

# Employment Law Matters

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## News update

The Government has announced that equal treatment for agency workers with permanent employees will be introduced. This will apply after a 12 week qualifying period. It has been estimated this means that up to half of all agency assignments will be affected. Certain benefits, such as sick pay and pensions, will be excluded.

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The Government has announced the new national minimum wage rates which will apply from 1 October 2008. They are:

Aged 22 or over:	£5.73 per hour (currently £5.52 per hour)
Aged 18-21	£4.77 per hour (currently £4.60 per hour)
Aged 16-17	£3.53 per hour (currently £3.40 per hour)
Accommodation allowance	£4.46 per day (currently £4.30 per day)

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Revised rates for statutory sick pay and statutory maternity pay came into force on 6 April 2008. They are:

Statutory sick pay	£75.40
Statutory maternity, paternity and adoption pay	£117.18

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The Advisory, Conciliation and Arbitration Service (ACAS) has started consultation on its proposed code of practice on discipline and grievance. This code will be a central part of the regime which replaces the statutory dismissal and grievance procedures, as the Government's proposal is to allow tribunals to increase (or reduce) an award by up to 25% for an unreasonable failure by the employer (or employee) to follow the code.

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In November 2007, the Prime Minister announced that the Government had decided to extend the right to request flexible working – currently available to parents of young and disabled children – to parents of older children. An independent review was conducted by Imelda Walsh, Sainsbury's HR Director, to consider where the age cut-off for older children should be set. The review was published in May 2008 and recommended that the legal right to request flexible working should be extended to parents of children aged 16 and under. In addition, the review rejected the

possibility that there should be an exemption for small firms, as it is only a right to request, not necessarily to receive, and evidence shows that the system does work for small employers. The Government has accepted these recommendations and will consult on how to implement the proposals.

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Dame Carol Black has published her report entitled *Working for a healthier tomorrow*. It calls for the Government to take action to improve health at work and enable workers with health problems to continue in employment. It recommends the development of a model for measuring and reporting on the benefits of employers investment in health and well-being. It also recommends a major drive to promote understanding of the positive relationship between health and work, and that paper sick notes should be replaced with electronic fit notes, which it says should switch the focus from what people cannot do to what they can do.

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## News update - Cont'd

The Sex Discrimination Act 1975 (Amendment) Regulations 2008, which came into force on 6 April 2008, made some important changes to the law on gender based discrimination. These include the following:

- The definition of harassment has been changed. It now requires only that the harassment be related to the gender of the victim or any other.
- Employers who do not protect their employees from harassment by a third party may now be liable.
- Where an employee complains of discrimination on grounds of pregnancy or maternity leave, there is now no need to compare the treatment with the behaviour when not pregnant or on maternity leave.
- Women whose expected week of childbirth begins on or after 5 October 2008 will have the right to the same terms and conditions during additional maternity leave as they currently have during ordinary maternity leave
- Women whose expected week of childbirth begins on or after 5 October 2008 will also be entitled to have their compulsory maternity leave counted pro-rata as working time towards their discretionary bonuses.

As a result of regulations in force on 6 April 2008, HM Revenue & Customs (HMRC) has the power to make a direction to transfer the pay-as-you-earn (PAYE) liability from the employer to employee, where the employee has received a payment from which tax has been under-deducted. The anomaly identified in the *Demibourne* case, where HMRC was permitted to charge the employer full tax and national insurance under the PAYE regulations if the person taxed as a contractor was an employee, without giving credit for the tax and national insurance already paid directly by the individual, has been resolved.

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ACAS has issued new advice on depression at work and how to spot signs of depression in the working environment. This accompanies the publication of its new booklet on health, work and wellbeing, which includes sample policies and checklists.

