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Employment Law

Seventh Edition

Malcolm Sargeant and David Lewis



Employment Law

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Malcolm Sargeant and David Lewis

Middlesex University

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Pearson Education Limited
Edinburgh Gate
Harlow CM20 2JE
United Kingdom
Tel: +44 (0)1279 623623
Web: www.pearson.com/uk

First published 2001 (print)
Fifth edition published 2010 (print)
Sixth edition published 2012 (print)
Seventh edition published 2014 (print and electronic)

© Pearson Education Limited 2001, 2012 (print)
© Pearson Education Limited 2014 (print and electronic)

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ISBN: 978-1-292-00179-1 (print)
978-1-292-00180-7 (PDF)
978-1-292-00181-4 (eText)

British Library Cataloguing-in-Publication Data

A catalogue record for the print edition is available from the British Library

Library of Congress Cataloging-in-Publication Data

Sargeant, Malcolm, author.

Employment law / Malcolm Sargeant and David Lewis, Middlesex University. – Seventh Edition.
pages cm

Includes bibliographical references.

ISBN 978-1-292-00179-1

1. Labor laws and legislation—Great Britain. I. Lewis, David, 1949 March 24- author. II. Title. KD3009.S27 2014 344.4101-dc23

2013048477

10 9 8 7 6 5 4 3 2 1
18 17 16 15 14

Print edition typeset in 9/12.5pt ITC Giovanni Std by 35
Print edition printed and bound in Great Britain by Henry Ling

NOTE THAT ANY PAGE CROSS REFERENCES REFER TO THE PRINT EDITION

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Preface

In recent years there have been many developments in employment law and regulation. All these developments, including the Equality Act 2010 and the Enterprise and Regulatory Reform Act 2013 are reflected in this edition.

The book is intended to be a comprehensive and supportive text for those studying employment law, whether they are law students or others. It emphasises the importance of the European Union in shaping employment protection in this country and other Member States of the Community. It also tries to reflect the continuing changes that are taking place in the subject. Mostly it will provide the reader with a good understanding of employment law and, hopefully, encourage them to further study and research.

Malcolm Sargeant
David Lewis

Guided tour

1 The study of employment law

1.1 Introduction

The subject of employment law is the regulation of the relationship between employer and worker or, put in another way, the relationship between the user of labour and the supplier of labour. This regulation takes place at an individual level and at a collective level. At an individual level the law takes the view that the contract of employment is like any other contract, namely a legally binding agreement that two equal parties have voluntarily entered into. At a collective level workers and employers have banded together into trade unions and employers' associations in order, partly, to give themselves greater bargaining power with each other.

The sources of this regulation are diverse and include:

1. Primary and secondary legislation initiated or supported by government.
2. The EU Treaties and legislation, usually, but not always, in the form of Directives.
3. The decisions of the courts, including the High Court, employment tribunals and the Employment Appeal Tribunal, but especially, as in other fields of law, decisions of the Court of Appeal and the Supreme Court.
4. The decisions of international courts, especially the Court of Justice of the European Union and the European Court of Human Rights.
5. Codes of practice and guidance issued by Ministers of the Crown and by individual bodies authorised by statute to do so. These latter include the Health and Safety Executive and the Equality and Human Rights Commission (EHRC).

'The study of employment law' chapter provides a comprehensive introduction to the main sources of employment legislation, and the best way of accessing them.

The EAT applied this reasoning in *Bateman v ASDA Stores*²¹⁰ where the staff handbook enabled the employer to alter contractual terms without obtaining the consent of the staff. However, such a right should only be exercised in a way that does not breach the implied term of trust and confidence (see above).

Chapter summary

- This chapter examined the express and implied terms that can be found in contracts of employment.
- It identified the types of information that an employer is required by law to provide in writing and the legal status of the particulars supplied.
- It discussed the particular duties imposed by statute and the difference between implied terms of fact and those of law.
- It detailed the obligations that the common law imposes on both employers and employees.
- It also outlined the impact of collective and workforce agreements as sources of obligations.
- Finally, it mentioned the process by which contractual terms can be lawfully varied.

Further reading

Barnes, L. 'The Continuing Conceptual Crisis in the Common Law of the Contract of Employment' (2004) 67(3) *Modern Law Review* 435.

Barnes, L., Collins, H. and Fitzpatrick, C. 'Reconstructing Employment Contracts' (2007) 36(1) *Industrial Law Journal* 1.

