a “permitted disclosure” to **anyone and for any purpose**. This removes the existing requirement under the VPA 2024 for the disclosure to be made to specified categories of persons (e.g. law enforcement, regulators or key family members) and the disclosures no longer have to be for the purpose of seeking support from the relevant function or co-operating with them.

- A disclosure can still qualify as a “permitted disclosure” even if the primary purpose of making it was to release the information into the public domain. The original restriction in this regard has been removed from the VPA 2024.

- The definition of “permitted disclosures” has been expanded to include “an allegation of” relevant criminal conduct, as well as allegations or information about the response of any other party to the agreement to the conduct or allegation. This broadens the potential scope from just being disclosures of information about the criminal conduct.

- The Secretary of State will have the power to set out conditions for “excepted agreements”, i.e. situations in which NDAs prohibiting “permitted disclosures” can be signed and enforced validly. It is expected that these will cover, for example, situations where both parties to the NDA genuinely desire confidentiality. However, even in such cases it is unlikely that NDAs will be able to operate as an absolute bar to these types of disclosures.

In practice, these changes mean that disclosures regarding actual or alleged criminal conduct, including the response of another party to that conduct, cannot be prevented in any way by an NDA unless it qualifies as an “excepted agreement”. Without such an agreement, disclosures can lawfully be made to anyone, for any purpose, regardless of any NDA purportedly signed and without the boundaries currently in place under the VPA 2024 around the recipient of or intention behind the disclosure.

It appears from the Act’s final form that regulations will be needed to bring the changes regarding NDAs into force, along with the majority of the other changes under the Act.

What does this mean for employers?

In effect, the amendments implemented by the Act will bring NDA regulation for victims of crime into line with the planned prohibitions under the Employment Rights Act 2025 for NDAs regarding discrimination and harassment.

As a result, employers will need to be prepared for the fact that the sharing of information about discrimination, harassment and / or criminal activity (including allegations of the same) will not generally be able to be restricted via an NDA. Unlike the current VPA 2024 regime or parallel protections under whistleblowing legislation, there will be no requirement for individuals to be sharing information in the public interest or for the purpose of seeking support or justice. Employers will therefore need to be mindful that any allegations, and the way in which they respond to them, could become public in the future.

The restrictions on NDAs under the Employment Rights Act 2025 and the VPA 2024 (as amended by the Act) will both provide for the idea of “excepted agreements”, and it will be crucial for employers to understand how they can ensure that an NDA falls within this definition and has the best chance of being enforceable.

Consultation on what should constitute an “excepted agreement” in the context of the Employment Rights Act 2025 was opened on 15 April 2026 (please see our coverage [here](#)), and it is possible that the outcome of this consultation will also inform the approach to this concept under the VPA 2024 (as amended by the Act). However, as the scope of NDAs for victims of crime apply to a much wider context than the workplace, some of the suggestions made by the Government in the consultation may not be practicable or appropriate to implement in this context. This question may be covered in the Government’s response to the consultation after it is due to close on 8 July 2026, and employers will need to keep a careful eye on developments to ensure they understand when and how their NDAs will be affected.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Claire Dawson speaking at ELA Annual Conference 2026

On 21 May 2026, BDBF Partner [Claire Dawson](#) will be speaking at the ELA Annual Conference in London. Her session, entitled “Unfair Dismissal post 1 January 2027: Advising clients in a changed landscape” will explore how the significant reforms to unfair dismissal law will impact both litigation risk and day-to-day advisory work.

Claire will be joined by Eleanor Rowswell (Farrer & Co), with the session chaired by Annabel Mackay (Baker McKenzie LLP).

[Register here](#)



Doyle's Guide 2026

BDBF has been ranked in the top tier by Doyle's Guide 2026 as one of London's leading employee-focused employment law firms.

Managing Partner [Gareth Brahams](#) has been recognised as a Preeminent Lawyer representing employees, [Paula Chan](#) as a Leading Lawyer and [Claire Dawson](#) as a Recommended Lawyer.

Doyle's Guide, described as one of the legal industry's most prestigious rankings guides, recognises those lawyers who have been identified by their peers for their expertise and abilities. Thank you to our clients for their continued trust, our peers for their feedback and our talented team for their dedication and expertise in delivering exceptional outcomes for our clients.