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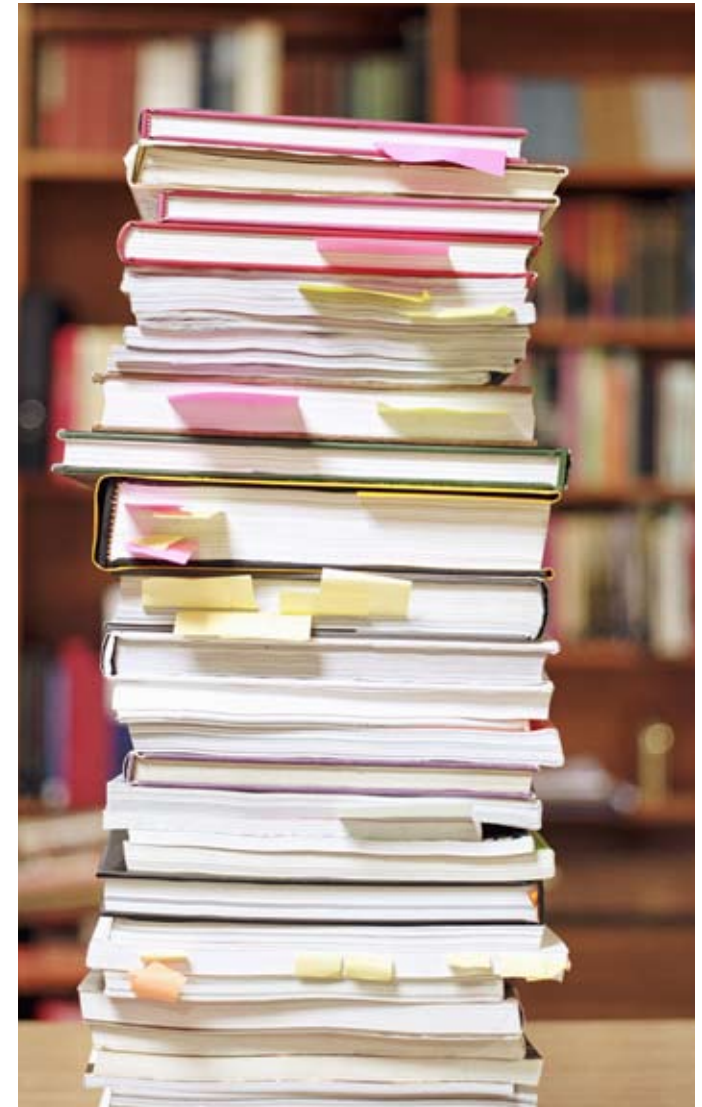
## Case law update

This first case has been heard concerning the impact of age discrimination on flexible benefits (*Swann v GHI Insurance Services UK Ltd, 2306281/2007*). The employer offered a flexible benefits package which included private medical insurance. The insurer calculated its premiums based on age and gender, with higher rates for older employees. An employee claimed that this was discrimination by the employer on the grounds of age. The employment tribunal concluded that it was not. The scheme was available to everyone and employees could opt for the medical scheme or not, using a non-discriminatory fund given to them by the employer. The tribunal also said that it would have allowed the defence of justification if it had found discrimination to exist. The employer had received professional advice regarding the most advantageous package to improve the effectiveness of the recruitment and retention of staff, and the employer had made all reasonable efforts to offer its employees a flexible benefits package. One tribunal member disagreed, however, and found there to be unjustified discrimination. This decision carries little weight, as it was only at tribunal level, but even there, opinions were split. The legal debates on this issue and many like it are just starting.

