01
The sources and institutions of employment law

Chapter overview

This chapter will introduce you to both the way in which employment law is made and the institutions that develop, supervise and enforce it. We start with the distinction between civil and criminal law and a basic introduction to the legal system.

Employment law is created by primary and secondary legislation, which is then interpreted by the courts, especially by employment tribunals and the Employment Appeal Tribunal. They are influenced by Codes of Practice and, at the time of writing, by EU law and the decisions of the Court of Justice of the European Union (EU). Finally, we look at those organisations set up by Parliament to regulate industrial relations and dispute resolution.

LEARNING OUTCOMES

After studying this chapter you will be able to:

- understand and explain the main sources of UK and EU law, and describe the court system that applies to employment cases
- advise colleagues about the practical application of employment tribunals and the merits of using the alternative dispute resolution methods provided by Acas and the CAC.

1.1 Civil and criminal law

Criminal law is concerned with offences against the state and, apart from private prosecutions, it is the state which enforces this branch of the law. The sanctions typically imposed on convicted persons are fines and/or imprisonment. Civil law deals with the situations where a private person who has suffered harm brings an action against (that is, sues) the person who committed the wrongful act which caused the harm. Normally, the purpose of suing is to recover damages or compensation. Criminal and civil matters are normally dealt with in separate courts, which have their own distinct procedures.

In this book we shall be concentrating largely on civil law, but we shall be describing the criminal law in so far as it imposes duties in relation to health and safety. In employment law the two most important civil actions are those based on the law of contract and the law of tort (delict in Scotland). The essential feature of a contract is a binding agreement in which an offer by one person (for example, an employer) is accepted by someone else (for example, a person seeking work). This involves an exchange of promises. Thus, in a **contract of employment** there is a promise to pay wages in exchange for an undertaking to be available for work. As we shall see later, the parties to a contract are not entirely free to negotiate their own terms because Parliament imposes certain restrictions and minimum requirements. The law of tort (delict) places a duty on everyone not to behave in a way that is likely to cause harm to others, and in the employment field the tort of negligence has been applied so as to impose a duty on employers to take reasonable care of their **employees** during the course of their employment. Various torts have also been created by the judiciary in order to impose legal liability for industrial action – for example, the tort of interfering with trade or business – but Parliament has intervened to provide immunities in certain circumstances (see Chapter 18).

1.2 Legislation and Codes of Practice

In the UK, the most important source of law governing industrial relations is legislation enacted by Parliament. Often the Government will precede legislation by issuing Green Papers or White Papers. Traditionally, the Green Paper is a consultative document and the White Paper is a statement of the Government's policy and intentions, although this distinction is not always adhered to. The Government announces its legislative programme for the forthcoming session in the Queen's Speech. A Bill is then introduced into the House of Commons (sometimes this process can begin in the House of Lords) and is examined at a number of sessions (readings) in both the House of Commons and the House of Lords. The agreed Bill becomes an Act (or statute) when it receives the Royal Assent. It is then referred to (cited) by its name and year, which constitutes its 'short title' (for example, Equality Act 2010).

The provisions of an Act may not be brought into operation immediately because the Government may wish to implement it in stages. Nevertheless, once the procedure is completed, the legislation is valid. The main provisions of a statute are to be found in its numbered sections, whereas administrative details, repeals and amendments of previous legislation tend to be contained in the Schedules at the back. Statutes sometimes give the relevant Secretary of State the power to make

rules (regulations) to supplement those laid down in the Act itself. These regulations, which are normally subject to parliamentary approval, are referred to as statutory instruments (SI) and this process of making law is known as delegated or subordinate legislation. Statutory instruments are cited by their name, year and number (for example, The Employment Rights (Increase of Limits) Order 2018 SI 2018 No 194).

