



UK Employment Law Update – September 2025

Our September 2025 update includes the usual round-up of recent interesting case law, including cases on race discrimination in a multilingual workplace, whistleblowing in circumstances where allegations of wrongdoing had been fully investigated and dismissed, a high compensation payout in a disability discrimination claim, and one of the first gender reassignment discrimination decisions since the UK Supreme Court's ruling on the definition of sex in equality legislation, as well as a reminder of new laws on the enforceability of non-disclosure agreements (NDAs) and the new duty to prevent fraud.

In this issue

- [Case law updates](#)
- [Employment Rights Bill](#)
- [Legislative developments](#)
- [Other news](#)
- [New guidance](#)
- [Consultations](#)
- [Upcoming events](#)

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Case law updates

Gender reassignment discrimination: A transgender woman with a gender recognition certificate (GRC) was not unlawfully discriminated against when she was excluded from a female pool competition following a reversal of the pool organisation's self-identity policy. The court concluded that pool is a sport which can lawfully be separated into gender-based competitions, and treating men and women differently in the organisation of tournaments was a proportionate way to promote the integrity of the game through fair competition and diversity. Given the Supreme Court's recent ruling on the definition of sex under the Equality Act, the claimant's GRC was not relevant – she was biologically male, and therefore under the Equality Act the appropriate comparator was a man without the protected characteristic of gender reassignment. As that comparator would also have been excluded from the female competition, there was no differential treatment. ([Haynes v. The English Blackball Pool Association](#))

Race discrimination – language: An English care worker has won a claim of racial discrimination and harassment arising from a meeting with three managers where they conversed in Polish, a language which she did not understand. The meeting was to discuss issues relating to the claimant's conduct and performance. Although the employment tribunal (ET) found it was not the intention of the managers to intimidate or humiliate the claimant when they interacted in their native language, it was not unreasonable in the context of a sensitive and important meeting for the claimant to have felt this way. The ET differentiated this from where the three managers spoke Polish together in the claimant's company, but as part of general interactions and not with the claimant specifically, which would not have passed the threshold to be considered harassment. The case highlights the need for employers with a multinational workforce to be mindful of where different languages may be spoken throughout the working day. ([Kellington-Crawford v. Newlands Care Angus Ltd](#))

Legal advice privilege: Legal advice given by a solicitor to their client is exempt from being disclosed to another party or the court under privilege rules. The public policy underlying legal advice privilege is that when a client consults a lawyer, the client must be confident that what passes between them will never be revealed without the client's consent. However, there is an exception for "iniquity", which is where the legal advice forms part of a dishonest plan or criminal enterprise. The scope of this iniquity exception was recently considered by the Employment Appeal Tribunal (EAT) in a case where confidential email correspondence between an employer and their solicitor about how to handle the claimant's future dismissal was mistakenly sent to the claimant. The claimant argued she was entitled to rely on the emails in support of her claim on the basis that the email exchange demonstrated underhand behaviour by fabricating a false position before her dismissal, amounting to iniquity. The EAT dismissed the claimant's appeal. In its view the emails were not fabricating a false position and did not demonstrate anyone was acting in an underhand or iniquitous way amounting to a sham. The email communications were within the normal scope of advice which employment lawyers routinely give to clients, with no suggestion of an ulterior motive if the employer decided to dismiss. Whilst clearly fact-specific, the case is reassuring to

employers and their advisors that there is a high threshold for the iniquity exception. It also serves as a cautionary reminder of the possible consequences of inadvertent disclosure. ([Shawcross v. SMG Europe Holdings](#))

Whistleblowing: A claimant who was dismissed for a breakdown in trust and confidence when he (i) refused to engage in a performance improvement plan because he believed it to be a punishment for making protected disclosures and (ii) continued to accuse his employer of fraud despite his allegations having been fully investigated and dismissed, was not automatically unfairly dismissed for whistleblowing. Whilst his initial allegations of fraud were a protected disclosure, subsequent allegations of the same nature were not protected as it was either unreasonable for him to continue holding that belief following the investigation, or the disclosures were not being made in the public interest. Further, on the facts, the reason for his dismissal was not the making of the protected disclosure, but his behaviour which followed. The case has been returned to the ET to determine whether the dismissal was unfair under ordinary unfair dismissal principles. ([Argence-Lafon v. Ark Syndicate Management Ltd](#))

Disability discrimination: An epileptic prison officer has been awarded £445,000 for disability discrimination after being dismissed from his role, the judgment acting as a reminder of the importance of following proper process, obtaining medical evidence, consulting with the employee and considering alternatives to dismissal. In this case, there was no dispute that the claimant's epilepsy was a disability, but following his diagnosis there were security risk concerns if he were to have a seizure and so the claimant was placed on restricted duties (occupational health advice being that he needed to be seizure-free for six months before returning to full duties). The claimant had some periodic sickness absence but was dismissed (without prior warnings) for his high sickness record and the unlikelihood of being able to return to full duties. The ET was critical that there had not been a proper enquiry into the claimant's medical position, leading to unreasonable assumptions being made about what he could and could not do, and a lack of understanding about when symptoms may have stabilised with medication, allowing him to return to full duties. As well as finding that the employer had failed to properly follow the attendance management policy, the ET was critical of the employer for not exploring alternatives to dismissal or properly consulting with the claimant before dismissing him, finding that redeployment would have been a reasonable adjustment. ([Mullinger v. Ministry of Justice](#))

