SLAUGHTER AND MAY

Pensions and Employment: Employment/Employee Benefits Bulletin

8 December 2017 / Issue 19

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Cases Round-up

Employers who misclassify workers may face substantial holiday pay claims

In an important recent decision, the Court of Justice of the European Union (CJEU) has held that a 'worker' who was wrongly classified as self-employed, and was denied the right to paid annual leave as a result, could bring a claim for holiday pay in respect of the whole period he had worked for his 'employer' (*King v The Sash Window Workshop Ltd*).

'Self-employed' salesman K was engaged by SWW in 1999 as a commission-only salesman. Both parties operated on the basis that K was self-employed and had no entitlement to paid holidays. SWW offered K an employment contract in 2008, but he rejected it in favour of remaining self-employed. Although he usually took several weeks leave each year, he did not take the full 5.6 weeks guaranteed under the Working Time Regulations 1998 (WTR), nor was he paid for any holiday which he did take.

Claim K was dismissed in 2012, and he subsequently brought a claim for paid leave stretching back over the entire 13 year period of his working relationship with SWW. The Tribunal found that K was, in fact, a worker and therefore was entitled to pay for holiday both taken and not taken in previous years. The EAT overturned that decision, but the Court of Appeal made a reference to the CJEU to determine the position under the Working Time Directive (WTD).

Leave v pay: The CJEU confirmed that under EU law, a worker is not required to take his leave before establishing whether he has the right to be paid for it. It found that the WTR may not be compliant with EU law in this respect, since the WTR seem to require a worker to take unpaid leave in order to claim payment. It found this result would be incompatible with Article 7 WTD, when read with Article 47 of the EU Charter, which requires Member States to ensure compliance with the right to an effective remedy.

Carry-over of rights to paid holiday The CJEU noted that, if a worker is prevented from taking paid holiday due to sickness, national law can limit the worker's right to carry over that leave to a period of 15 months. However, the CJEU declined to extend the same approach to the present case. It found there was no need to protect the employer's interests - on the facts, SWW was not faced with the same sort of organisational difficulties, and indeed was able to benefit from K not taking any paid annual leave.

Misclassification irrelevant: The CJEU found it was irrelevant that SWW considered, wrongly, that K was not entitled to paid annual leave. It left it up to the employer to inform itself of its obligations in this regard, finding that the employer must bear the consequences if it gets the worker's status wrong. Further, since the existence of the right to paid leave cannot be subject to any preconditions whatsoever, it was irrelevant whether or not K had put in requests for paid leave over the years.

Conclusion The CJEU therefore concluded that the WTD requires a worker to be able to carry over and accumulate paid annual leave rights until the termination of his or her employment, where those rights have not been exercised over several consecutive reference periods because the employer refused to remunerate that leave.

Employers beware: This judgment is significant given the current trend for ostensibly self-employed individuals in the gig economy to establish themselves as workers. The judgment potentially exposes employers of such workers to claims for unpaid holiday pay stretching back over the entire period of the worker relationship.

It should however be noted that this judgment applies only in respect of the basic entitlement to four weeks annual leave (under Reg 13 WTR), and not the additional entitlement to 1.6 weeks (under Reg 13A WTR).

The CJEU's judgment casts doubt on the limitations on historic claims for holiday pay under UK law, notably under:

- section 23(4A) of the Employment Rights Act 1996 (introduced by the Deductions from Wages (Limitation) Regulations 2014), which limits unlawful deductions claims for holiday pay to the previous two years; and

- the *Bear Scotland* rule (whereby any gap of more than three months between unlawful deductions will break the chain and preclude any further look-back).

It seems that employers who deny paid annual leave to their workers because they were wrongly classified may not be able to rely on these limitations. Employers may therefore face significant historic liabilities.

The case will now return to the Court of Appeal, which will need to decide whether the WTR can be interpreted in line with the CJEU's judgment. We will report further when the Court of Appeal's judgment is handed down.

In the meantime, from a practical perspective, the CJEU's judgment clearly puts the onus on employers to establish the employment status of all members of its workforce, and make sure they are afforded the appropriate rights. The law in this area is complex and in a state of flux, so employers should consider seeking legal advice on their individual circumstances in order to properly assess and minimise their exposure.

Uber drivers are 'workers'

Back in October 2016, an employment tribunal ruled that a group of Uber drivers were 'workers' rather than self-employed, and as such were entitled to paid holiday, the National Minimum/Living Wage, and whistleblower protections (see our Bulletin dated 4th November 2016 for further details). The EAT has now upheld that decision (*Uber BV v Aslam*).