1.2.1 Codes of Practice

Legislation sometimes allows for an appropriate Minister or a statutory body to issue Codes of Practice. The primary function of these codes is to educate managers and **workers** by publicising the practices and procedures which the Government believes are conducive to good industrial relations. Under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992) the Advisory, Conciliation and Arbitration Service (Acas) has a general power to issue codes 'containing such practical guidance as [Acas] thinks fit for the purpose of promoting the improvement of industrial relations'. Following representations by interested parties, Acas submits a draft code to the Secretary of State for approval before it is laid before Parliament. At the time of writing, Acas Codes of Practice exist on the following topics: *Disciplinary and Grievance Procedures*; *Disclosure of Information to Trade Unions for Collective Bargaining Purposes*; and *Time Off for Trade Union Duties and Activities*. By virtue of section 14 of the Equality Act 2006, the Equality and Human Rights Commission (EHRC) can issue codes of the same standing as those of Acas, and section 16 of the Health and Safety at Work Act 1974 (HASAWA 1974) gives the Health and Safety Executive (HSE) the power to approve Codes of Practice provided it obtains the consent of the Secretary of State on each occasion. The Information Commissioner also has powers to produce Codes of Practice for data controllers. Finally, sections 203–206 TULRCA 1992 entitle the Secretary of State to issue codes, but before publishing a draft he or she is obliged to consult Acas. However, no such duty exists if a code is merely being revised to bring it into conformity with subsequent statutory provisions.[1] Although emerging by different means, all these codes have the same legal standing – that is, nobody can be sued or prosecuted for breaching a code – but in any proceedings before a tribunal, court (if the code was issued under TULRCA 1992 or HASAWA 1974) or the Central Arbitration Committee (CAC) a failure to adhere to a recommendation 'shall be taken into account'.[2] In addition, there are non-binding codes which are intended to provide guidance from the relevant government department. For example, the Department of Business, Energy and Industrial Strategy has produced a document entitled *Whistleblowing: Guidance and code of practice for employers* (2015).

1.3 Common law and the court hierarchy

The feature which distinguishes the English legal system from non-common-law systems is that in the UK judicial decisions have been built up to form a series of binding precedents. This is known as the 'case-law approach'. In practice this means that tribunals and judges are bound by the decisions of judges in higher courts. Thus employment tribunals, which are at the bottom of the English court

hierarchy, are required to follow the decisions of the Employment Appeal Tribunal (EAT or Appeal Tribunal), the Court of Appeal and the Supreme Court (formerly the Appeal Committee of the House of Lords).[3] However, they are not bound by other employment tribunal decisions. The Employment Appeal Tribunal is bound by the decisions of the Court of Appeal and the Supreme Court, and normally follows its own previous decisions. The Court of Appeal has a civil and criminal division and, while both are bound by the Supreme Court's decisions, only the civil division is constrained by its own previous decisions. The Supreme Court has stated that it will regard its own earlier decisions as binding unless in the circumstances of a particular case it is thought just to depart from them. In addition, until the Brexit process has been completed, all English and Scottish courts must follow the decisions of the Court of Justice of the European Union (CJEU).[4] When a court or tribunal needs clarification of EU law in order to make a decision, it will refer the matter to the CJEU under Article 267 of the Treaty on the Functioning of the European Union (TFEU) (see section 1.4).

What constitutes the binding element of a judicial decision is for a judge or tribunal in a subsequent case to determine. Theoretically, what has to be followed is the legal principle or principles which are relied on in reaching the decision in the earlier case. In practice, judges and tribunals have a certain amount of discretion, for they can take a broad or narrow view of the principles which are binding upon them. If they do not like the principles that have emerged, they can refuse to apply them so long as they are prepared to conclude that the facts of the case before them are sufficiently different from the facts in the previous decision. Not surprisingly, this technique is known as 'distinguishing'. Thus, while it is correct to argue that the doctrine of precedent imports an element of certainty, it is wrong to assume that there is no scope for innovation in the lower courts.