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There are an increasing number of cases tackling the difficult questions concerning when an expatriate employee or other international worker is protected by UK employment law rights. In *Bleuse v MBT Transport ([2008] IRLR 264)*, a lorry driver worked mainly in Austria and Germany but had an English law contract of employment with a company registered in England. The driver lodged claims in the employment tribunal for constructive unfair dismissal, failure to pay holiday pay, unlawful deductions from wages and breach of contract. The tribunal, relying on *Lawson v Serco Ltd*, decided Mr Bleuse was not protected by UK law as he had never worked in the UK so it was not his base. The Employment Appeals Tribunal (EAT) agreed in part, but decided he could pursue the claim for holiday pay and the contract claim. Holiday pay, it said, is a right deriving from EU law and the UK should give an effective remedy to such rights. This decision begs questions about whether the EAT fully considered Mr Bleuse’s ability to pursue his holiday rights in Germany or Austria, where he was working. And did it matter that he was working in Europe – would it have made a difference if he has been working in the United States?

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## Case law update - Cont'd

The case of *Ralph Martindale & Co Ltd v Mr K Harris* (2007 WL 4610613) considers the process for selecting people into alternative roles in a redundancy situation. There is established law on the pooling of employees and the process of selection when the number of people doing a certain type of work is reduced (selection out of role), but the legal principles related to deciding who should be selected in to a vacant position have been less clear. Here, the EAT appeared to accept that an employer may have more flexibility when selecting in, but that overall fairness is still required. Thus, it did not overturn the decision of the employment tribunal which found a dismissal unfair because “the current industrial relations practice of a reasonable employer” was not followed. The employer had not prepared a job description for the vacancy, used criteria which were subjective and submitted the candidates to an interview which had no influence on the decision. In addition, the position was advertised internally to staff who were not provisionally redundant.

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*Airbus UK Limited v Webb* ([2008] EWCA Civ 49) establishes that an employer can act reasonably in taking into account an expired warning when deciding whether to dismiss an employee, provided the expired warning is not the decisive factor in the decision to dismiss. The employee was found watching television when he was supposed to be working, three weeks after a final written warning for a similar offence had expired. He was dismissed, whereas four of his colleagues

who had been watching with him were only given final warnings. The Court of Appeal found for the employer. The reason for his dismissal was the gross misconduct, not the expired warning, and all that warning did was to distinguish him from his colleagues when it came to deciding whether the appropriate penalty (dismissal) may be reduced.

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The end of the statutory dismissal and grievance procedures is nigh, so any case in which the level of uplifts to awards where the statutory procedures have not been followed will have a short life span. In *McKindless Group v McLaughlin* ([2008] WL 1867349), the employee was dismissed, the procedures were disregarded entirely and the employer admitted the claim on the eve of the hearing. The tribunal’s 50% uplift to the unfair dismissal award (the maximum allowed) was reduced by the EAT to 10% (the minimum allowed). The tribunal considered that the late concession left no time to negotiate settlement. The EAT said this was irrelevant. What mattered was the employers’ behaviour at termination and there was no evidence (even when the procedures were not followed) that this demanded an uplift above the minimum.

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In *James v London Borough of Greenwich* ([2008] EWCA Civ 35), the Court of Appeal redressed the position on implied contracts of employment, stating that the employment tribunal should imply a contract between an agency worker and the end-user of their services only on the grounds of necessity, which will be a question of for the tribunal to decide.

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Can an employee on long-term sick leave claim paid holiday? This tricky problem has been referred to the European Court of Justice by the House of Lords (*Stringer v HMRC* (previously *Ainsworth v HRMC*) (C-520/06)) and by the German courts (*Gerhard Schultz-Hoff v Deutsche Rentenversicherung Bund* (Case C-350/06)). The Court has not given judgment in either case yet, but it will be influenced by the opinions of the Advocate General, who in both cases, has concluded that entitlement to paid holiday does accrue whilst a worker is on sick leave. The Advocate General also takes the view that as a worker may not take the holiday while on sick leave, payment in lieu of holiday is not permitted and, after termination of employment, the worker is entitled to a compensatory payment to reflect accrued but untaken holiday leave, even where the worker was on sick leave for the full holiday year.