Brodie, D. 'Mutual Trust and Confidence: Catalysts, Constraints and Commonality' (2008) 37(4) *Industrial Law Journal* 329.

Chapter summaries are located at the end of each chapter and concisely sum up the main points and focus to be taken from each chapter.

granted leave to enter or remain in the UK or such leave is invalid, has ceased to have effect or is subject to a condition preventing him from entering employment. However, a dismissal for the reason that the employer could not lawfully continue to employ someone without contravening a restriction under an enactment is not necessarily fair.²⁷⁷

4.4.3.8 Some other substantial reason

Section 98(1)(b) ERA 1996 includes a fifth, potentially fair reason for dismissal. This is:

Some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

This provides flexibility for employers to introduce reasons other than the specific ones provided for in ERA 1996. In *RS Components Ltd v R E Iurnin*,²⁷⁸ which was about the dismissal of a salesperson who refused to accept a new contract of employment containing a restrictive covenant, the court held:

There are not only legal but also practical objections to a narrow construction of 'some other substantial reason'. Parliament may well have intended to set out... the common reasons for a dismissal but can hardly have hoped to produce an exhaustive catalogue of all the circumstances in which a company would be justified in terminating the services of an employee.

Thus 'some other substantial reason' is a general category which enables the courts to accept reasons as potentially fair that are not related to those in s. 98(2) ERA 1996. In *Irvine's* case the court was sympathetic to the employer's desire to protect its business by introducing non-competition covenants for its sales staff. The burden is on the employer to show a substantial reason to dismiss. The law is designed to deter employers from dismissing employees for a trivial reason or as a pretext to conceal the real reason.²⁷⁷ However, if an employer can show that there was a fair reason in mind at the time the decision was taken, and that the employer genuinely believed it to be fair, then this might make it a dismissal for some other substantial reason. Thus this reason has covered a dismissal following pressure from a third party²⁷⁹ and the removal of an incumbent chief executive following a takeover.²⁷⁸ However, where allegations are unproved the employer should check the reliability of what it has been told and the integrity of the informant.²⁸⁰

This desire to help employers make difficult decisions for sound business reasons has typified the approach of the courts. *St John of God (Care Services) Ltd v Brooks*²⁸¹ involved a charity-owned hospital whose National Health Service funding was reduced. As a result the employer proposed to cut pay and benefits to staff in order to make the necessary savings to stop them getting into financial trouble. The proposals were eventually accepted by 140 of

Short extracts from legislation and legal judgments ensure that you have access to primary material in all key areas.

FURTHER READING

- The Equality Act 2010 makes clear that unlawful discrimination is in relation to these protected characteristics.
- Unlawful discrimination includes direct and indirect discrimination as well as harassment.

Further reading

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www.homeoffice.gov.uk/equalities for the Government Equalities Office.

www.eef.org.uk/blog/ for the Equalities and Diversity Forum.

Further reading lists direct you to the most relevant resources with which to supplement your study. Use them for reading around a subject or for coursework preparation.

Abbreviations

AC	Appeal Cases
ACAS	Advisory, Conciliation and Arbitration Service
All ER	All England Law Reports
AMRA	Access to Medical Reports Act 1988
ASTMS	Association of Supervisory, Technical and Managerial Staffs
AUEW	Amalgamated Union of Engineering Workers
CA	Court of Appeal
CAC	Central Arbitration Committee
CBI	Confederation of British Industry
CEEP	European Centre of Employers and Enterprises providing Public Services
CHR	European Convention on Human Rights
CJEU	Court of Justice of the European Union
CMLR	Common Market Law Reports
CO	Certification Officer
CPSA	Civil and Public Services Association
CRE	Commission for Racial Equality
CRTUPE	Collective Redundancies and Transfer of Undertakings (Protection of Employment) Regulations 2014
DDA	Disability Discrimination Act 1995
DBIS	Department for Business, Innovation and Skills
DRC	Disability Rights Commission
DRCA	Disability Rights Commission Act 1999
EA	Equality Act 2010
EAT	Employment Appeal Tribunal
EC	European Community
ECHR	European Court of Human Rights
ECR	European Court Reports
EEA	European Economic Area
EEC	European Economic Community
EES	European Employment Strategy
EHRC	Equality and Human Rights Commission
EHRR	European Human Rights Reports
EIRR	European Industrial Relations Reports
EOC	Equal Opportunities Commission
EPA	Equal Pay Act 1970
ERA	Employment Rights Act 1996
ERELA	Employment Relations Act 1999
ERRA	Enterprise and Regulatory Reform Act 2013