REFLECTIVE ACTIVITY 1.1

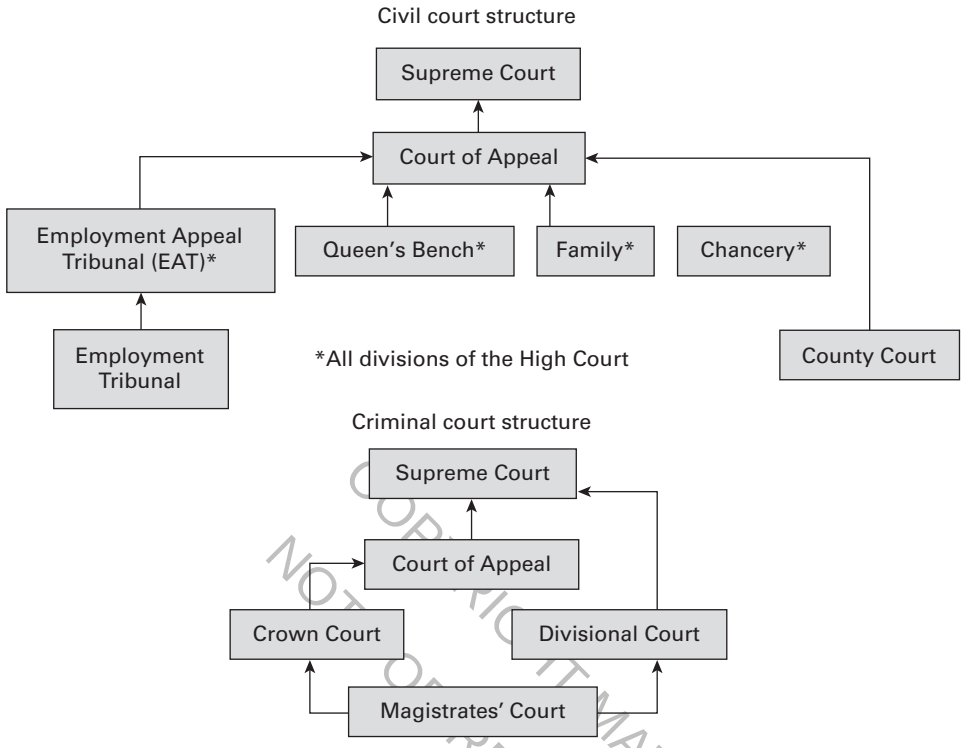
Is it true to say that judges only interpret the law but do not make it?

1.3.1 The court hierarchy

The court structure in England and Wales is shown in diagrammatic form in Figure 1.1.

Most proceedings involving individual employment rights are commenced at employment tribunals, and appeals against an employment tribunal decision can normally be heard by the EAT only if there has been an error of law. An error of law occurs when a tribunal has misdirected itself as to the applicable law, when there is no evidence to support a particular finding of fact, or when the tribunal has reached a perverse conclusion – that is, one which cannot be justified on the evidence presented.[5] Further appeals can be made on a point of law to the Court of Appeal and the Supreme Court, but only if permission is granted by either the body which made the decision or the court which would hear the appeal. However, section 65 of the Criminal Justice and Courts Act 2015 now provides for appeals to go directly from the EAT to the Supreme Court if certain conditions are met.

Figure 1.1 Court structure in England and Wales



Other civil actions can be started in the County Court or High Court. Appeals on a point of law against a decision made by either court can be lodged with the Court of Appeal and, if permission is granted, further appeal lies to the Supreme Court. There is also a 'leapfrog procedure', which enables an appeal against a decision of the High Court to go directly to the Supreme Court so long as all the parties involved give their consent.

Criminal proceedings are normally commenced in magistrates' courts – for example, if pickets are charged with obstructing police officers in the execution of their duty. The defence can launch an appeal on fact which goes to the Crown Court, but it is also possible for either party to appeal on a point of law to the Divisional Court of the Queen's Bench and then on to the Supreme Court. Prosecutions for serious offences – for example, under section 33 of HASAWA 1974 – are dealt with in the Crown Court, and appeals on a point of law go to the Court of Appeal and the Supreme Court in the usual way.

1.4 European Union law

The United Kingdom joined the European Economic Community in 1973. Since then there have been a number of Treaties by which the Member States have agreed to develop the scope of the law of the EU. At the time of writing the employment

law implications of Brexit are uncertain and this edition has been prepared on the assumption that EU law will still be applicable to the UK until the end of the transition period.