Employment Rights Bill

Key points at a glance:

- The final content of the ERB is not yet settled.
- The parliamentary process paused for the summer recess and resumed on 3 September 2025.
- Royal assent is expected in autumn 2025.
- Provisions will be phased in, with most reforms not becoming law until at least April 2026.
- Changes to unfair dismissal are not expected until 2027 – it is currently unclear whether this will be a day one right (as initially proposed) or a reduction in the qualifying service period to six months.
- The detail of many of the reforms will need to follow – expect consultations from autumn 2025.

Legislative developments

Non-disclosure agreements (NDAs): On **1 October 2025** new rules take effect which affect the enforceability of NDAs in England and Wales with individuals who are (or reasonably believe they are) victims of crime, regardless of whether they have told anyone about that crime. The legislation applies to all sectors and all relationships and circumstances where NDAs may be used. Broadening existing rules, the changes which apply to NDAs signed on or after 1 October 2025 allow victims of crime to disclose details of the relevant crime to the following without that disclosure breaching their NDA: (1) police or other criminal investigation/prosecution bodies (for the purpose of investigating or prosecuting the crime); (2) qualified lawyers (for the purpose of seeking legal advice); (3) regulated professionals and professional support services (for obtaining support); (4) regulators (for cooperation purposes); (5) persons authorised to receive information on behalf of any of the preceding; and (6) close family (parents, children, spouses/partners, but not extended family or friends). NDAs signed before 1 October 2025 remain subject to the current legal framework.

Fraud: Under new rules that came into force on 1 September 2025, large organisations are criminally liable if an employee, agent, subsidiary or other associated person commits fraud with the intention of benefiting the organisation, unless they have reasonable processes in place to prevent it.

Other news

Minimum wages: The government has sought recommendations from the Low Pay Commission (LPC) by October 2025 on the minimum wage rates to apply from April 2026. The LPC has been asked to ensure that the national living wage (for workers aged 21 and over) is at least two-thirds of median earnings, which is currently predicted to raise the rate to between £12.55 and £12.86 per hour.

Neurodiversity: An analysis of ET decisions shows a marked rise in claims related to autism, ADHD and dyslexia since 2020.

Gender pay: Analysis by the *Financial Times* suggests that gender pay disparity starts very early in a career, even where the same course is studied. The research shows that five years after leaving university, male graduates are earning over 14% more than their female counterparts with an identical degree, the research suggesting that this is because men are more likely to prioritise a more lucrative career with a given degree than women.

New guidance

Neonatal care leave and pay: The government has published [technical guidance](#) to help employers implement neonatal leave and pay, a new statutory right which applies to eligible parents whose babies were born on or after 6 April 2025 and who require neonatal care up to 28 days of age for seven continuous days or more.

Modern slavery: The Home Office has introduced an [optional template for reporting on modern slavery](#). Intended to act as a guide for employers in the UK, Australia and Canada, the template is aimed at reducing the administrative burden of complying with supply chain transparency requirements.

Non-disclosure agreements (NDAs): The government has published [guidance](#) on the changes to the enforceability of NDAs which take effect from 1 October 2025 (see above).

Consultations

Financial services – non-financial misconduct: The Financial Conduct Authority (FCA) has launched a consultation on its proposals to [extend conduct rules and fitness and propriety assessments](#) to include non-financial misconduct. As well as consulting on the new content, the FCA also seeks views on whether any additional guidance is needed. The consultation is open until **10 September 2025**.

Financial services – SM&CR: The [FCA](#), [PRA and Bank of England](#) and [HM Treasury](#) have each launched consultations on potential reform of the Senior Managers and Certification Regime (SM&CR), proposing changes to reduce the burden on firms and to make requirements clearer. The consultations close on **7 October 2025**.

Disability: The Department for Work and Pensions has launched an [inquiry into improving job prospects](#) for disabled people, exploring barriers to entry and the effectiveness of support schemes currently in place. It closes on **29 September 2025**.

Internships: The government is [seeking views on unpaid and low paid \(i.e., below the NLW/NMW\) internships](#), work trials, voluntary work and work shadowing as part of its plans to ban these except where they form part of an educational or training course. The consultation is open for comment until **9 October 2025**.

Data protection: The Information Commissioner's Office (ICO) is consulting on [draft guidance for organisations handling data protection complaints](#), which is open for comment until **19 October 2025**, and on changes to [how the ICO handles data protection complaints](#), which is open for comment until **31 October 2025**.

Upcoming events

(Register using the links below)

[Investigations and enforcement trends webinar series: Key priorities for Q3 2025 – Wednesday, 17 September 2025, 4:00 pm-5:00 pm BST](#)

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