

WINTER 2014

INSIDE THIS ISSUE

FIRM NEWS



James Rousell and David Ellis

FIRM NEWS

New Appointment
Partner Promotion
WJC Seminar

ARTICLES

Litigants in Person
Lifting the Corporate Veil
Change to Holiday
Pay Law

David said "I am delighted to be joining the litigation team at Wall James Chappell and I look forward to providing clients with a first-rate service".

WJC strengthens Litigation Team

The firm has appointed David Ellis to strengthen its litigation and dispute resolution team.

David joins the firm as a litigation solicitor and will work alongside the firm's litigation consultants Roger Bishop and Simon Beddow.

David graduated from Southampton University and attended the College of Law. He has over 16 years' experience as a practising solicitor, and has gained a wealth of experience dealing with both civil litigation and employment matters over that period.

Partner Promotion



Philip Chapman has been promoted to partner. Senior Partner, Jonathan Browne comments, "Philip has been with the firm since 2009 and over the last six years has consistently proven to be an extremely good lawyer as well as having the ability to bring in work. We are delighted to acknowledge his skills and contribution through this promotion to Partner and are sure that he will thrive in this new role."

A Notary Public and Cambridge Post-Graduate, Philip has wide ranging experience of all aspects of company commercial law advising both UK and International clients.

WJC SEMINAR

Join us for a Seminar on 5th March 2015 at Dudley Kingswinford Rugby Club on the following areas:

- Business debt collection
- Terms & Conditions of Contracts
- Tips for avoiding litigation
- Followed by Q & A session

For further information
email_post@wjclaw.co.uk

Litigants in Person

By David Ellis

With the virtual abolition of civil public funding (previously known as Legal Aid), more and more people are choosing to – or are forced to – represent themselves in litigation. They are known as “litigants in person”. Litigants in person are also known as unrepresented parties, self-represented litigants or self-represented parties. For the purposes of costs, a litigant in person includes a company or other corporation that is acting without a legal representative, and a legal representative who is acting for himself or herself.

Although the law is the same whether a litigant is or is not professionally represented, the application of that law, and the court’s exercise of its discretion, must take in to account whether a litigant is professionally represented. A court should not judge a litigant in person by the standards of a professional representative – indeed justice requires that the court should not do so.

Many of these litigants in person would previously have had recourse to public funding for legal advice and representation at court, but will no longer have that resource and will have to represent themselves.

In general, there are at least four reasons why someone might decide to act as a litigant in person. It may be because they:

- Cannot afford to pay for a representative;
- Think that matters are agreed or very straightforward so that there is no need for a representative;
- Believe that lawyers are only interested in making money out of their misery; or
- Believe they are capable of dealing with the matter as well as any lawyer.



David Ellis

There could be other reasons too.

Most litigants in person are likely to fall within the first category. It is likely that over time there will be a further increase in the proportion of litigants falling within this category.

A number of judges have expressed serious concerns about the rising number of litigants in person, including at the very highest level of the judiciary, with Supreme Court President Lord Neuberger expressing concern about their impact. One problem is that cases involving litigants in person are generally taking much longer than those where the parties are represented.

There are a number of practical steps that can be taken (whether by lawyers or by another litigant in person) to make dealing with litigants in person easier:

1. Politely ask them to engage with you - explain that they will be assisted by talking to you, and that the court will expect you to negotiate prior to any hearing;
2. Listen to what they have to say: find out what they want from the case. Not only can this save time, but it gives you a clear idea of their understanding of the case;
3. Bring duplicate copies of any documents to court, together with any proof of service. This will help avoid adjournments if the litigant in person fails to attend, or claims to have had too short notice of a hearing;
4. Ask the litigant in person whether they have sent documents into court: litigants in person are often unaware of the need to ensure documents are filed as well as served;
5. Always stick to clear English and avoid jargon;
6. Always ensure that the litigant in person has understood the situation. Do not assume that they can always read – for example some people have dyslexia and may be too embarrassed to raise the issue;
7. Be prepared to explain to the litigant in person with the law, rules and guidance relating to the case, as they may not be aware of these;
8. Check who is coming to court: litigants in person may not be aware that they need to tell you about a McKenzie Friend;
9. Treat a litigant in person with as much respect as you would any other opponent – do not underestimate them. Some litigants in person carry out diligent research and are very well- prepared.

The only thing that can be said with any certainty is that litigants in person appear to be here to stay.

For further information please contact David Ellis at d.ellis@wjclaw.co.uk

“Lifting the corporate veil”

A register of people with significant control



David Ellis

By Philip Chapman

On 25 June 2014 the government introduced the Small Business, Enterprise and Employment Bill to Parliament. The Bill includes amendments to the Companies Act 2006 to require companies to hold and keep available for inspection a register of people with significant control over the company (PSC register). Briefly:

A 'person with significant control' (PSC) is an individual who meets one or more of the following conditions:

1. Direct or indirect ownership of more than 25% of a company's shares.
2. Direct or indirect control of more than 25% of a company's voting rights.
3. Direct or indirect right to appoint or remove a majority of the board of company directors.
4. Exercises or has the right to exercise significant influence or control over a company.
5. Exercises or has the right to exercise significant influence or control over activities of a trust or firm which itself meets one or more of the first four conditions.