Since December 2009 the two principal sources of EU law are the Treaty on the Functioning of the European Union and the Treaty on European Union. Articles 288–292 of the TFEU allows the EU to introduce different types of legislation, the most important ones being regulations and Directives. Regulations tend to be of a broad nature and are directly applicable in all Member States. Most EU legislation that affects employment law is introduced, however, in the form of Directives. Directives are legislative instruments that require a Member State to translate (transpose) the contents of the Directive into national law. Member States are usually given a period of two to three years to carry this out.

CASE STUDY 1.1

Mangold v Helm

In the case of *Mangold v Helm*,[6] the Munich Labour Court referred questions to the CJEU about whether the German law on fixed-term working was compatible with Community law on age discrimination. Although the implementation date for the age provisions of Directive 2000/78 was December 2003, Member States were allowed to delay implementation until December 2006 'to take account of particular conditions'.

In a decision which has significant ramifications, the CJEU held that national courts must guarantee the full effectiveness of the general principle of non-discrimination by setting aside any provision of national law which conflicts with Community law even where the period prescribed for transposition has not expired.

Discussion point

Do you think judges will be reluctant to set aside national laws?

If a Member State fails to transpose a Directive, a citizen may, in certain circumstances, rely on the EU law rather than on existing national laws. The Directive is then said to have direct effect. This can be the result of the Member State's either failing to transpose the Directive or inadequately transposing it. Direct effect is, however, usually only vertically effective – that is, it can only be relied upon against the state or 'emanations' of the state.[7] This concept of direct effect has proved an important tool in the enforcement of Community law, especially with respect to Article 157 TFEU on equal pay.

Early cases in the Court of Justice of the European Union established the supremacy of Community law over national law.[8] National courts also have an obligation to interpret national law so that it gives effect to EU law.[9] This means that national legislation should be interpreted in a way that is consistent with the objects of the Treaty, the provisions of any relevant Directives and the rulings of the CJEU.[10] In relation to the interpretation of Directives, this principle applies whether the national legislation came after or preceded the particular Directive.[11]

It was the European Communities Act 1972 (ECA 1972) which gave effect to the UK's membership of the EU. First, section 2(1) enabled directly effective EU obligations to be enforced as free-standing rights. Thus, in *McCarthys Ltd v Smith*,[12] Article 157 TFEU on equal pay was applied following a reference to the CJEU. Second, section 2(2) facilitated the introduction of subordinate legislation to achieve compliance with EU obligations – for example, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.[13] Articles 258 and 260 TFEU enabled the European Commission to take steps to ensure that the UK complies with its obligations to give effect to Directives.[14] In addition, individuals were able to obtain damages as a result of a Member State's failure to carry out its obligations under EU law.[15]

1.5 The key institutions

1.5.1 Employment tribunals

Industrial tribunals were first established under the Industrial Training Act 1964, but their jurisdiction has been greatly extended. Their name was changed to 'employment tribunals' by section 1 of the Employment Rights (Dispute Resolution) Act 1998. In this book they are always referred to by this newer name, even though some of the older cases cited still refer to them as industrial tribunals.

The Employment Tribunal Service was established in 1997 to provide administrative and organisational support for employment tribunals and the Employment Appeal Tribunal. The President of these tribunals is a barrister or solicitor of seven years' standing who is appointed by the Lord Chancellor for a five-year term. Normally tribunal cases are heard by legally qualified chairpersons and two other people who are known as 'lay members'.[16] Tribunal appointments are for five years initially, and whereas the chairpersons are appointed by the Lord Chancellor and are subject to the same qualification requirements as the President, the lay members are appointed by the Secretary of State. They are drawn from two panels: one is formed as a result of nominations made by employer organisations; and the other consists of nominees from organisations of workers. Since 1999 the Government has also advertised in the press so that individuals may nominate themselves for one of the panels. However, although lay members are expected to have an understanding of workplace practices and how people work together, they are not supposed to act as representatives of their nominating organisations.

Representation at hearings

Hearings at employment tribunals are relatively informal.[17] The parties may represent themselves or be represented by a legal practitioner, a trade union official, a representative from an employers' association or any other person. In practice, employers tend to be legally represented more often than employees, one reason being the unavailability of legal aid. Human resource managers should give very serious thought to the question of representation.