Contracts not determinative: The EAT held that the Tribunal was entitled to look beyond the contractual documentation describing drivers as self-employed contractors, which it found did not accord with the reality of the working arrangements.

Agency relationship rejected: The EAT rejected Uber's argument that it was providing "lead-generation" opportunities to self-employed drivers as their agent. It took into account the scale of the business, rejecting the notion of Uber as 'a mosaic of 30,000 small businesses linked by a common platform'. The drivers were integrated into Uber's business, and were marketed as such. It was equally relevant that the drivers could not grow their 'businesses'; they were excluded from establishing a business relationship with passengers, and they had to accept work on Uber's terms.

Regulatory requirements relevant: The EAT also confirmed that, although personal service and an element of control were regulatory requirements, they were also relevant matters in determining worker status. In any event, the extent of Uber's control went far beyond its regulatory requirements.

Working time: The EAT had more difficulty with the issue of what should count as 'working time'. Ultimately it upheld the Tribunal's conclusion that this should comprise any time when the drivers were in the relevant territory (London), logged into the app and ready and willing to accept work – not just when they were actually engaged in trips. This relied in large part on the finding that drivers were expected to accept at least 80% of trip requests when signed in. The EAT did accept that, to the extent that drivers, in between accepting trips for Uber, might hold themselves out as available to other Private Hire Vehicle operators, the same analysis might not apply. It would be a matter of evidence in each case whether and for how long a driver remained ready and willing to accept trips for Uber.

Wider relevance? The EAT's judgment has been eagerly awaited and seems unsurprising, given the strong factual findings made by the Tribunal (despite the force with which Uber argued for its agency model). Nonetheless, it is clear that employment status cases are highly fact-specific, so the EAT's decision cannot simply be read across to other situations where employment status is disputed.

Reform? The Taylor Review made numerous proposals for reform in this area, including placing a greater emphasis on 'control' (which would not have helped Uber in this case). It was however more helpful on the "working time" issue, as it recommended that the definition of 'working time' should be adapted, to discourage individuals logging on to an app when they know that there is no work and expecting to be paid.

Next steps: Uber are appealing the EAT's judgment. Uber sought (but have recently been denied) permission to leapfrog the Court of Appeal and be joined with *Pimlico Plumbers v Smith*, which is due to be heard by the Supreme Court on 20/21st February 2018. The appeal will therefore proceed in the Court of Appeal. The "working time" issue is likely to be one of the

most contentious issues on appeal - not least because the EAT's formulation will make it very difficult for Uber to accurately calculate the working time of its drivers. We will report further once the Court of Appeal's decision is handed down.

Deliveroo riders are NOT 'workers'

The Central Arbitration Committee (CAC) has rejected a recognition application from the Independent Workers Union of Great Britain (IWGB) for rights to negotiate on pay, hours and holidays with Deliveroo in respect of its riders in Camden. It found that, although the IWGB could demonstrate the requisite level of support for recognition, the riders were not 'workers', since there was no obligation to provide personal service (*Independent Workers' Union of Great Britain (IWGB) v RooFoods Limited T/A Deliveroo*).

No personal service: On the 'worker issue, the CAC found it fatal that Deliveroo riders effectively enjoyed a genuine and unfettered right of substitution. Riders were able to send any other individuals to take their place on any job at any time and for any reason, even if the substitute was not a fellow Deliveroo rider. Riders were also under no obligation to notify Deliveroo that they had done so (although they were liable to Deliveroo for the acts/omissions of their chosen substitute).

The 'substitution conundrum' The CAC was clearly puzzled by this arrangement, since they were unable to see why riders would engage a substitute (given their ability to log in to the app as and when they wished, to pass on offers of a delivery, and even to abandon the delivery midway through), or why Deliveroo would allow substitutes (given the amount of time, money and energy they spent in selecting and training riders).

Substitution was genuine: Nonetheless, the CAC found the right of substitution to be genuine, having heard evidence that it was operated in practice by some (albeit a very small minority) of the riders. Unlike in the *Uber* litigation (see item above), Deliveroo did not seek to argue that the riders were in business on their own account. The personal service criterion was therefore key, and the claim for worker status failed.