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## Case law update - Cont'd

Determining the status of a person who provides services can be difficult. A question which sometimes arises is whether, if a person categorised as an independent contractor, and treated as such, is later found to be an employee, does that mean the contract is illegal (potentially preventing one or other party from relying on it)? The Court of Appeal has confirmed that a contract will not be illegal just because it has been mischaracterised (as a contract with an independent contractor) where the parties have acted in good faith. *Enfield Technical Services Limited v Ray Payne & BF Components Limited v Ian Grace* ([2008] EWCA Civ 393).

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Discrimination questionnaire from an aggrieved employee. They are usually very broadly drafted and therefore time consuming and expensive to deal with. Failing to reply fully to them can allow a tribunal to draw inferences of fact which can damage the defence to a subsequent claim. However, in *D'Silva v NAFTHE* (now known as *University & College Union*) (2008 WL 576956) the EAT has confirmed that a failure to reply should not lead to an automatic presumption of discrimination. The tribunal must first look at the facts of the case and then consider if it is appropriate to draw inferences which support the claim. So for the employer who does not respond to a questionnaire, all is not lost.

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In *Dynamex Friction Ltd and another v Amicus and others* ([2008] EWCA Civ 381) a business was transferred from a company which was in administration to a separate newly formed company in which the owner of the old company was also a shareholder. By the time the transfer occurred, all the employees had been dismissed by the administrator, and whilst some were offered jobs in the new business, others were not. The latter group alleged that the whole transaction was set-up to avoid transfer of undertakings rules (TUPE) and that various obligations transferred to the new entity, including liability for failure to consult in connection with the mass redundancies. The Court of Appeal rejected the claim. The tribunal had found that there was insufficient money to pay the employees in the future, and thus there was no alternative but to dismiss them. The employer's (that is, the administrator's) reasons at the time of the dismissals were economic and not transfer related. The actions and motives of others did not affect that decision and did not need to be taken into account.

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## Agency workers: the end of the line for employment claims?

### Key points

- The Court of Appeal has reversed the tide of cases which encouraged agency temps to claim employment status with the end user of their services.
- There will still be exceptional situations where a finding of employment remains a risk and employers should have policies in place which control that risk.
- The need to check an employee's authority to work in UK, and the increased financial and reputational penalties for having illegal workers on site, are a further reason for ensuring agency staff are not employees but remain the responsibility of the agency. The agency should then be monitored to ensure it is operating proper verification procedures.

Since the case of *Dacas v Brook Street Bureau in 2004*, there has been a steady stream of cases dealing with the question of whether an individual supplied by an agency is an employee of the end user. It was looking as though many agency workers should be classified as employees. However, the Court of Appeal has now reversed this trend and as a result it will be far more difficult for workers to claim employment status in future.

### The James case

In *James v London Borough of Greenwich [2008]*, the Court of Appeal considered a fairly standard agency worker arrangement where the worker brought a claim of unfair dismissal against the borough of Greenwich after her engagement was terminated. The Court held that Ms James was not an employee and the claim failed. The judgment was based on the fact that it was not necessary to imply that a contract of employment existed. Also, the fact that the engagement had been in place for a lengthy period of time did not raise the implication of employment status. All of this seems a far cry from comments made by the Court of Appeal in *Dacas*, to the effect that tribunals should start with the presumption of employment status in cases such as these.

Therefore, as things stand (and subject to an appeal in this or a similar case to the House of Lords), legislation is necessary to give greater employment rights to agency workers. And, as reported elsewhere in this newsletter, the Government has announced proposals in this regard.



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## Agency workers: the end of the line for employment claims? – Cont'd

### Impact on employers

So can organisations which engage significant numbers of agency workers breath a sigh of relief and forget the issue for the time being? Not entirely. There are still situations where the worker could be an employee. Examples of these might include the following:

- The agency/end user/worker arrangement is a sham. This may occur where the end user pays the worker's fees or expenses directly rather than through the agency – this would be evidence of a direct contract between those parties.
- The worker was previously an employee of the end user and that employment relationship has not been terminated, despite the introduction of an agency arrangement.
- The arrangement is non-standard. The worker may have been integrated fully into the end user's organisation and be covered by such employee related procedures as discipline and grievance.