ABBREVIATIONS

ETA	Employment Tribunals Act 1996
ETEJO	Employment Tribunals (Extension of Jurisdiction) Order 1994
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
EWC	European Works Council
GCHQ	Government Communications Headquarters
GMBATU	General, Municipal, Boilermakers and Allied Trades Union
HASAWA	Health and Safety at Work etc. Act 1974
HC	House of Commons
HL	House of Lords
HRA	Human Rights Act 1998
HSCE	Health and Safety (Consultation with Employees) Regulations 1996
IANA	Immigration, Asylum and Nationality Act 2006
ICE	Information and Consultation of Employees Regulations 2004
ICR	Industrial Cases Reports
IRLR	Industrial Relations Law Reports
LGBT	Lesbian, Gay, Bisexual or Transgender
MHSW	Management of Health and Safety at Work
MP	Member of Parliament
MPL	Maternity and Parental Leave etc. Regulations
NALGO	National Association of Local Government Officers
NEC	National Executive Committee
NGA	National Graphical Association
NGO	Non-Governmental Organisation
NIRC	National Industrial Relations Court
NMW	National minimum wage
NMWA	National Minimum Wage Act 1998
NUM	National Union of Mineworkers
NURMTW	National Union of Rail, Maritime and Transport Workers
ODI	Office for Disability Issues
OJ	Official Journal
ONS	Office for National Statistics
OPSI	Office of Public Sector Information
PTW	Part-time workers
QB	Queen's Bench
RRA	Race Relations Act 1976
SC	Supreme Court
SDA	Sex Discrimination Act 1975
SE	Societas Europaea
SI	Statutory Instrument
SNB	Special Negotiating Body
SOGAT	Society of Graphical and Allied Trades
SPA	State Pension Age
SRA	Standard retirement age
TFEU	Treaty on the Functioning of the European Union

TGWU	Transport and General Workers Union
TICE	Transnational Information and Consultation of Employees
TUC	Trades Union Congress
TULRCA	Trade Union and Labour Relations (Consolidation) Act 1992
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 1981 and 2006
UEAPME	European Association of Craft, Small and Medium Sized Enterprises
ULR	Union learning representative
WLR	Weekly Law Reports
WT	Working time

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Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ [2006] L204/23	151	Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purpose of informing and consulting employees, OJ [2009] L122/28	294, 296
Art 1	151	Directive 2010/18/EU implementing the revised Framework Agreement on parental leave; repealing Directive 96/34/EC, OJ [2010] L68/13	269
Art 2(1)	151	Clause 2(1)	270
Art 3	174	Clause 2(2)	270
Directive 2008/94 on the protection of employees in the event of the insolvency of their employer	315	Clause 3	242, 270
		Clause 5.5	270
		Clause 6	270
		Clause 7.1	270
		Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity; repealing Directive 86/613/EEC.	269
		Regulations	
		Regulation 1035/97/EC establishing a European Monitoring Centre on Racism and Xenophobia, OJ [1997] L151	153

Publisher's acknowledgements

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Tables 5.1 and 5.2 from *Discrimination in the European Union, Special Eurobarometer Survey (2007)*, European Commission, © European Union, 1995–2013. http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_sum_en.pdf.

In some instances we have been unable to trace the owners of copyright material, and we would appreciate any information that would enable us to do so.

1

The study of employment law

1.1 Introduction

The subject of employment law is the regulation of the relationship between employer and worker or, put in another way, the relationship between the user of labour and the supplier of labour. This regulation takes place at an individual level and at a collective level. At an individual level the law takes the view that the contract of employment is like any other contract, namely a legally binding agreement that two equal parties have voluntarily entered into. At a collective level workers and employers have banded together into trade unions and employers' associations in order, partly, to give themselves greater bargaining power with each other.