View the full rankings here:

- <https://doylesguide.com/leading-employment-law-firms-employee-union-representation-london-2026/>
 - <https://doylesguide.com/leading-employment-lawyers-employee-union-representation-london-2026/>
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Employment Rights Act 2025: Consultation launched on non- disclosure agreement prohibitions

Under the Employment Rights Act 2025, employers will be prohibited from using non-disclosure agreements (NDAs) to prevent disclosure of information relating to harassment or discrimination. The Government has now launched its consultation on the substance of these rights.

The [consultation](#), which is due to close on 8 July 2026, was published along with a [press release](#) confirming the Government's intention to bring the changes to NDA regulation into effect in 2027.

The prohibitions under the Employment Rights Act 2025 will apply to NDAs that seek to prevent individuals from speaking about "relevant harassment or discrimination" by their employer or fellow workers, including allegations. This also includes the employer's response to the allegation or information. For more information on the substance of these rights, please see our [previous coverage](#).

Definitions

The consultation confirms the following definitions applying to the paper (and as a result, the intended legislative changes):

- NDAs are “*contractual agreements or clauses within contractual agreements, between two or more parties which seek to keep certain information confidential*”. Examples of likely locations of NDAs are said to be settlement agreements, employment contracts or business service agreements.

- “Excepted agreement” means an “*agreement between a worker and their employer that will not be void*” if it meets certain conditions. In practice, this means an NDA that can be validly entered into as an exception from the general prohibition. The definition suggests that an “excepted agreement” could not be made as part of a business service contract, as it is required to be specifically between the worker and their employer.

- “Relevant harassment and discrimination” means an instance, or alleged instance, of harassment or discrimination under the Equality Act 2010 where:
 - It was carried out, or is alleged to have been carried out, by the employer or another worker of the employer (noting that the victim of the treatment does not have to be the worker signing the NDA). For instance, this could include harassment that a worker witnesses from their employer towards a customer; **or**

 - The victim (or alleged victim) is the worker that

- The potential for the relevant prohibitions to be expanded in future to cover NDAs involving individuals other than employees or workers.

Excepted Agreements

The qualifying conditions to enter into an excepted agreement, essentially meaning a valid and enforceable NDA, will be of crucial importance to both employers and employees. If an NDA does not qualify as an excepted agreement, it will not prevent the employee or employer from speaking to anyone about the relevant harassment or discrimination.

No detail on such agreements has yet been provided in the Employment Rights Act 2025, and the consultation therefore seeks views on the broad range of options that the Government is considering.

These can be summarised as follows:

Method of Entering into an Excepted Agreement

- **Requirement to receive independent advice:**
 - This option would require workers to obtain independent advice in writing on the terms and

effect, and legal limitations, of the proposed NDA from an independent adviser. The advice would also need to cover the disclosures that can still be made (i.e. the scope of "permitted disclosures").

- This would be similar to the requirement under Section 203 of the Employment Rights Act 1996 for workers to receive independent advice on the terms and effect of a settlement agreement. However, it would be extended to also cover COT3 agreements facilitated by ACAS, with ACAS (as a body) also proposed to qualify as an advisor for these purposes.
- Employers will not be required to pay for the relevant advice, although many would contribute as they do currently for qualifying advice as part of a settlement.
- An open invitation has been put forward for suggestions of any other topics that the advice would be required to cover.

▪ **Worker's expression of written preference:**

- This option would require the worker, following the receipt of independent advice (see above), to express their preference in writing to enter into an NDA.
- The consultation considers whether employers should be permitted to suggest confidentiality, and notes the disadvantages should they not be allowed to do so; in particular, the Government notes the risk that employees may not be informed

of all available options, as well as the fact that the initial mention of an NDA by the employer would later prevent the employee from validly entering into an NDA (even if this were their genuine wish). The proposals conclude that the risks of pressure or coercion in permitting employers to suggest NDAs are likely to be able to be mitigated through other conditions.