Robust policies are therefore still required to distinguish properly between the employed and self-employed populations, including agency workers. And, apart from the risk of employment law claims and tax implications, there is one final reason for getting the status of agency workers right.

Since 29 February 2008, new penalties have been imposed on organisations which employ individuals without the correct authority to work in the UK (including civil penalties of up to £10,000). These penalties only apply where the individual is an employee, not if they are self-employed. Organisations often leave the question of checking for illegal working to the agency, but this is dangerous if there is any risk that the organisation could be found to be the employer. Users of agency workers should take steps (including appropriate contractual provisions) to ensure that agencies check the immigration status of the individuals they supply, and may also want to reserve the right to audit the agency's checking processes and the status of certain individuals. This will minimise the risk of legal proceedings and the reputational damage of having illegal workers on the organisation's premises.

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## Clearance – an increased margin for error?

### Key points

- The Pension Regulator's updated guidance on the clearance procedure for transactions affecting the employer's covenant to its pension plan creates fresh uncertainty over when clearance should be sought.
- More transactions will fall within the scope of the process and the Regulator will look beyond the employer who owns the plan to all other group companies and the transactions they are involved in.
- Trustees are likely to feel empowered to seek extra funding when transactions occur, although the going-rate for that additional funding is also now thrown into doubt.

The Pension Regulator's clearance guidance has been updated to reflect the way in which the Regulator and the market have developed since the clearance regime was introduced in April 2005.

### Original guidance

That regime, which allowed businesses to apply for confirmation that the Regulator would not use its anti-avoidance powers in a transaction, was introduced at the request of industry to create a more certain business environment. There was concern that it would prove cumbersome and time consuming but, initially at least, this was not the case.

The guidance in 2005 was based on the principle that any event that would be materially detrimental to a pension plan was an event for which clearance should be considered. When the guidance was introduced the scheme specific funding regime was not in place and it was largely unheard of to consider pensions when refinancing or paying dividends, or during mergers or acquisitions. The guidance therefore gave a number of tests to assist in determining whether an event was material, focusing on FRS17 (unless technical provisions were set) as the measure for determining the pension deficit.

### New emphasis

The new guidance is purely principle based. That principle is the same as before – any event which is materially detrimental to the pension plan should be considered for clearance. But the tests of materiality have been removed.

Instead, employers and trustees are required to:

- compare and contrast the employer covenant before and after the event;
- assess whether any weakening of the employer covenant is materially detrimental; and
- identify if the plan has a relevant deficit.

The relevant deficit to be looked at is now based on the technical provisions, except when the detriment is significant. This means that the deficit can be increased throughout the process.

Examples of events which may be detrimental are expanded from those affecting just the legal employer. They now include transactions involving companies within the wider group, such as business and asset sales, sale and leasebacks and any other event that could reduce sustainable cash flow in the wider group, including any increase in debt or a reallocation of debt.

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## Clearance – an increased margin for error? - Cont'd

### Uncertainty

Those involved in pensions became used to ensuring that mitigation was proposed to the pension plan in any transaction and, over time, often did not seek clearance. Why not? Time and money.

As the Regulator became more confident and trustees, with the backing of their advisors, grew more aggressive, companies elected to incur the cost of clearance and developed a sense for what that cost would be. Now that has changed.

The Regulator's objectives include protecting members of pension schemes and reducing calls on the Pension Protection Fund. The best way to do this is to increase scheme funding – and the best time to do this is when corporate activity is occurring. The activity will often be key to the business – a refinancing or dividend payment or in a time sensitive deal.

Trustees, often without the legal power to do so, are advised by the Regulator to secure appropriate mitigation, and they worry that if they do not they will be personally liable.