The sources of this regulation are diverse and include:

1. Primary and secondary legislation initiated or supported by government.
2. The EU Treaties and legislation, usually, but not always, in the form of Directives.
3. The decisions of the courts, including the High Court, employment tribunals and the Employment Appeal Tribunal, but especially, as in other fields of law, decisions of the Court of Appeal and the Supreme Court.
4. The decisions of international courts, especially the Court of Justice of the European Union and the European Court of Human Rights.
5. Codes of practice and guidance issued by Ministers of the Crown and by individual bodies authorised by statute to do so. These latter include the Health and Safety Executive and the Equality and Human Rights Commission (EHRC).
6. The Advisory, Conciliation and Arbitration Service (ACAS) and the Central Arbitration Committee (CAC), which have been given a special role by governments in the field of dispute resolution between workers and employers, both individually and collectively.

A concern for students of employment law is how to access the large amount of information available in the most efficient and effective way. Books are one source of information but further study means accessing the law and its sources directly. The purpose of this chapter is to provide some information on accessing employment law and to show that a large amount of information is available free from the organisations mentioned above and others, much of which is accessible via the Internet.

1.2 Primary and secondary legislation

The Acts of Parliament most often referred to in this book are the Employment Rights Act (ERA) 1996 and the Equality Act (EA) 2010. Both of these have been much amended by other statutes. There are other important Acts, such as the Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992 and the National Minimum Wage Act 1998. There are also a large number of statutory instruments that form an important source of employment law. For example, much EU legislation is introduced via regulations under s. 2(2) European Communities Act 1972.

Study sources for both Acts of Parliament and secondary legislation are:

1. Office of Public Sector Information (OPSI) – the Stationery Office, which is the official publisher to Parliament, prints copies for sale of all primary and secondary legislation. These can be expensive but are often available in libraries. All such legislation since, and including, 1988 is available at: www.legislation.gov.uk.

Here you can click on 'Browse Legislation', 'New Legislation' or 'Changes to Legislation' and you will be able to access all Acts of the UK Parliament adopted since 1988 together with draft legislation. If you click on 'Statutory Instruments' you will be able to access subordinate legislation. Bear in mind that there are several thousand statutory instruments adopted each year so it will help you if you know the year and the number that you are looking for. Thus SI 1998/1833 will lead you to statutory instrument number 1833 adopted in 1998, which will take you to the Working Time Regulations 1998.

2. Houses of Parliament – Hansard is the full verbatim report of debates in the Houses of Parliament and is kept by many libraries in microfiche format. There is also a large amount of information available on Parliament's website at: www.parliament.uk.

If you click on this, you will be able to choose between the House of Commons and the House of Lords and explore at your leisure. Click on 'House of Commons' and you will see a section on 'Research Papers'. If you click on these you will be able to explore all the recent research papers written by House of Commons research staff. This will include papers on employment law issues and Bills before Parliament.

Alternatively, if, at the Parliament Home Page, you click on 'Site Map' this will give you access to the entire work of Parliament, including copies of Bills before Parliament and the current work of the House of Commons and the House of Lords. It will usefully give you access to the Committee System and the reports that Select Committees of both Houses have made. For example, you might follow this through to the Business, Innovation and Skills Committee.

The government department that has the most relevance to the study of employment law is the Department for Business, Innovation and Skills. Its website can be found at: www.bis.gov.uk. The site has copies of all the consultations that have taken place about the introduction of many EU measures in the field of employment law and provides guidance on current legislation.

3. Other sources of statutes will be the same as for other law subjects studied, such as Halsbury's Statutes, Lexis Library and Lawtel.

1.3 The EU Treaties and legislation

Six countries adopted the Treaty of Rome in 1957 but the European Community has grown to 27 Member States at the time of writing. From December 2009 the two principal sources of EU law are the Treaty on the Functioning of the European Union and the Treaty on European Union. The scope of the EU's activities has also grown from being concerned with a number of primarily economic objectives to a Union that has an important social dimension as well as an economic one.

As a result of this, there is a large amount of EU material available and it seems to increase at a rate that alarms even specialist students of EU law. Ways of accessing this information will include:

1. European Documentation Centres – a large number of libraries contain European Documentation Centres, which will normally have a specialist librarian in charge. These keep paper copies of both current and historical EU material. They are most useful if you know what you are looking for rather than starting a cold search.
2. The EU has a website with an enormous amount of material. It is not the easiest site to navigate but will reward those who know which document they are looking for or those with patience. It can be found at: <http://europa.eu>.

Once you have clicked on the language you require, the next page provides a subject list of what the European Union does. Click on 'Policy and activities of the European Union' and the relevant area to choose is 'Employment and Social Affairs'. Here you will find useful summaries of legislation and policy as well as full texts of legislation and case law. You might also try the 'European Foundation for the Improvement of Living and Working Conditions' (at www.eurofound.europa.eu). This site has extensive information about what is going on in the EU and individual Member States.