REFLECTIVE ACTIVITY 1.2

Could a manager who understands how the shop floor operates and is familiar with the types of argument that may be raised during the disciplinary process prove more effective than a lawyer from outside?

Costs, fees, and the enforcement of awards

Apart from appeals against improvement or prohibition notices issued under HASAWA 1974, costs are not normally awarded unless: (a) either party (or their representative) acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or (b) any claim or response had no reasonable prospect of success.[18]

From 2013 until 2017 tribunal fees were charged at two stages: the issue of the claim; and prior to a hearing. However, since the Fees Order 2013 was declared unlawful by the Supreme Court, there has been no fee system in place for employment tribunals or the EAT.[19]

Following evidence that employers were failing to pay sums awarded by tribunals, sections 37A–37Q ERA 1996 came into effect in 2016. These provisions enable enforcement officers to issue a warning notice specifying a date by which an outstanding tribunal award and interest must be paid. An employer not complying with the notice may incur a financial penalty (payable to the Secretary of State) of 50% of the sum owed, subject to a minimum of £100 and a maximum of £5,000. However, employers qualify for a reduction of 50% of the penalty if they pay the reduced penalty and the whole unpaid amount within 14 days after the day on which notice of the decision to impose the penalty was sent.

Challenging tribunal decisions

Tribunal decisions can be challenged either via a request for a reconsideration[20] or by appeal. A tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the original decision may be confirmed, varied or revoked.

Unless it is made in the course of a tribunal hearing, an application for reconsideration must be made in writing (and copied to all the other parties) within 14 days of the date on which the written record of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later). Where a tribunal proposes to reconsider a decision on its own initiative, it will inform the parties of its reasons for doing so.[21]

An appeal to the Employment Appeal Tribunal can only be made on a point of law and must be lodged within 42 days.[22]

1.5.2 The Employment Appeal Tribunal (EAT)

The EAT, which was established in 1976, is serviced by Employment Tribunal Service offices in London and Edinburgh. It can sit anywhere in England, Wales or Scotland and consists of High Court judges nominated by the Lord Chancellor (one of whom serves as President) and a panel of lay members who are appointed on the joint recommendation of the Lord Chancellor and the Secretary of State. This panel consists of nominees from employers' and workers' organisations. Appeals are heard by a judge and either two or four lay persons, all of whom have equal voting rights. However, a judge can sit alone where the appeal arises from proceedings before an employment tribunal consisting of the chair alone.

Parties can be represented by whomsoever they please, and costs will be awarded only where the proceedings are deemed to have been unnecessary, improper or vexatious, or where there has been unreasonable conduct in bringing or conducting the proceedings.[23] Finally, the Appeal Tribunal may adjourn proceedings where there is a reasonable prospect of a conciliated settlement being reached.[24]

1.5.3 The Advisory, Conciliation and Arbitration Service (Acas)

Acas has been in existence since 1974. Its work is directed by a council consisting of a chairperson and between 9 and 15 members appointed by the Secretary of State. Three or four members are appointed after consultation with trade unions, the same number following consultation with employers' organisations, and the remainder are independent. The service is divided into 12 regions which perform most of the day-to-day work – for example, handling direct enquiries from the public. Although Acas is financed by the Government, section 247 (3) TULRCA 1992 states that it shall not be 'subject to directions of any kind from any Minister of the Crown as to the manner in which it is to exercise its functions'.

Acas has the general duty of promoting the improvement of industrial relations, in particular by exercising its functions in relation to the settlement of trade disputes.[25] It also has specific functions which merit separate consideration.

Advice

Acas may, on request or on its own initiative, provide employers, their associations, workers and trade unions with advice on any matter concerned with or affecting industrial relations.[26] In practice, the forms of advice range from telephone enquiries to in-depth projects, diagnostic surveys and training exercises.

Conciliation

Where a trade dispute exists or is likely to arise, Acas may, on request or of its own volition, offer assistance to the parties with a view to bringing about a settlement. This may be achieved by conciliation or other means – for example, the appointment of an independent person to render assistance. Before attempting to conciliate in collective trade disputes, Acas is required to 'have regard to the desirability of encouraging the parties to a dispute to use any appropriate agreed procedures'.[27] According to its Annual Report for 2017/18, 731 collective cases were completed and conciliation was successful in 674 (91%) of them.