According to the National Audit Office's report on the Pensions Regulator in October 2007, "[The Pensions Regulator] believes the threat of a Contribution Notice or a Financial Support Direction has resulted in increases in the funding of pension schemes that are part of a corporate transaction."

But what are the rules now? They are unclear – it is not apparent what level of change will be considered as material by the Regulator or trustees. And once a change is considered material, what is the deficit and what mitigation is appropriate? Is it part of the sale price or should it tie in with the scheme's technical provisions? Should it be a higher level if the change is significantly material?

The new approach seems to cause the very uncertainty clearance was designed to avoid.

### Summary

Trustees are likely to be more aggressive in seeking mitigation when there is an event in the employer group which may affect the pension scheme. Employers can expect to see trustees seeking additional funding for their scheme on every possible occasion – even if they do not expect to get it – just to prove they have complied with the guidance.

And that extra funding may be in addition to technical provisions already agreed on a prudent basis.

Employers will continue to feel uncertainty around pensions in every aspect of corporate life. They should ensure they fully understand any impact on the pension plan, the trustees' powers and, perhaps most importantly, the Regulator's powers.

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## New employment rules relating to parental leave

### Key points

- Women due to give birth from 5 October 2008 will have extended rights to receive employment benefits.
- These entitlements could have material cost implications for employers.
- Maternity and parental rights are increasingly complex, for example, in how they affect bonus entitlements during absence. Sound understanding and advice is recommended.

The Government has introduced legislation which will change the arrangements applying to employees on maternity leave. The new rules will apply to those who are due to have a baby on or after 5 October 2008. This is likely to have serious cost implications for employers.

It will affect employees on additional maternity leave (AML) who will be entitled to all their contractual benefits, with the exception of salary, during the AML period. This is currently only the case for employees during ordinary maternity leave (OML), although employer pension contributions can extend into AML as they are payable whilst an employee is receiving statutory maternity pay (SMP) or is otherwise receiving some pay. Whilst employers are typically reimbursed 92% of the SMP from the Government through the national insurance/pay-as-you-earn system, this is not

the case for other benefits. Therefore there are cost implications for employers who provide benefits such as private medical insurance, life assurance, company cars and childcare vouchers.

For employees who receive a performance related bonus, determining if, or to what extent, this should be paid to an employee on leave (or who has taken leave during the year to which the bonus relates) poses complex problems for employers.

With organisations keen to retain and motivate valuable staff, as well as avoid legal claims, balancing the needs of all staff within this context can be difficult. However, the rules on family leave and related employment rights are tricky and it is easy for an employer to inadvertently breach its obligations. If in doubt, employers are encouraged to seek advice.

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## The weakest link: data security and people issues

### Key points

- Any provider or business user of online recruitment or web-based managed services should review its information security to minimise the risk of data exploitation by hackers.
- All employers should have proper data management controls in place covering not just permanent employees but also temporary workers, including agency staff. This is especially the case if use of social networking sites is allowed.
- HR departments must play a key role in ensuring data security policies are in place and effective – they should work with IT teams on this, not just rely on them.

Data security issues have made headlines several times recently and a number of well-publicised losses of personal data by public bodies have led to record fines from the Financial Services Authority (FSA). Some of the stories and surveys that emerged are of particular note to HR professionals and HR businesses.

### Big risks for recruitment sites

The hacking attack on a major online job search website highlights the risks for any online service – and recruitment sites in particular. 1.6 million data entries, relating to hundreds of thousands of users registered on the site, were found on a server in the Ukraine. It emerged that hackers accessed the recruiter section of the site and extracted personal details of candidates including names, contact addresses, telephone numbers and CVs. The hackers also sent spam and phishing emails.