3. A good library will have other sources, such as those contained on various CDs, as well as access to relevant information via other commercial bodies.

1.4 The courts

1.4.1 Employment tribunals and the EAT

Section 1(1) Employment Rights (Dispute Resolution) Act 1998 renamed industrial tribunals as employment tribunals, so this is how they are referred to in this book. Unlike many other courts, employment tribunals and the Employment Appeal Tribunal (EAT) are created by statute¹ as is the subject matter in which they deal.² The composition of employment tribunals is set out in the Employment Tribunals Act 1996 and provision has recently been made for legal officers to determine certain claims if the parties have given their written consent.³ An interesting issue with regard to tribunals and the Human Rights Act 1998 was raised in *Smith v Secretary of State for Trade and Industry*.⁴ Article 6(1) of the European

¹ See ss. 1 and 20 Employment Tribunals Act 1996.

² Sections 2–3 and 21 Employment Tribunals Act 1996.

³ Sections 4 and 22–25 Employment Tribunals Act 1996 (as amended).

⁴ [2000] IRLR 6.

Convention on Human Rights gives everyone the right to an 'independent and impartial' tribunal.⁵ The question raised was whether employment tribunals which were appointed by the Secretary of State could adjudicate in claims against the Secretary of State and still be an independent and impartial tribunal.

The work of employment tribunals is increasing partly because of new legislation on employment rights giving individuals the opportunity to make a complaint to an employment tribunal. Appeals from employment tribunals, on a point of law, are normally to the EAT, which sits in Edinburgh and London. Proceedings are to be heard by a judge alone unless a judge directs otherwise.⁶ Table 1.1 provides a breakdown of the employment tribunal cases sent to ACAS for conciliation in 2012/13.⁷

1.4.2 Case reports

Paper reports of proceedings at the EAT, the Court of Appeal (CA) and the Supreme Court are published in:

Industrial Cases Reports (ICR)

Industrial Relations Law Reports (IRLR).

Wherever possible, these are the sources used in this book. Both carry good summaries of the cases in question. Cases may also be reported in non-specialist law reports, such as the All England Law Reports (All ER), the Weekly Law Reports (WLR), or in Appeal Cases (AC).

Table 1.1 Employment tribunal cases sent to ACAS for conciliation in 2012/13

<i>Subject matter</i>	<i>Number and percentage of applications</i>	
Unfair dismissal	37,598	55.4%
Wages Act	24,269	35.8%
Breach of contract	23,849	35.2%
Working time (annual leave)	19,807	29.2%
Redundancy pay	9,193	13.6%
Disability discrimination	6,976	10.3%
Sex discrimination	5,213	7.7%
Race discrimination	4,288	6.3%
Equal pay	3,519	5.2%
Protective award	3,327	4.9%
Failure to provide terms and conditions	2,917	4.3%
Public interest disclosure	2,338	3.5%
Age discrimination	2,235	3.3%
Religion or belief discrimination	846	1.2%
Sexual orientation discrimination	591	0.9%
Other	8,049	
Total jurisdictions	155,015	

⁵ On the application of Article 6 to disciplinary proceedings see *Mattu v University Hospitals of Coventry and NHS Trust* [2012] IRLR 661 CA.

⁶ Section 28(2)–(8) Employment Tribunals Act 1996.

⁷ See ACAS Annual Report 2012/13.

Other, more comprehensive, sources are:

1. www.employmentappeals.gov.uk (the EAT);
2. www.courtservice.gov.uk (the High Court and the Court of Appeal);
3. www.supremecourt.gov.uk/decided-cases/ (the Supreme Court).

Apart from the EAT, these sources are not restricted to employment law cases only and can be found via a number of other links. The advantage of all these sites over the paper reports is that the judgment of the court is reported in full in all cases. The Employment Tribunals Service website also contains a lot of useful information and statistics. It can be found at: www.justice.gov.uk/tribunals/employment/.

For employment law purposes, the two most important courts are the Court of Justice of the European Union (Court of Justice) and the European Court of Human Rights (ECHR). Significant and relevant cases in both are reported in the ICR and IRLR but they both have their own paper and electronic reports. These are:

European Court Reports (ECR) for the Court of Justice

European Human Rights Reports (EHRR) for the European Court of Human Rights.

