

# PPMA Employment Law Update

24 April 2026

Sean Hick – Partner (Employment)  
Kate Beech – Partner (Pensions)

# Agenda

- Employment Case law update
- Employment Horizon Scanning
- Pensions update

# Case law update

## Alpha Anne & Others v Great Ormond Street Hospital for Children NHS Foundation Trust

- 80 cleaners' (most of whom were of BAME backgrounds) employment TUPE transferred into the Trust from a contractor
- Entitled to AfC Band 2 rates
- Harmonisation of terms delayed
- Indirect race discrimination claims dismissed by the ET
- The claimant's appealed
- EAT held that
  - The pre-transfer claims failed as the Trust were not responsible for the terms set by the claimants' employer
  - The pre-transfer claims were upheld, the Trust had the power to unilaterally vary the terms under an express contractual term and could not objectively justify the delay in providing the AfC terms from 'day one'

## Alpha Anne & Others v Great Ormond Street Hospital for Children NHS Foundation Trust

### What to take away

- This decision doesn't change the rules under Regulation 4 of TUPE where the transfer is the reason for changing terms and conditions
- In this case, the employer should have remedied the discrimination identified from 'day one' of the transfer because they had a contractual right to unilaterally vary the terms
- The position is less clear where no such clauses exists
- Recommend identifying any post-transfer indirect discrimination pay risks
- Note also the planned changes under the ERA 2025 to prevent 'two tier' workforces being created when outsourcing services from the public sector

# Kankanalapalli v Loesche Energy Systems Ltd

- K accepted a conditional offer of a project manager post that was subject to satisfactory references, a right to work check and successful completion of a six-month probationary period.
- L withdrew the offer before the agreed start date due to project delay
- K's breach of contract claim dismissed by the ET as the conditions of the offer had not been met when it was withdrawn
- EAT upheld K's appeal and his claim on the basis that:
  - The ET did not consider whether the conditions were precedent or subsequent
  - On the facts of the case, the conditions were all subsequent
  - This meant the job offer had given rise to a binding contract which the employer breached by failing to give reasonable notice
  - As the contract was silent on notice, reasonable notice was assessed at three months'

# Kankanalapalli v Loesche Energy Systems Ltd

## What to take away

- Conditional offers need to be carefully drafted and managed
- Review your offer letters
  - Do your conditional offer letters clearly set out which conditions are precedent and which are subsequent?
  - Are employees only allowed to start work after accepting a conditional offer if they have met all the conditions?
- If the answer to one or both of those questions is “no”, an employment contract may exist despite the employee not having satisfied the conditions
- If a contract exists, the employer will have to either give the employee notice or PILON to terminate it
- Also note - if the notice period is not explicitly set out in the offer or contract, a reasonable notice period may be implied by the court or tribunal

# Horizon scanning

## ERA 2025: Preparing for three key changes

- **1 October 2026:** Proactive duty on employers to take 'all reasonable steps' to prevent **sexual harassment** AND employer liability for **third party harassment** of employees and workers unless all reasonable steps taken to prevent such harassment occurring.
- **Immediate next steps:**
  - Put in place robust risk assessments, processes, policies, training and other initiatives to show that you are taking all reasonable steps
  - Engage staff and union representatives in the process
  - Review and update equalities, harassment, sexual safety and whistleblowing policies

## ERA 2025: Preparing for three key changes

- **1 January 2027:** employees with six months continuous service on or after that date will have **unfair dismissal** rights and compensation for claims uncapped.
- **Immediate next steps:**
  - Active management of the performance and probationary periods of new joiners
  - Review and update how fixed term and temporary employees are engaged
  - Ensure processes started now that may result in a dismissal after 1 January 2027 are executed meticulously

## ERA 2025: Preparing for three key changes

- **1 January 2027: a “fire and rehire/replace”** dismissal will be automatically unfair if the employee is dismissed because they refuse to accept a ‘restricted variation’ to their terms and conditions.
- **Immediate next steps:**
  - Seek to make any necessary changes to T&Cs before 1 January?
  - Review contracts – enough flexibility?
  - Review and update organisational change and redundancy policies
  - Work on strengthening relationships with the workforce and staff