▪ **Cooling-off period:**

- This option would allow the worker a 14-day period to withdraw from any excepted agreement without penalty, to allow them ample time to consider the implications and reduce any pressure placed by the employer to sign the NDA.
- The Government acknowledges that in effect, this would likely need to apply to the whole agreement in order to avoid uncertainty about whether other terms (particularly financial payments) remain active; however, views are sought on whether alternatives could be workable.
- Views are also sought on whether the worker should be able to waive this period, particularly in light of the fact that making it mandatory would make it more difficult to settle claims in tight timeframes (e.g. during or just before Employment Tribunal hearings) and introduce uncertainty as to how these types of processes can be revived if the agreement is cancelled. An inability to waive the period could also lead to confusion around relevant time limits to pursue a claim, and

consequently lead to additional disputes.

- In addition, the Government proposes the alternative options of a shorter cooling off period, a statutory review period before signing an NDA, or a combination of the two.

▪ **Written copy of agreement:**

- This option would require the employer to provide the worker with a written copy of the agreement that is accessible to them (e.g. printed in large font if required). Whilst most employers will already do so, and solicitors must not prevent a written copy being provided (under their regulatory obligations), this requirement would be intended to ensure that the worker understands their rights and obligations.
- The consultation proposes an additional, more onerous option, of requiring the use of standard language for any excepted agreement or a requirement that it is in standard, plain language. This may cause issues where technical language is required, and could lead to future disputes over whether an NDA is valid based on what is considered 'plain English'. The Government suggests that these types of matters may therefore be better as part of guidance rather than regulations.

Contents of an Excepted Agreement

- **Backwards-looking only:** This requirement would mean that excepted agreements can only cover incidents (or allegations about incidents) that have already taken place, and cannot prevent workers from speaking out about harassment or discrimination that might occur in the future. This would stop forwards-looking NDAs from being able to be included in employment contracts (or any other agreements) to cover incidents that could take place in future; such provisions would not be 'excepted' and therefore would be unenforceable.

- **Time-limited:** This requirement would mean that the parties must agree a time limit for the NDA, with the aim of discouraging "*long-term secrecy*" and providing a choice for workers as to how long they want a matter to remain confidential. This may lead to lower settlement offers if the employer values confidentiality highly. Another option proposed would go further, setting a maximum time limit in regulations (e.g. no longer than 3 years), however the Government acknowledges that this would be a blunt approach when workers might prefer permanent confidentiality.

Permitted disclosures

The consultation also seeks views on the categories of disclosure and recipients which should always be allowed, even where the parties have entered into a valid NDA as part of an excepted agreement. In practice, these are categories of person that the Government considers that workers should always be able to speak to as a matter of principle, and an employer should not be able to prevent this.

The permitted categories suggested in the consultation broadly mirror those applying to the current version of the Victims and Prisoners Act 2024 (see our coverage [here](#)) (VPA 2024), but are more tailored towards the employment rather than a criminal context. They include essential functions like law enforcement and regulatory bodies, legal or tax advisers, victim support services, advisory services, trade union representatives (in some circumstances) and close family members.

Most notably, like the current version of the VPA 2024, the permitted disclosure must be made for the purpose of seeking support from the relevant function; for instance, disclosures to a regulatory body must be for the purpose of disclosing or co-operating as part of an investigation or advisory service about the relevant harassment or discrimination. Unlike the present VPA 2024, there is no carve-out suggested in the consultation for disclosures made purely for the purpose of bringing information into the public domain; it is therefore possible that these would remain “permitted” disclosures.

We note that the Government has separately proposed to remove the list of categories and purposes of permitted disclosures in the VPA 2024 altogether, meaning that disclosures about criminal activity may always be made to anyone, for any purpose. The consultation does not address whether this

approach could also ever be planned for relevant discrimination and harassment, although it would seem perhaps less likely given that this would invalidate the concept of an “excepted agreement”. For more information on the proposed changes to the VPA 2024, please see our briefing [here](#).

As a further option, the consultation also suggests that the list of potential recipients of permitted disclosures could be even broader, including prospective employers or friends / wider family. However, the Government notes that these recipients would not be bound by any sort of confidentiality restrictions, which may prevent employers from being willing to enter into excepted agreements in the first place (even where requested by the employee). A more reasonable alternative may be setting out specific, negotiated categories, such as a named friend.

Application to other individuals

The current prohibition on NDAs due to take effect under the Employment Rights Act 2025 applies to employees and “limb (b)” workers under Section 230(3) Employment Rights Act 1996.