Again, these reports cover all the work of the courts and will include a large number of cases that are not directly relevant to the study of employment law. In addition, both courts have websites that will provide access to the judgments of the court. These sites are:

1. <http://europa.eu/about-eu/institutions-bodies/court-justice/> (the Court of Justice).
2. www.echr.coe.int/ (the ECHR).

1.5 Advisory, Conciliation and Arbitration Service

The Advisory, Conciliation and Arbitration Service (ACAS) was established by statute in 1975 to promote the improvement of industrial relations.⁸

It operates as an independent publicly funded body and is not subject to direct ministerial control. It is run by a council of 12 individuals, which is made up of leading figures from business, unions, independent sectors and academics. ACAS operates in four key areas of activities. These are:

1. Preventing and resolving disputes by means of collective conciliation and advisory mediation.
2. Conciliating in actual and potential complaints to employment tribunals.
3. Providing information and advice.
4. Promoting good practice and training.

Examples of its success are:

1. In 2012/13,⁹ 734 collective disputes were closed by outcome and another 77 were withdrawn; 681 cases were successfully completed and 53 unsuccessfully.

⁸ See now s. 209 TULRCA 1992.

⁹ See the latest annual report available on the ACAS website, www.acas.org.uk.

2. In the same period, 67,062 individual conciliation case outcomes were explained. Of these, 23 per cent were withdrawn and 44.7 per cent settled, and only 20.4 per cent made it to a tribunal hearing.

The ACAS annual report is a good source of statistical information and is free from the website. It also produces a wide range of publications that focus on good practice and explain the legal obligations of practitioners. Of considerable importance is its guide *Discipline and Grievances at Work* (see Chapter 4) and its codes of practice on:

- disclosure of information to trade unions for collective bargaining purposes 2003;
- time off for trade union duties and activities 2009; and
- disciplinary and grievance procedures 2009.

ACAS has authority to issue these codes of practice under ss. 199–202 TULRCA 1992. Sections 207 and 207A TULRCA 1992 provide that the contents of these codes will be taken into account at hearings before employment tribunals, courts or the Central Arbitration Committee (CAC). ACAS has a very useful website, which contains consultation and proposals on matters such as new codes of practice. It can be found at: www.acas.org.uk.

1.6 Central Arbitration Committee

The Central Arbitration Committee (CAC) is a permanent independent body with a number of roles:¹⁰

1. To adjudicate on applications relating to the statutory recognition of trade unions for collective bargaining purposes (see Chapter 11).
2. To determine disputes between employers and trade unions over the disclosure of information for collective bargaining purposes (see Chapter 11).
3. To determine claims and complaints regarding the establishment and operation of European Works Councils in Great Britain (see Chapter 9).
4. To provide voluntary arbitration in trade disputes, in certain circumstances.

In the period 2012/13 the CAC did not receive any applications concerning voluntary arbitration. However, it received 6 applications concerning disclosure of information and 54 concerning trade union recognition.

The Committee consists of a chair and 9 deputy chairs, together with 39 members experienced as representatives of employers or workers. Any determinations of the Committee are made by the chair, or deputy chair, plus two members.

The CAC has a useful website at: www.cac.gov.uk. This website contains information about the CAC and its statutory powers. It also contains information about decisions of the CAC and details about individual cases.

¹⁰ See ss. 259–265 TULRCA 1992.

1.7 Certification Officer

The Certification Officer is appointed¹¹ to carry out particular functions¹² (see Chapter 10):

1. Maintaining a list of trade unions and employers' associations.
2. Receiving, ensuring compliance with statutory requirements and keeping available for public inspection annual returns from trade unions and employers' associations.
3. Determining complaints concerning trade union elections, certain other ballots and certain breaches of trade union rules.
4. Ensuring observance of statutory requirements governing mergers between trade unions and between employers' associations.
5. Overseeing the political funds and the finances of trade unions and employers' associations.
6. Certifying the independence of trade unions.

The Certification Officer produces a detailed and useful annual report that contains information on employers' associations and trade unions and on the work of the Certification Officer. The report and other material can be seen on the website at: www.certoffice.org.