This story should prompt any provider or business user of online recruitment or web-based managed services to review its information security. Adequate security measures are one of the key requirements of UK data protection law. This means that the current security environment must be taken into account so examples attacks like this cannot be ignored as one-off events affecting someone else. Password systems, as well as staff access rights, may also need to be reviewed to reduce the risk of password theft and unauthorised access.

The issue goes beyond legal obligations. In light of recent breaches, suppliers and business users would be wise to review the information they require from candidates to minimise any data that can be exploited by hackers. Users could also be guided on how to reduce their exposure; for example, not to upload exploitable or sensitive information to make sure they use discardable email addresses rather than permanent ones. An action plan for data breaches should be in place, identifying when customers are to be notified and what immediate steps they need to take to protect themselves.

### Data risks of temporary staff

A survey of 100 temporary workers by Websense, a web security company, produced some worrying results: 88% of temporary staff had the same access to documents on the company system as permanent staff; 62% had used someone else's log in details; and 42% were able to connect a personal USB device such as an MP3 player or memory stick to their work computer. Such flaws expose businesses to information leakage either by mistake or malicious intent. These businesses are also breaching data protection law by failing to have adequate security measures and access controls in place. Temporary staff and agency workers are an obvious risk because, in practice they may not be subject to the same training, vetting and other controls as permanent staff.

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## The weakest link: data security and people issues - Cont'd

It is important to note that most of the recent high profile breaches occurred because of employee action as opposed to IT systems attacks. Proper data management controls covering both permanent and temporary staff are essential to reduce the risk of breaches on the ground, and this is an issue for HR managers as much as for IT departments.

### [Agencies on the hook](#)

This is also a good time for suppliers of agency workers to consider if they are at risk from the errant actions of their workers. They could well be, particularly where the client contract imposes obligations of confidentiality. Agencies should review their risk exposure and how it can be reduced.

### [Social networking sites and Web 2.0](#)

According to Websense, 81% of respondents had unlimited internet access from their work PC, 67% used social networking sites and 26% accessed download sites from their work computer. This is not just a worry for temporary staff. Social networking and new web services expose companies' IT systems, confidential information and intellectual property to an unprecedented extent.

The privacy concerns around the use of social networking sites are obvious, given the degree of personal information typical users divulge. Users who access these and other Web 2.0 sites also increase the probability of attacks on the corporate IT system and data leakage because of the degree of content

downloads, peer-to-peer interaction and self-publishing made possible through these sites. Yet most companies, while allowing personal email and internet use, do not block access to such sites or make it clear that these sites must not be used.

### [The cost of data breaches](#)

What is the size of the risk? While the fines meted out by the UK Information Commissioner have been relatively small to date, recent FSA penalties show that financial institutions should certainly not be complacent. But the real cost of data breaches goes beyond fines, potential liability for directors or even bad publicity.

There have been attempts to quantify the costs. Research by the Ponemon Institute in the US, which surveyed 35 organisations that suffered data breaches, found that the average cost of a data breach per customer record was \$197 in 2007. The average total cost per company was more than \$6 million. Lost business opportunity accounted for 65% of the losses, while the rest included legal costs and costs of remedying IT systems. Loss of customers is a significant factor: according to the Privacy Rights Clearinghouse in its *national survey on data security breach notification*, about 23 million adults in the US were notified of lost or compromised data, of which 20% terminated their accounts immediately. Another set of figures comes from a major security breach suffered by a US-based retailer, which has revealed costs of around \$256 million in battering down IT systems and settling class actions from banks for the costs of replacing customer credit cards.

The 2006 Department of Trade and Industry (now the *DBERR*) *information security breaches survey* suggested that the overall cost of security breaches to UK plc was in the order of £10 billion per annum. The average cost for the worst incident for large companies in 2006 was £90,000. The US figures may be impacted by some very large instances and the prevalence of class action law suits, but even the UK figures are likely to be significantly higher now compared to 2006 – in the millions of pounds for some of the high profile examples.