A further future option considered in the consultation is the question of expanding protection to other individuals whom the Government considers may be “*vulnerable to the misuse of NDAs in cases of harassment and discrimination*”. Potential options suggested include:

- Individuals working for someone other than their employer, such as agency workers or secondment workers;

- Those on work experience placements;
- Nurses and midwives in training; and
- NHS workers (where operating as self-employed contractors).

The consultation also invites suggestions for any other type of self-employed workers who should benefit, such as those in the music industry.

Key takeaways

This long-awaited consultation provides helpful reassurance to employers and employees that the provisions of the Employment Rights Act 2025 will not amount to a 'ban' on NDAs. It offers several practical and workable suggestions for determining when an NDA can properly be entered into and enforced, many of which would not require employers to go much further than they do already (particularly when it comes to settlement agreements and the provision of legal advice).

Any restrictions on the contents and scope of a valid NDA are likely to be met with more resistance, particularly the 'blunt' tools of using prescribed language or a statutory time limit (as the Government has acknowledged). Similarly, any suggestion of expanding the categories of disclosures which will always be permitted is likely to be unpopular, particularly where it includes third parties who are not bound

by regulatory functions or other confidentiality obligations.

Notably, the consultation pays little attention to how the various proposals would work in the context of business services agreements (despite these being a common place for NDAs to arise, as noted in their definitions). This is particularly notable when it comes to making a valid excepted agreement, which is defined as an agreement between a worker and their employer (implying that NDAs in business services agreements will never be enforceable). Equally, if the proposal to make forwards-looking NDAs unenforceable is taken forward, this would render pointless any upfront restrictions in business contracts (and even perhaps employment contracts).

What remains clear throughout the consultation is that the Government acknowledges the importance of NDAs to employees as well as to their employers, and that there is a clear intention for them to be valid and enforceable where they are truly desired by both parties. Responses to the consultation are likely to shape any implementing regulations and offer certainty as to how this can be achieved.

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Withdrawing job offers: why “subject to” does not mean risk-free

In *Kankanalapalli v Loesche Energy Systems Ltd*, the Employment Appeal Tribunal (EAT) confirmed that a binding contract may be formed before employment starts. Standard conditions such as references or right to work checks may not prevent that. Where no notice terms are agreed, employers may still be required to give (and pay) reasonable notice to terminate.

What happened in this case?

The Claimant was offered a project manager role on 23 September 2022, with a proposed start date of 1 November 2022. As is standard practice, the offer was stated to be subject to satisfactory references, a right to work check, and a six-month probation period. No notice provisions were set out in the offer.

On 26 September 2022, the employer confirmed additional terms, including a £3,000 relocation contribution repayable if the Claimant left within 12 months, and suggested that he secure a 12-month tenancy. The Claimant accepted the offer the same day and indicated that he would sign and return the relevant documents shortly. The next day the employer replied that it looked forward to him joining them. The Claimant began onboarding, providing personal details and referee information. On 6 October 2022, the employer requested right to work documents, which were provided that day.

On 7 October 2022, the employer postponed the start date to 3 January 2023 due to a delay in a client contract. The Claimant queried how he would be paid in the meantime, having already made travel arrangements. Then on 11 October 2022, the employer withdrew the job offer due to delays in the project. It proposed a new conditional offer dependent on a “notice to proceed”.

The Claimant brought a breach of contract claim. The Employment Tribunal found that the offer had been accepted by the Claimant’s email of 26 September 2022. However, it held that the conditions (namely the satisfactory references and right to work check) had not been fulfilled. This meant that the offer was conditional at the point it was withdrawn, meaning no binding contract was in place. Alternatively, if a contract was in place, there was an implied term that as the Claimant had less than one month’s service, the employer would not have been required to give him any notice. This was on the basis of the standard terms and conditions that the employer said it would have given to the Claimant.

The claim was dismissed. The Claimant appealed to the EAT.

What was decided?

Were the “subject to” terms conditions precedent or conditions subsequent?

The conditions in question were the right to work checks, the employment references, and a six-month probation period.

The EAT found that the Tribunal had taken too narrow an approach in treating the conditions as “conditions precedent” i.e. conditions that prevent a binding contract from forming until they are fulfilled. Instead, the conditions relating to references, right to work and probation were properly characterised as “conditions subsequent” i.e. a binding contract had formed but could be terminated if the conditions were not met.