1.8 Information Commissioner

The Office of the Information Commissioner was established by the Data Protection Act 1998, much of which came into effect on 1 March 2000.¹³ The Commissioner oversees and enforces compliance with the Data Protection Act 1998 and the Freedom of Information Act 2000. It does this by, amongst other means:

1. Publishing guidance to assist with compliance.
2. Providing a general inquiry service.
3. Encouraging the development of codes of practice.
4. Maintaining the public register of data controllers under the Data Protection Act 1998 and the list of public authorities with approved publication schemes under the Freedom of Information Act 2000.
5. Prosecuting persons in respect of offences under the legislation.

There is an excellent website at: www.ico.gov.uk. This provides legal guidance and compliance advice as well as links to the Data Protection Act 1998, codes of practice and consultation documents, including the code of practice on the use of personal data in employer/employee relationships.

¹¹ Sections 254–255 TULRCA 1992.

¹² Part I TULRCA 1992.

¹³ Section 6(1) Data Protection Act 1998.

1.9 Equality and Human Rights Commission (EHRC)

The Equality and Human Rights Commission was established by s. 1 Equality Act 2006. In addition to assuming responsibility for the work of the previous anti-discrimination Commissions (i.e. the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission), it has the duty to combat unlawful discrimination on the grounds of sexual orientation, religion or belief, and age.

Section 8 Equality Act 2006 provides that the EHRC must:

- (a) promote understanding of the importance of equality and diversity,
- (b) encourage good practice in relation to equality and diversity,
- (c) promote equality of opportunity,
- (d) promote awareness and understanding of rights under the Equality Act 2010,
- (e) enforce the equality enactments,
- (f) work towards the elimination of unlawful discrimination, and
- (g) work towards the elimination of unlawful harassment.

It must also monitor the effectiveness of equality and human rights legislation and report on progress made every three years.¹⁴ As part of its general powers the EHRC can provide advice and information, produce codes of practice, conduct inquiries, carry out investigations and issue unlawful act notices.¹⁵

The EHRC website is located at: www.equalityhumanrights.com.

1.10 Other useful websites

Some sites are useful because they provide good links to other legal sites, such as:

University of Kent	www.kent.ac.uk/lawlinks
Industrial Law Society	www.industriallawsociety.org.uk

Other useful sites include:

British Employment Law	www.emplaw.co.uk
Business Europe	www.businesseurope.eu
Cabinet Office	www.cabinetoffice.gov.uk
Chartered Institute of Personnel and Development	www.cipd.co.uk
Confederation of British Industry	www.cbi.org.uk
Employers Forum on Age	www.efa.org.uk
European Industrial Relations Observatory	www.eurofound.europa.eu
European Trade Union Confederation	www.etuc.org
European Trade Union Institute	www.etui.org
Federation of Small Businesses	www.fsb.org.uk

¹⁴ Sections 11–12 Equality Act 2006.

¹⁵ Sections 13–16, 20–21 Equality Act 2006.

Health and Safety Executive	www.hse.gov.uk
Incomes Data Services	www.incomesdata.co.uk
International Labour Organization	www.ilo.org
Labour Research Department	www.lrd.org.uk
Low Pay Commission	www.lowpay.gov.uk
National Statistics	www.statistics.gov.uk
Trades Union Congress	www.tuc.org.uk
UK Official Documents	www.official-documents.gov.uk
Unison	www.unison.org.uk
XpertHR	www.xpethr.co.uk

Chapter summary

- Both EU and UK employment laws are interpreted by the courts, especially by employment tribunals and the Employment Appeal Tribunal.
- Courts and tribunals are bound by the decisions and guidance given by the Court of Justice as well as judges in higher UK courts.
- Employment tribunals are specialist bodies, whose decisions can be appealed against, on points of law, to the Employment Appeal Tribunal.
- ACAS has the general duty of improving industrial relations and provides advice, individual and collective conciliation and arbitration services.
- The Central Arbitration Committee deals with complaints about failure to disclose information for the purposes of collective bargaining. It also has an important role to play in the procedure for the statutory recognition of trade unions.
- The Certification Officer maintains lists of employers' associations and trade unions and issues certificates of independence.

Further reading

Davies, A. 'Judicial Self-restraint in Labour Law' (2009) 38(3) *Industrial Law Journal* 278.

Kilpatrick, C. 'The ECJ and Labour Law' (2009) 38(2) *Industrial Law Journal* 180.

Tucker, E. 'Renorming Labour Law: Can We Escape Labour Law's Recurring Regulatory Dilemmas?' (2010) 39(2) *Industrial Law Journal* 99.