Sufficient support: On the support issue, it was clear that IWBG members constituted at least 10% of the workers in the proposed bargaining unit. The issue was whether a majority of the riders in the proposed bargaining unit would be likely to favour recognition of the IWGB. The IWGB's petition of the riders revealed around 33% support for recognition, and both sides accused the other of employing underhand tactics in order to garner (or reduce) support for union recognition. On balance, the CAC found that IWGB would have been able to demonstrate sufficient support (noting that "*There are clearly concerns about the precarious nature of the work and the wider debate around the gig economy*"). Had the riders been found to be 'workers', IWGB's application would therefore have succeeded - but on the facts, it did not.

New contracts were key: The CAC's decision was based on a new contract which Deliveroo implemented in May 2017, just a few weeks before the hearing. This has sparked both controversy and interest on both sides of the debate, as representing a method by which gig economy platforms may continue to engage individuals on a self-employed basis (subject to how and when the Taylor reforms are implemented).

Reform: The fact that the CAC's decision turned so heavily on the issue of personal service is significant in light of the Taylor Review, which recommended de-emphasising this element of the employment status test (with the intention being that "a substitution clause can no longer defeat a claim to 'worker' status", exactly as happened in this case).

Next steps? A decision by the CAC can be challenged in the High Court on a point of law. The IWGB has yet to confirm whether it will be appealing this decision. It is currently pursuing a separate employment tribunal claim seeking to establish 'worker' status for other purposes for Deliveroo riders.

IWGB seeks collective bargaining rights for outsourced workers

It has been reported that the Independent Workers Union of Great Britain (IWGB) have lodged an application with the CAC for collective bargaining rights with the University of London. The application relates to 75 support staff (receptionists, security officers, postroom staff

and porters) working at the University of London, who are employed through the facilities management company Cordant Security. The IWGB is seeking the right to agree their pay and conditions directly with the university.

The IWGB are reportedly arguing that denying the workers the right to collectively bargain with their "de facto employer" is a breach of their rights to freedom of association under Article 11 of the European Convention on Human Rights. It is effectively seeking a 'joint employment' model between the University and Cordant.

A University of London spokesperson said: "*The University does not employ any of these workers and does not accept that the relevant legislation recognises the concept of joint employment. We have therefore not agreed to the IWGB's request for recognition*." The University has nonetheless also announced a review of the performance of its contracted facilities management services.

Implications for outsourcing: It has been suggested that, if the application succeeds, it will remove many of the benefits of outsourcing. It is worth noting however that similar arguments were made before service provision changes were expressly brought within the scope of TUPE in 2006, but this did not result in any significant reduction in the use of outsourcing arrangements. It has also been suggested that, rather than 'levelling up' the terms of outsourced workers, allowing outsourced workers to join the collective bargaining unit may result in businesses reducing pay and benefits for their direct employees, in order to achieve a more affordable middle ground.

'Joint employment'? The 'joint employment' model contended for by the IWGB has so far not been widely recognised in the UK. It has been rejected for example in agency worker scenarios, where the courts and tribunals have only been willing to imply a contract of employment between the agency worker and the end-user where it is "necessary" to do so (which it rarely is, when they are engaged under a contract with the agency). There is however an established concept of joint employment under US law, which the IWGB may seek to rely on in support of their claim.

Next steps: We will track the progress of this application and report further when the CAC's decision is handed down. A date for the hearing has not yet been announced.

Assumption of responsibility by parent company gave rise to TUPE transfer

If a parent company takes over the day-to-day running of the business of a subsidiary, this may result in a TUPE transfer of the subsidiary's employees to the parent. This is so even if the parent company has not assumed the obligations of employer towards the subsidiary's employees, according to a recent judgment of the EAT (*Guvera Ltd v Butler*).

Share purchase by subsidiary: Blinkbox (B) provided a music streaming business (the Business) in the UK. In January 2015, GUK (a subsidiary of G Ltd) bought the shares in B. The CEO of G Ltd (H) was not happy about the purchase, as in his view there had been insufficient due diligence. H became increasingly concerned about how the Business was being conducted.

Timeline: H therefore set in motion a series of events:

- On 9th May 2015, H sent an email to G Ltd's Chief Technical Officer (K) with instructions to buy the assets of B "without triggering major HR issues". K was also instructed to take the place of B's sole director, and make the majority of the staff redundant (keeping 20 of the best).
- On 12th May, K arrived at B and began implementing H's instructions, and asking for relevant financial information about the Business.
- On 15th May, the majority of B's staff were made redundant (in accordance with H's instructions).
- On 18th May, K addressed the remaining staff, confirming that G Ltd had now 'taken B into the fold under a different structure', and that G Ltd was now in charge.

