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DRAPER LANG QUARTERLY

Draper Lang LLP
The Employment Law Partnership

Welcome to our Draper Lang Quarterly Update. Here we share some employment news highlights and look at what's coming up to help your business planning.

WHEN ALGORITHMS DISCRIMINATE: EMPLOYERS BEWARE

WHY AI ISN'T NEUTRAL—AVOIDING PITFALLS AND ENSURING YOUR RECRUITMENT TECHNOLOGY IS FAIR

AI tools are now widely used in candidate screening, shortlisting, and video interview assessments. However, if these apparently neutral tools are not properly monitored, they can entrench discrimination rather than reduce it.

Under the Equality Act 2010, employers must ensure their recruitment practices do not discriminate on the basis of protected characteristics - whether decisions are made by people or automated systems. In fact, relying on AI tools may increase legal risk, especially if employers cannot explain why certain candidates were rejected.

AI is playing a growing role across all sectors. **A recent survey found that by the end of 2025, 68% of companies will use AI in some form in hiring. However, AI is not always neutral.**

Many models show **clear evidence of gender bias,** reflecting and amplifying the inequalities present in the data they are trained on. **Race discrimination is prevalent too**. A 2024 Bloomberg analysis suggested racial bias in Open AI's ChatGPT 3.5. Apparently the AI tool over selected Asian women and under selected black men. An Australian study suggested that AI tools favoured English language speakers from the US over non-native English speakers with accents from other countries.

This bias often stems from historical datasets that overrepresent certain demographics or encode societal stereotypes. For example, if an AI model is trained on decades of employment data where leadership roles were disproportionately held by men, it may learn to associate leadership traits more strongly with male candidates. Similarly, natural language processing tools may favour CVs using traditionally "masculine-coded" language, or penalise career breaks—disproportionately affecting women who take maternity leave.

These patterns aren't just technical quirks—they're discrimination risks. And when AI is used in the workplace, especially in recruitment, the legal implications for employers become significant. Some practical steps employers can take include:

- **Audit AI systems for bias**
  - Regularly evaluate recruitment tools for demographic disparities. Analyse data to identify any disproportionate impact.
- **Maintain human oversight**
  - Ensure automated decisions can be reviewed. Hiring managers should have the ability to override AI recommendations, and all decision-making rationale should be documented.
- **Require transparency from vendors**
  - If using third-party recruitment software, ask for evidence of fairness testing and bias mitigation strategies. Understand how the system works and how potential risks are addressed.
- **Train your teams**
  - HR, legal, and tech staff should be educated on how algorithmic bias can arise, how to spot it, and how to respond to it.
- **Monitor outcomes over time**
  - Track hiring, promotion, and retention data across demographics. If disparities persist, investigate the underlying systems and practices and take corrective action.

Tribunals: Backlogs, unpaid awards. A return to fees?

The backlog in UK Employment Tribunals is increasing sharply. As of March 2025, 491,000 cases were open, with **single-claim caseloads rising around 32% each yea**r. In London South, hearings of 1–5 days are being scheduled for October 2026 and 6–9 day hearings for February 2027. We have also just had a 3 day hearing in Nottingham scheduled for early 2028.

Delays heighten the risk of lost evidence and witness unavailability for employers, while employees face emotional strain, financial hardship, and delayed justice. To mitigate against this, parties should maintain meticulous records, consider early settlements where appropriate, and gather witness evidence at an early stage.

Even when successful, as reported by the BBC, the sad reality is that **many claimants struggle to recover awards.** Of around 7,000 people using a government enforcement scheme set up to tackle non-payments, three-quarters remain unpaid, often due to employer insolvency. This highlights systemic strain in the tribunal system, prompting calls from organisations such as Citizens Advice for reform.