## Single sex facilities in the workplace: Latest

<b>April 2025</b>	Supreme Court in For Women Scotland held that the terms “man”, “woman” and “sex” in the Equality Act 2010 (EqA) refer to biological sex not acquired sex
<b>Sept 2025</b>	EHRC’s revised Services Code of Practice submitted to the government for approval in Sept 2025 .... <u>but</u> this will not apply to workplaces. A revised EHRC Work Code of Practice could take years.....
<b>Dec 2025 &amp; Jan 2026</b>	<p>ET decisions in the cases of Peggie v NHS Fife, Kelly v Leonardo and the ‘Darlington Nurses’:</p> <ul style="list-style-type: none"> <li>▪ Claims arose from claimants’ concerns about their employer’s policy of allowing trans staff to access the single sex facilities (specifically, toilets and changing rooms) of their acquired gender</li> <li>▪ Each of the tribunals approached the issue differently</li> <li>▪ Two of the decisions (Peggie and Kelly) are being appealed to the Employment Appeal Tribunal (EAT)</li> </ul>
<b>May 2026?</b>	EHRC’s Services Code to be laid before Parliament?

## Single sex facilities in the workplace: What to do now

- Existing policy = under review
- Carry out an estates check on the existing the toilet, washing and changing facilities provided now and what it is possible to provide
- Consult with staff, staff groups and unions on policy options and to identify any areas of risk/concern
- Conduct meaningful (not “tick box”) Equality Impact Assessments
- Be aware of likely repercussions – e.g. staff who “police” access, trans staff who ignore policy, etc.
- Work on on tolerance and respect – this topic is one aspect of the conflicting beliefs/civility challenge we see playing out

# Pensions update

## Public sector transfer club

- Employer found to have committed maladministration for failing to facilitate club transfer within 12-month window.
- Depute Pensions Ombudsman found that an employer has a contractual and common law duty *“to do what was reasonably required of it to enable the employee to exercise their statutory right to request a transfer of his benefits from the LGPS to the NHSPS, and to do so within timescales that would enable him to benefit from a Club Transfer.”*
- Keep the 12-month deadline in mind, particularly for outsourcing or devolution related transfers and ensure this is communicated as part of wider consultation piece

**Proposed LGPS  
reforms following  
Fairness and Access  
consultation**

- Survivors' benefits
- Death grant changes
- Gender pensions gap initiatives and reporting
- Forfeiture changes

# Survivors' benefits

- Removal of requirement for signed nomination for in case of cohabitee survivors;
- Removal of age 75 cut off for death grants
- Removal of requirement to pay death grants within 2 years
- Removal of discriminatory treatment arising as a result of sexual orientation discrimination following the case of *Goodwin v Secretary of State for Education*

# Death grants

- The government will remove the age 75 cap on death grant eligibility (which will be backdated to all deaths that occurred on or prior to 1 April 2014)
- It will also remove the requirement for death grants to be paid to personal representatives within 2 years.

## Gender pensions gap initiatives and reporting

- Authorised unpaid absences under 15 days will be automatically pensionable
- The cost of buying back authorised unpaid leave over 14 days to be the same as what the member would have paid had they not taken leave, and time limit for buying back to be extended from 30 days to 1 year
- Additional maternity leave, additional adoption leave and shared parental leave during which no pay is received will be automatically pensionable
- From 2025 - 2028, gender pensions gap reporting is mandatory but in limited form
- From April 2028 pensions gap reporting to move towards 'pensions accrued over a typical working life'

# Forfeiture

- Removal of requirement that member must have left employment because of the offence before application for forfeiture
- Revoke current time limit of 3 months for forfeiture application
- Revoke Regulation 92 – option to make interim payments – as not used in practice
- Further guidance expected on eligibility criteria, evidential expectations, timelines, decision making, communications, appeals, and legal challenges

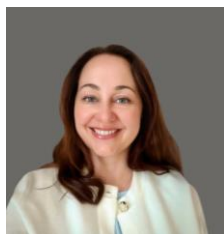
Any Questions?



**Sean Hick**  
**Partner (Employment)**

[sean.hick@capsticks.com](mailto:sean.hick@capsticks.com)

07889 651526



**Kate Beech**  
**Partner (Pensions)**

[Kate.beech@capsticks.com](mailto:Kate.beech@capsticks.com)

07552 518347