Claim: A group of former employees of the Business (together X) brought a claim against G Ltd alleging that there had been a TUPE transfer of the Business. The Tribunal held that there was a relevant transfer of the Business to G Ltd on 12th May 2015. In its judgment, this was the point at which G Ltd assumed day to day control of the Business, in a way that went beyond the mere

exercise of ordinary supervision or information gathering between parent and subsidiary.

Test for transfer: The EAT dismissed G Ltd's appeal. It rejected G Ltd's argument that it is a necessary condition of a transfer that the transferee has assumed the obligations of employer towards the employees of the undertaking, finding that this is simply one factor in the multi-factorial test. It did not accept that the recent High Court decision in *ICAP Management Services Ltd v Berry* (see our Bulletin dated 16th June 2017) had changed the position and made it a critical condition that the transferee must assume the obligations of employer. The EAT preferred the more generic test of whether the new party has *"stepped into the shoes"* of the transferor. On the facts, it was satisfied that G Ltd had "*stepped into the shoes*" of B, and there was a TUPE transfer.

Lessons for parent companies: The EAT's judgment has clear implications for parent companies in how they deal with share purchases by their subsidiaries. In this case, a claim by X against the parent company was no doubt motivated by the fact that B went into administration on 11th June 2015 and was in liquidation by the time of the hearing, by which time G UK had also been dissolved. G Ltd therefore provided the only viable financial recourse for X. The sums involved were also substantial, since the Tribunal awarded X in total around £3.5m in compensation.

Beware misleading employee on reason for dismissal

An employer who decides to dismiss an employee for poor performance reasons may decide to give the employee a different reason for terminating their employment, in order to 'soften the blow'. However, if the employee finds out the true reason, this may have adverse consequences for the employer. The EAT has recently confirmed that an employer in this position had breached the implied term of trust and confidence, entitling the employee to claim constructive wrongful dismissal (*Rawlinson v Brightside Group Ltd*).

Performance concerns: R was employed by BG, a firm of insurance brokers, as its Group Legal Counsel. BG's CEO (W) had concerns about R's performance from the outset (although these were never formally raised with R). W therefore decided, six months into R's employment, that R should be dismissed.

Different reason: W was however concerned that R should work through his three-month notice period to ensure a smooth handover of work. W therefore decided, in order to 'soften the blow', that R should be told that his employment was terminated not for performance reasons, but because BG had decided to outsource its legal services.

Response: R responded by asserting that TUPE would apply to the outsourcing, and his dismissal was therefore automatically unfair. He resigned with immediate effect on the basis that BG was acting in breach of contract and breaching its obligations under TUPE. It was only when R lodged a subject access request following the end of his employment that he discovered the true reason for his dismissal.

Claim: R claimed wrongful constructive dismissal based upon a fundamental breach of the implied term of trust and confidence (he had insufficient service to claim unfair dismissal). The Tribunal dismissed R's claim, finding that BG's failure to inform him of its concerns with his performance or the true reason for his dismissal did not amount to a breach of the implied term of trust and confidence. The Tribunal also considered that R's complaint was really about the manner of his dismissal, which could only be the basis for an unfair dismissal claim (and not a wrongful dismissal claim).

Reason for dismissal: The EAT allowed the appeal. It accepted that an employer is not necessarily obliged to inform the employee of the reason for their dismissal, at least as an incident of the implied duty of trust and confidence. However, if an employer does decide to give a reason, the employer then assumes an obligation not to deliberately mislead the employee. The EAT therefore concluded that in this case there had been a breach of the implied term of trust and confidence.

Wrongful dismissal: The EAT went on to find that R's claim was not excluded on the basis that it related to the manner of his dismissal. Its view was that the breach preceded and stood apart from the dismissal; indeed, it arose at a time when the employment relationship was intended

to continue (if only for the notice period). The EAT therefore substituted a finding that R's wrongful dismissal claim should succeed.

Unfair dismissal implications: The employee in this case did not have the requisite two years qualifying service in order to claim unfair dismissal. If he had, his dismissal would likely have been unfair. He would also have been entitled to a written statement of reasons for his dismissal, under section 92 ERA 1996 (R made such a request in this case, but he was refused).

Wrongful dismissal implications: Where employees do not have two years' qualifying service, employers should be aware of the risk of a wrongful dismissal claim if they choose to give a false reason for dismissal. Although damages for such a claim would usually be limited to the value of the notice period (as it was in this case), there may be other implications of a wrongful dismissal, including restrictive covenants falling away.