The Employment Rights Bill changes will add to Tribunal case load, so something must be done. The Guardian has suggested **that government is considering a possible reintroduction of Tribunal fees, but that appears to be speculation at present.**

Redundancy and the Haycocks Case: Key Lessons for Employers

In De Bank Haycocks v ADP RPO UK Ltd [2024] EWCA Civ 1291, the Court of Appeal confirmed that **employers are not required to conduct general workforce consultation when making fewer than 20 employees redundant.**

The case arose when an employee challenged his redundancy, arguing that ADP had failed to consult properly. Rather surprisingly, the Employment Appeal Tribunal (EAT) had suggested that workforce consultation was needed in this situation as part of "good industrial relations practice," but thankfully the Court of Appeal rejected this notion, noting it had no statutory basis and would be unworkable.

The Court emphasized that **individual consultation in redundancy situations remains essential.** In particular, employers must allow employees to comment on matters affecting them personally—such as selection criteria and scores—as well as any broader workforce-level issues relevant to the redundancy.

The case illustrates that what amounts to a fair redundancy procedure depends on the facts. In this case, ADP's failure to share redundancy scores before consultation and to discuss them during consultation were procedural flaws. However, a robust appeal process allowed the employee to challenge his scores, remedying the defects and making the redundancy fair.

Key lessons for employers:

- Small-scale redundancies do not trigger a duty for general workforce consultation.
- Ideally - conduct a scoring exercise **after consultation begins** (something many employers do not always do in practice)
- Share selection criteria and scoring methods during consultation.
- Allow employees to review and comment on their scores before final decisions.
- Ensure appeals are robust to identify and correct procedural errors.

For expert advice on managing redundancies to minimise risk, please contact our team

Draper Lang News - Henley office move!

We are pleased to announce that our Henley team has relocated to a larger office at 23 Old Brewery Lane, Henley-on-Thames, following a successful decade on Hart Street. We look forward to welcoming clients to our new premises, please do drop in to say hello if you are in the area.

Other news and Tribunal round up

- **Employment Rights Bill Update**: It is said that the ERB will be approved by the Lords on 28th October with Royal Assent expected in early November. The Bill will introduce major reforms including day-one rights for unfair dismissal, enhanced sick pay, restrictions on zero-hours contracts, and stronger protections against "fire and rehire." Implementation will be phased, with key changes taking effect through 2026 and 2027. Please see our road map for further details.

- On 19 September 2025, the government **responded to the Women and Equalities Committee's call for stronger parental leave rights.** The WEC had recommended six weeks' paid paternity leave, aligning paternity pay with maternity pay for that period, reforming shared parental leave, and extending provision to self-employed parents, kinship carers, single parents, and parents of multiples. The government declined to guarantee a "day one" right to paternity leave and pay, limiting its response to an ongoing review. Changes are unlikely for several years.

- In a recent case the EAT confirmed that the requirement to provide **reasonable adjustments for disabled employees is only required if the adjustment could realistically reduce a disadvantage**. In a recent case, Mr Hindmarch, an Ambulance Care Assistant on long-term sick leave requested an FFP3 mask due to COVID-19 anxiety but did not confirm it would allow him to return to work. The Trust refused, and the EAT upheld this decision, finding no real prospect the mask would overcome the disadvantage.

- In *Garner v Thorpe Hall Leisure Ltd*, a chef with anxiety, depression and PCOS was dismissed after a after a **foul-mouthed outburst to her ex-partner** in front of guests in the four-star hotel in which they worked. The Tribunal held the employer failed to seek medical evidence—a missed reasonable adjustment—which might have changed the outcome. She was **awarded £13,500, highlighting the risk of rushing disciplinary processes and failing to obtain medical evidence** where it may be relevant.

COMING UP

Employment Rights Bill
With royal assent expected early November, the first provisions of the Bill could come into force soon afterwards, including various trade union-related measures (see our roadmap)

Consultations are expected on collective redundancies, flexible working, changes to tipping laws and further trade union measures.

The Budget will take place on 26 November 2025.

House of Lords is expected to release a report on their inquiry into effects and future development of remote and hybrid working in the UK

A consultation is expected to be released soon on employment status

We love to hear from you, so please get in touch if you would like to know more about anything featured in this update, or to give us any feedback.