The Secretary of State must publish guidance about the meaning of 'significant influence or control'.

Companies will be required to take reasonable steps to identify people they know or suspect to have significant control, including by giving notice to PSCs and others to obtain information. PSCs will be required to disclose their interest in the company to the company in certain circumstances. In certain circumstances

details of a legal entity rather than an individual must be noted in the register. The Bill enables regulations to be made setting out the information that is required and how it should be recorded.

The required particulars of a registrable person who is an individual are the individual's name, service address, the country or state (or part of the United Kingdom) in which the individual is usually resident, nationality, date of birth, usual residential address, the date on which the individual became a registrable person in relation to the company in question, and the nature of his or her control over that company.

Companies will have to update the information if they know or might reasonably be expected to have known that a change to their PSCs has occurred. PSCs must inform the company of any changes to the information recorded in certain circumstances.

Companies will have to provide an initial statement about their PSCs to the registrar of companies on incorporation (a statement of initial significant control). They will have to update that information at least once every 12 months by delivering a confirmation statement.

Information will be publicly accessible. However a protection regime is provided.

For further information please contact Philip Chapman at p.chapman@wjclaw.co.uk



Change to the law on counting overtime in holiday pay

By David Ellis



David Ellis

In a landmark decision which will potentially be very costly to any UK businesses that pay their staff overtime, the Employment Appeal Tribunal (EAT) has allowed a claim by workers to include overtime (and other elements of remuneration such as commission) in holiday pay. The judgment that was handed down today (Tuesday 4 November) concerned the calculation of holiday pay in three cases: *Bear Scotland v Fulton and Baxter*, *Hertel (UK) Ltd v Wood and others* and *Amec Group Ltd v Law and others*. Until now, only basic pay (i.e. not including overtime pay) could be included when calculating holiday pay. This often meant that staff regularly working overtime would effectively face a pay cut during those weeks taken as annual leave. However, this new ruling means that (for the time being at least) all people working overtime can claim from their employer holiday pay at a rate that includes overtime.

The EAT also held that workers can make backdated claims, but only for a limited period thought to be no more than three months since when the holiday was taken.

The cases centre on the interpretation of the EU-wide Working Time Directive, and in particular the UK's Working Time Regulations 1998. The EAT judgment suggests that UK companies had been interpreting the EU directive wrongly.

It is likely that the employers in these cases will appeal against the decision either to the Court of Appeal or the European Court of Justice. Until such time as one of these courts overrules the decision, however, the new law stands.

This is good news for the five million or so workers who are paid overtime, and who represent some one-sixth of the UK workforce.

The Coalition government had resisted suggestions that overtime should be included in holiday pay. Unsurprisingly, trade union leaders have welcomed the ruling, but the Federation of Small Businesses and the CBI have been less enthusiastic, suggesting that the ruling could lead to the curtailment of overtime or even job losses in some businesses.

Employers would be well advised to review their current arrangements for holiday pay and assess their exposure to the risk of claims.

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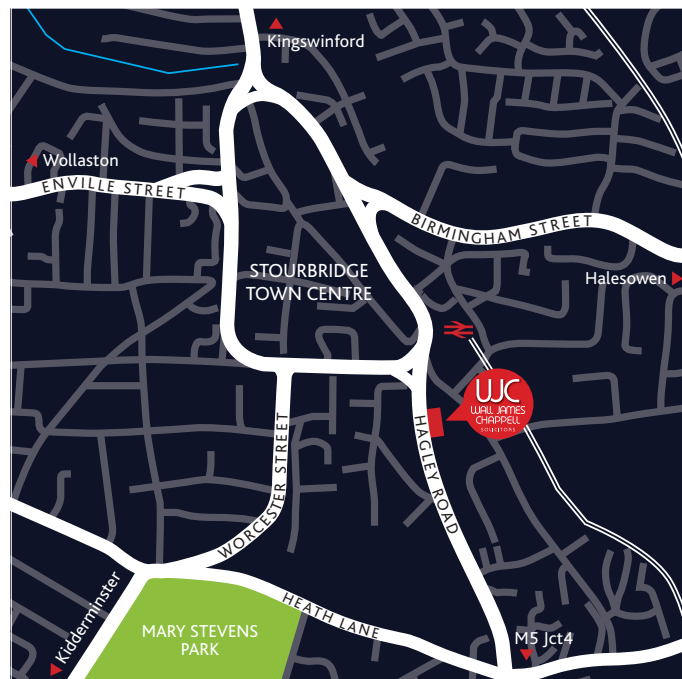
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This update is intended only to provide a summary of the law and is not a comprehensive guide. It is not intended to provide legal advice for specific cases. If you would like specific advice please contact a member of the team.