Of course the statistics don't describe all the pain, including management and staff time and long-term business impact, which are hard to quantify.

### [What should be done?](#)

An organisation's data vulnerabilities can easily fall between the gaps – data security is often perceived as being the responsibility of the IT department, yet the IT department may not be best placed to understand all the people risks. HR professionals need to play their part in defining where the responsibility lies, reviewing processes and management controls and verifying that staff are complying on the ground.

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## The path to British citizenship

### Key points

- The Government has introduced a new three stage route to British citizenship.
- Proposed increases to the time period for obtaining permanent residency may dissuade assignees from transferring to the UK.
- Employers may retain their responsibilities under the work permit and points based system arrangements for longer periods of time.

The Government has made changes to its policy on the routes into British citizenship. This comes as part of the reform to the immigration system, which includes the introduction of the points based system and the establishment of a new UK Border Agency.

In February 2008, the Government published a green paper, entitled *The path to citizenship: next steps in reforming the immigration system*, which outlined proposals for changing the process for individuals wanting to naturalise as British citizens.

Currently, individuals wishing to naturalise must meet certain criteria, such as being of sound mind and having sufficient knowledge of life in the UK. In addition, they must meet the residential requirement, demonstrating that they have lived in the UK for at least five years, with less than 450 days outside the UK during that period.

The changes will introduce a new three stage journey to citizenship, including temporary residence, probationary citizenship and finally British citizenship. Those choosing not to become a British citizen will proceed to permanent residency.

This route to citizenship will apply to:

- economic migrants – highly skilled and skilled workers under the points based system and their dependants;
- family – family members of British citizens and permanent residents; and
- refugees – those in need of protection and their dependants.

Journey to citizenship	Time period in each stage
Temporary residence	<ul style="list-style-type: none"> <li>• Economic migrants five years</li> <li>• Family two years</li> <li>• Refugees five years</li> </ul>
Probationary citizenship	<ul style="list-style-type: none"> <li>• To progress to citizenship: a minimum of one year</li> <li>• To progress to permanent residence: a minimum of three years</li> </ul>
Permanent residence	Persons in this category can remain in the UK indefinitely and can progress to British citizenship if they meet the criteria.
British citizenship	Completion of the journey. Full rights and benefits.

## The path to British citizenship - Cont'd

### Probationary citizenship

The probationary period of citizenship is of particular importance and will require new migrants to demonstrate their contribution to the UK. It will be a time-limited stage, following which migrants will be able to gain full British citizenship. It is intended that full access to benefits, such as jobseeker's allowance and income support, will be delayed until migrants have completed this probationary period.

Probationary citizenship will affect employers as it could take a migrant worker eight years to obtain permanent residency. The employer will therefore retain its responsibilities under the work permit and points based system arrangements for a longer period of time. Responsibilities will include the performance of annual checks and the extension of the probationary citizens' leave to remain.

The proposed increases to the time period for obtaining permanent residency may also dissuade assignees from transferring to the UK.

Other criteria to be applied to the probationary period include:

- English language requirements;
- paying tax and becoming self-sufficient;
- obeying the law; and
- joining in with the British way of life.

Migrants will require a strong command of English in order to pass the probationary period. They will also be required to contribute to a new fund for managing the transitional affects of migration. This fund is intended to provide extra financial support to communities experiencing change from migration. Those migrants who are integrating and getting involved in their communities through volunteering will be able to graduate to British citizenship more quickly.

Migrants who have committed an offence resulting in prison will be barred from becoming a citizen and those who have committed minor offences will be required to spend longer in the probationary period.

Whilst the reforms do not affect European economic area nationals, the Government will set up a cross-departmental unit to look at access to benefits for such individuals.

A bill based on the proposals made in the green paper is due this summer, with full legislation expected in November 2008. It is expected that such reforms will affect migrants arriving in the UK from 2010 as these changes will only apply to migrants arriving after the new laws are passed.

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