'White lies' OK? The EAT was prepared to allow that in some cases the employer may be permitted some element of deceit - the '*white lie that serves some more benign purpose*' - without breaching its implied duty. However, it did not accept that this was such a case, and gave no broader guidance on what circumstances may suffice. Unless the employer can be confident that it has reasonable and proper cause for the deceit, honesty may be the best policy.

Points in practice

Employment status: Government Committees publish report and draft Bill

The House of Commons Work and Pensions and Business, Energy and Industrial Strategy Committees have published a joint report, 'A framework for modern employment'. The report responds to the Taylor Review's final report, and includes the text of a draft Bill intended to 'take forward the best of the Taylor Report recommendations' (see our Bulletin dated 14th July 2017 for further details). It also incorporates some of the recommendations from the Work and Pensions committee's May 2017 report, 'Self-employment and the gig economy' (see our Bulletin dated 12th May 2017 for further details).

The report's conclusions and recommendations are set out below:

Clearer statutory definitions of employment status: The report finds that clearer legislation on employment status could be valuable in preventing confusion and promoting fair competition between businesses. It therefore recommends that the Government legislates to introduce greater clarity on definitions of employment status, and specifically, to emphasise the importance of control and supervision of workers by a company, rather than a narrow focus on substitution, in distinguishing between workers and the genuinely self-employed.

The draft Bill proposes amendments to section 230 ERA 1996, to:

- remove the personal service requirement from the 'worker' definition;
- insert a definition of 'independent contractor' (as being neither a worker nor an employee), and
- set out a list of factors to which a tribunal or court may have regard when determining if an individual is an 'employee' or a 'worker' (these factors largely reflect the factors developed in existing case law).

Worker by default: The report reiterates the recommendation from the May 2017 report that the Government should legislate to implement a 'worker by default' model. This was not something which the Taylor Review recommended, and Matthew Taylor has rejected it in his response to the report). The report envisages a statutory presumption that an individual is a worker unless the contrary is established. The report envisages that the presumption would apply to companies who have a self-employed workforce above a certain size (to be defined in secondary legislation). The draft Bill would implement this via a new section 1ZB ERA 1996.

Written statement of employment particulars: The report also recommends that the Government extends the duty of employers to provide a clearly written statement of employment conditions to cover workers, as well

as employees. This right should apply from day one of a new job, with the statement to be provided within seven days. The statement should give a clear statement of status, as well as details of the rights and entitlements of the individual by virtue of their status. The draft Bill would implement this via a new section 1ZA ERA 1996.

Non-guaranteed hours: premium NMW/NLW: The report adopts the Taylor Review recommendation that the Government should pilot a pay premium on the National Minimum Wage and National Living Wage for workers who work non-guaranteed hours. Proposed legislation to enable this change is set out in clause 3 of the draft Bill.

Other: The report also adopts the Taylor Review recommendations for amendments to the Information and Consultation of Employees (ICE) threshold, and abolishing the Swedish Derogation from equal treatment for agency workers. The report also recommends that the Government brings forward stronger and more deterrent penalties for repeat or serious breaches of employment legislation. It also advocates more resources for the Director of Labour Market Enforcement to enable it to take a more proactive approach to identifying and deterring abuses, including 'deep-dives' into industrial sectors and geographic areas, and supply-chain wide enforcement actions.

What is missing from Taylor?: The report has adopted most of the recommendations of the Taylor Review. However, some of the Taylor Report recommendations have been ignored at this stage, including:

- introducing the term 'dependent contractor' to refer to those who are 'workers' but not 'employees';
- permitting rolled-up holiday pay and increasing the holiday pay reference period from 12 to 52 weeks;
- allowing agency workers and zero-hours contractors a right to request a direct / guaranteed hours contract with the end user after 12 months;
- a requirement on all employers to report on (and bring to the attention of the workforce) their workforce structures; and
- reforms to SSP and the right to return from sick leave.

Working time and NMW: The report has also not adopted the Taylor Report recommendations for changes to the NMW rules to better accommodate the gig economy. Taylor was of the view that workers should not necessarily be entitled to claim the NMW if they simply log on to an app at a time when they are aware (through real-time information) that there is not much work available. The Committees decided that this could create too great a loophole in the entitlement to the NMW. If the Committees recommendations are taken forward, it has been suggested that platforms could move away from on-demand working and instead operate on a shift-work model, which would mean significantly less flexibility for its workers.