In reaching that conclusion, the EAT emphasised that the key terms of the role had been agreed and that both parties had begun taking steps towards the start of employment, including arrangements for his security pass. Further, the referee form stated that *“I understand that my employment may be terminated without...satisfactory references”*, rather than providing that there was no contract until these had been supplied. It also placed weight on the inclusion of a probationary period, which could only operate once employment had begun.

Taken together, this pointed towards a binding contract already having been formed, with the conditions operating as potential grounds for termination rather than barriers to formation.

Separately, the EAT noted that if the conditions *had* been conditions precedent, this did not mean there was an unrestricted right to withdraw the offer. Instead, the correct approach would have been for the Tribunal to have considered whether the employer was under an obligation not to withdraw before the date on which the conditions should have been fulfilled.

Was a notice term implied?

The EAT held that, in the absence of an express notice provision, a term of reasonable notice should be implied, and that this could exceed the statutory minimum period under the Employment Rights Act 1996.

The employer had referred to its standard conditions which offered one week's notice in the probationary period, but no notice if the employee has less than one month's service. However, the EAT said internal practices, and other employees' contracts, did not amount to a binding custom and practice capable of supplying a contractual term.

What was reasonable notice?

The EAT said that it is not the case that notice is presumed to start from zero and that there must be a reason to increase it. Section 86 of the Employment Rights Act 1996 (which sets out statutory notice requirements) only contains minimum thresholds – this should not be taken as meaning that they apply in the absence of any other provisions. What is “reasonable notice” may exceed those minimums.

On the facts, the EAT concluded that three months' notice was reasonable. This reflected the seniority of the role, the length and nature of the recruitment process, and the fact that the Claimant was to relocate. The employer's suggestion that the Claimant commit to a 12-month tenancy was also significant. The EAT rejected the employer's argument that this should have been reduced during the probation period – this had never been suggested to the Claimant.

In those circumstances, withdrawing the offer without notice

amounted to a breach of the implied term to give three months' notice.

Other claims

The EAT rejected the Claimant's claims for holiday pay and the relocation payment. Employment had not commenced, so no entitlement to holiday pay arose. The relocation payment was conditional on starting employment and was, therefore, not payable.

The EAT substituted judgment in favour of the Claimant for three months' notice pay.

What does this mean for employers?

This decision is a useful reminder that "subject to" wording is not necessarily enough to prevent a contract of employment from arising. Where an offer sets out the key terms and both parties proceed on the basis that employment will begin, a Tribunal may find that a binding contract is already in place.

What are the key practical takeaways for employers?

- **Be clear about the impact of conditions:** state clearly whether any conditions prevent a contract forming or apply after formation and set deadlines for satisfying them.

- **Include notice provisions in offer letters:** ensure offer letters specify notice rights that apply once a contract has formed, including any reduced notice that applies until the end of any probationary period.
- **Manage the process carefully:** onboarding steps and communications can indicate that a contract is already in place so be careful with the language used. HR should check any communications to be sent from managers.
- **Avoid relying on informal practice:** internal norms or other employees' contracts will not usually be enough to imply terms.

[Kankanalapalli v Loesche Energy Systems Ltd](#)

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TUPE under review: what employers need to know about the Government's Call for Evidence

The Department for Business and Trade has launched a wide-ranging review of the TUPE regulations. Employers have until 1 July 2026 to make their voices heard.

What is the background?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 – known as TUPE – sit at the heart of almost every business sale, merger, outsourcing arrangement and service provision change. They are also, in the experience of most HR professionals and in-house teams, among the most complex and demanding pieces of employment legislation to navigate in practice.

On 8 April 2026, the Department for Business and Trade (DBT) published a Call for Evidence on TUPE as part of the Government's broader "Plan to Make Work Pay" programme. The review follows hot on the heels of the Employment Rights Act 2025 and signals that further legislative change is on the agenda.

The Call for Evidence is explicitly framed around two, sometimes competing, objectives: making TUPE easier for businesses to operate, while simultaneously strengthening protections for employees who are subject to a transfer. Ministers have been candid that they want both outcomes and are seeking evidence to understand whether the current regulations deliver either goal satisfactorily.

At this stage, however, the Government is gathering information and experience from employers, employees, trade unions, legal practitioners and business representative bodies. Depending on the results, it may go on to develop policy proposals and consult on those.

The six areas under scrutiny

The Call for Evidence covers six broad areas:

The current framework

The Government asks whether the existing framework strikes the right balance between employer flexibility and employee protection, covering terms and conditions, consultation rights, collective agreements and pensions. Notably, occupational pension benefits tied to old age, invalidity or survivors remain exempt from automatic transfer under TUPE. The review invites views on whether that exemption remains appropriate, signalling potential change in this area.

Identifying a “relevant transfer”

One of the most persistent practical difficulties with TUPE is the threshold question: does it apply at all? The definition of a “relevant transfer” (i.e. an economic entity retaining its identity, or when a service transfers to a new provider) has generated extensive case law and significant uncertainty, particularly in complex outsourcing arrangements. The Government asks how clear the current test is in practice and whether it needs to be reformed.

Process and practicalities

The Call for Evidence asks about the areas where employers experience difficulty in the TUPE process: planning, employee liability information, consultation, terms and conditions post-transfer, and/or situations involving insolvency. These are the friction points where legal disputes commonly arise, and where clearer rules could benefit business.

Variation of terms and conditions

Under the current rules, employers cannot vary terms and conditions where the reason for doing so is the transfer itself. Variations are only permissible for economic, technical or organisational (ETO) reasons entailing changes in the workforce and the employee agrees to the change, or in certain other limited circumstances.

In practice, the bar on harmonisation is one of the most commercially significant features of TUPE. Acquiring businesses frequently find themselves managing workforces on incompatible terms for years after a transfer, creating both operational complexity and employee relations difficulties.

The Government is asking whether this framework is clear, fair and proportionate.

Guidance and support

The review asks how useful the existing Government and Acas guidance is in practice. This reflects a longstanding criticism from employers and practitioners that the guidance does not give businesses the practical direction they need when navigating novel or complex transfers.

Cost and impact

The Government is seeking quantitative evidence on the cost burden of TUPE compliance, both direct costs such as legal advice, HR resource and restructuring costs, and indirect ones including delay to transactions and difficulty in workforce planning.

What does this mean for employers?

It would be premature to predict specific reforms at this stage. What is clear is that the Government is open to relaxing some aspects to facilitate smoother transactions, while tightening others to strengthen employee protections.

Employers should be particularly alert to the possibility of changes to the ETO framework, which currently provides the main route for post-transfer harmonisation of terms. Reform to the service provision change rules is also plausible. Any

tightening of the information and consultation obligations, or of the protective award exposure for non-compliance, would have immediate and significant financial consequences for employers involved in transfers.

It is also worth setting this review in its broader legislative context. The Employment Rights Act 2025 has strengthened employee rights across multiple areas. Any TUPE reform is likely to be developed in that spirit.

Responses may be submitted [online](#), by email to tupepolicy@businessandtrade.gov.uk, or in writing to the TUPE Policy Team at the Department for Business and Trade, Old Admiralty Building, London SW1A 2DY. The response deadline is 11.59pm on 1 July 2026.

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Employment Rights Act 2025: second consultation launched

on trade union access rights

On 8 April 2026, the Government published its response to the completed consultation on the new rights of trade unions to access workplaces, as well as a draft statutory Code of Practice on the practicalities of this right (the Code) and an accompanying second consultation on that Code.

These consultations and the Code aim to shape the substance of the rights given to trade unions under Section 59 of the Employment Rights Act 2025 and will inform regulations and any secondary legislation which will determine how the rights take effect.

The new rights of access will affect all employers, regardless of whether their workplace currently has a union presence.

Progress to date

Under the new framework, trade unions will have new rights to access workplaces and engage with workers in order to meet, recruit and support them or facilitate collective bargaining. This includes both physical and digital access. Unions are expected to work with employers to agree an “access agreement” for this purpose, which will then be recorded by the Central Arbitration Committee (CAC). If they cannot agree, either party can make a referral to the CAC to determine whether (and how) access should be granted.