Government response: The Government has confirmed (most recently in its Industrial Strategy: building a Britain fit for the future that it will be taking forward some of the Taylor review's recommendations (including that the Government work with worker representative bodies to develop a standard measure of 'good work'). Budget 2017 also confirmed that an employment status consultation will be published as part of the Government's response to the Taylor Review, considering options for reform to make the employment status tests for both employment rights and tax clearer. The Government's formal response to the Taylor Review was expected before the end of the year, but reports now suggest that this may be delayed until the New Year. We will report further when it is published.

FRC publishes proposals for a revised UK Corporate Governance Code

The Financial Reporting Council (FRC) has published a consultation on a revised UK Corporate Governance Code. The revised Code is (in the FRC's words) shorter and sharper, and focuses on the importance of long-term success and sustainability, addresses issues of public trust in business and aims to ensure the attractiveness of the UK capital market to global investors through Brexit and beyond.

The revised Code has been restructured into five sections:

1. Leadership and purpose

2. Division of responsibilities

3. Composition, succession and evaluation

4. Audit, risk and internal control

5. Remuneration

The consultation includes specific changes to the Code as requested by the Government's response to the Green Paper Consultation on Corporate Governance Reform. These are:

- for companies to have a method of consulting with their employees. New Provision 3 within Section 1 provides that "*The board should establish a method for gathering the views of the workforce. This would normally be a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director*". The term 'workforce' has been deliberately chosen to encourage companies to consider how their actions impact on all, not only those with formal contracts of employment. For example, this could include workers, agency workers and those providing services as a contractor (self-employed);

- extending recommended minimum vesting and post-vesting holding periods for executive share awards from three years to five years;

- that chairs of remuneration committees should have at least 12 months' previous experience; and

- specifying the steps companies should take when they encounter significant shareholder opposition to executive pay policies and awards.

Responses to the consultation should be sent to codereview@frc.org.uk by 28th February 2018.

Women on boards: the latest

The Hampton-Alexander Review 2017 has published new figures which reveal that almost 28% of board positions in FTSE 100 companies are now held by women, and the number of all-male FTSE 350 company boards has fallen to 8. This means that FTSE 100 companies are on course to meet the review's 33% target for women on boards by 2020.

However, Sir Philip Hampton has now extended the 33% target to senior leadership positions of all FTSE 350 companies. Previously this voluntary target only applied to FTSE 100 firms.

All FTSE 100 companies, and 96% of FTSE 250 companies excluding investment trusts, voluntarily responded to the review's requests for their gender diversity data. The 2017 Hampton-Alexander Review therefore gives the most accurate picture ever of diversity at FTSE 350 companies.

Tribunal fees: refund scheme launches in full

The Ministry of Justice and HM Courts & Tribunals Service have launched full application process for refunds of tribunal and EAT fees.

Eligible parties can apply online or by post. The application process is open to all those who paid fees between 29th July 2013 and 26th July 2017. All types of fee can be reclaimed, not just fees for issuing a claim or having a hearing.

If HMCTS agrees that a refund is due, the amount will be transferred to the applicant's bank account (plus 0.5% interest) and a letter will be sent confirming the amount.

PLSA report on FTSE 100 workforce reporting

The Pensions and Lifetime Savings Association (PLSA) has published a new report: Hidden Talent: What do companies' annual reports tell us about their workers? The report (which includes a forward by Matthew Taylor of the Taylor Review) examines corporate reporting on employment models and working practices across the FTSE 100.

The report identified highly varied levels of engagement with these themes. It reveals that:

- Only 43% of companies report how employees added value to company strategy (whereas 91% discussed the workforce in relation to risk management);

- 49% provided forward-looking commentary on their workforce, such as commitments to enhanced engagement or training, while 51% focus solely on past performance;

- Just 4% of companies provide a breakdown of workforce by full-time and part-time

workers, and only 7% provide data or policies on their use of agency workers;

- 21% provide concrete data in relation to investment in training and development of their workforce or the number of workers trained; and
- 64% disclose mechanisms for dialogue between the workforce and senior management, but only 9% reference trade union coverage.

The report concludes that the onus is on both companies to provide better information, and on investors to ask for it. The PLSA encourages both companies and investors to engage with recent initiatives designed to promote better reporting, such as the PLSA toolkit, as well as the Investment Association's long-term reporting guidance and the ShareAction Workforce Disclosure Initiative.

If you would like further information on these issues or to discuss their impact on your business, please speak to your usual Slaughter and May contact.

If you would like to find out more about our Pensions and Employment Group or require advice on a pensions, employment or employee benefits matters, please contact Jonathan Fenn or your usual Slaughter and May adviser.

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