The Government’s initial consultation covered the

practicalities of making an access request, notifying the CAC, the length of negotiation periods and the factors that the CAC will consider when assessing requests. For information on the initial consultation, which ran from 23 October 2025 to 18 December 2025, please see our coverage [here](#).

Response, the draft Code and consultation

The Government has now published their [response](#) to the first consultation along with the [draft Code](#), which takes account of the proposals that the Government is taking forward as described in their response.

The Code provides practical guidance for making and responding to a request, how to facilitate engagement constructively and how the CAC will exercise its powers if the employer and union cannot agree. It is intended to cover both the new primary legislation under Chapter 5ZA of the Trade Union and Labour Relations (Consolidation) Act 1992 (as inserted by the Employment Rights Act 2025) and new proposed secondary legislation.

The key impacts to note of the Code in its current form are as follows:

- Requests will need to be made in writing, with email as the preferred option but with flexibility to use post if appropriate. If two or more unions make a joint application for access, they should prepare the request together and implement access arrangements jointly.

- There will be a standardised template for requesting access, with a baseline set of information requirements for the union to provide. There will be a similar template and set of information requirements for the employer's response to a request, and if the request is rejected the employer must make clear which elements are rejected and provide relevant reasons. Standard templates will also be provided for notifications to the CAC of successful access agreement, and for notifying variation and/or revocation of agreements.

- As part of any rejection, the employer must also specify if they have received an access request from any other union, or if they are engaged in negotiations with another union. The employer must also provide contact details, which we anticipate will likely be for the purpose of discussing the rejection.

- The timelines for responding to a request, the negotiation period and referring to the CAC have all been extended, which the Government states is aimed at balancing the need for timely access with the practicalities of requests for both employees and unions. The relevant periods will be:
 - 15 working days for an employer to consider and respond to a request, which can be extended by

agreement with the union;

- 25 working days for negotiation between the union and employer; and
 - 55 working days for the union to make a referral to the CAC (i.e. 15 working days following the conclusion of the negotiation period).
-
- Guidance will cover the practicalities of access, such as who will be permitted to attend meetings, use of workplace facilities and accounting for non-typical working patterns. Employers and unions should negotiate in good faith, and guidance will set out the process for continuing negotiations beyond the initial period.
-
- A minimum of 5 working days' notice must be given before the first instance of access takes place, and agreements must have an expiry date (maximum two years from the date on which they come into force). Agreements can be extended beyond this date through a joint application to the CAC.

- The CAC will not grant access to employers with fewer than 21 workers, however in future this may be adjusted so that the size-based exemption does not apply to workplaces covered by a statutory national bargaining framework (such as the national bargaining frameworks for adult social care and school support staff). There will also be some other narrow safeguards to require refusal of access, for instance if doing so would prejudice the prevention, detection or prosecution of crime.

- The CAC will have a set list of circumstances where it is otherwise reasonable for access not to be granted, meaning that a request will be denied. These include the presence of a recognised union already in the workplace (although this will not be a default), multiple requests for access from different unions, or any ongoing statutory recognition process.

- Employers will be required to take reasonable steps to facilitate access but should not be required to make any significant changes to do so, and the preference is for access to be facilitated using existing facilities and systems. The CAC may consider it reasonable to refuse access if it would require excessive resources from the employer (such as new meeting spaces or IT systems, or material operational disruption).

- Model” terms of access agreements will be set out to use as a reference point when drafting an agreement. These are not mandatory to use, however consistency with them will mean that a request for an access agreement is more likely to be granted by the CAC.

- Employers and unions will be encouraged to resolve disagreements before taking formal action. The CAC will have the power to issue penalties for breach of an access agreement, taking account of factors such as the gravity and duration of a breach and any reasons. The maximum penalties will be:
 - Up to £75,000 for a first penalty;

 - Up to £150,000 for a second penalty, reflecting repeated non-compliance under the same access agreement; and

 - Up to £500,000 for a third breach under the same access agreement (potentially issued repeatedly if non-compliance continues).

The Government has opened a [new consultation](#) on the Code’s guidance and the draft templates, seeking views on whether the proposals are sufficiently clear, detailed, appropriate and

workable. This will close on 20 May 2026, after which the Government plans to introduce secondary legislation into Parliament along with the final Code of Practice, expected to take effect in October 2026.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.