In addition to collective matters, Acas has the task of conciliating in employment tribunal cases. As a result of the insertion of section 18A into the Employment Tribunals Act 1996, most potential applicants must submit details of their case to Acas before they can lodge an employment tribunal claim.[28] The conciliation officer must endeavour to promote a settlement between the prospective parties within a prescribed period. If during this period the conciliation officer concludes that a settlement is impossible or the period elapses without a settlement being achieved, he or she will give the prospective claimant a certificate to that effect. A claim cannot be lodged without such a certificate, but a conciliation officer may continue to endeavour to promote a settlement. Even if it has not received information from a prospective claimant, section 18B(1) ETA 1996 obliges Acas to promote a settlement where a person requests the services of a conciliation officer in relation to a dispute that is likely to result in employment tribunal proceedings against them. (For the conciliation officer's particular duty in unfair dismissal cases, see Chapter 15.) So as not to undermine the conciliation process, it is stipulated that anything communicated to an officer in connection with the performance of his or her functions shall not be admissible in evidence in any proceedings before an employment tribunal without the consent of the person who communicated it.

The Acas Annual Report for 2017/18 reveals that 20,001 applications to employment tribunal were dealt with. Of these, 55.2% were settled, 15.6% were withdrawn and 21.3% went to a hearing.

REFLECTIVE ACTIVITY 1.3

What are the advantages to the parties of achieving a conciliated settlement?

Arbitration

At the request of one party but with the consent of all the parties to a collective dispute (or potential dispute), Acas may appoint an arbitrator or arbitration panel from outside the Service or refer the matter to be heard by the Central Arbitration Committee (CAC). According to the Acas Annual Report for 2017/18, 20 cases were referred to collective arbitration and dispute mediation. In performing this function,

Acas is obliged to consider whether the dispute could be resolved by conciliation, and arbitration is not to be offered unless agreed procedures for the negotiation and settlement of disputes have been exhausted (save where there is a special reason which justifies arbitration as an alternative to those procedures).[29] CAC awards can be published only with the consent of all parties involved.

In addition, Acas operates a voluntary arbitration scheme which provides an alternative to employment tribunals for the resolution of disputes over unfair dismissal. Where the parties agree to use the scheme, they must waive the rights they would otherwise have in relation to an unfair dismissal claim. Arbitrators are appointed from the Acas Arbitration Panel, and hearings, which are held in private, are intended to be relatively speedy, cost-efficient and non-legalistic. The parties can reach an agreement settling their dispute at any stage. However, where an arbitrator makes an award, the parties cannot appeal on a point of law except where the Human Rights Act 1998 or EC law is relevant.[30]

REFLECTIVE ACTIVITY 1.4

Suggest reasons why the voluntary arbitration scheme for unfair dismissal has not been widely used.

Enquiry

Acas may enquire into any question regarding industrial relations generally, in a particular industry or in a particular undertaking. Any advice or findings that emerge may be published so long as the views of all concerned parties have been taken into account.[31]

Other duties

Apart from the general power to issue codes of practice, Acas has an important conciliation role to play in statutory recognition claims and in those situations where a recognised union has lodged a complaint that an employer has failed to disclose information which it requires for collective bargaining purposes (see Chapter 18).

1.5.4 The Central Arbitration Committee (CAC)

The CAC consists of a chairperson, deputy chairpersons and other members, all of whom are appointed by the Secretary of State after consultation with Acas. The members must have experience as employer or worker representatives, while the deputy chairpersons tend to be lawyers or academic experts in industrial relations. Like Acas, the CAC is not subject to directions from a Minister. Apart from receiving requests to arbitrate directly from parties to a dispute, the CAC receives arbitration requests from Acas. Additionally, the CAC is required to make determinations under

sections 183–185 TULRCA 1992 (dealing with complaints arising from a failure to disclose information). CAC awards are published and take effect as part of the contracts of employees covered by the award. Unless it can be shown that the CAC exceeded its jurisdiction,[32] breached the rules of natural justice or committed an error of law,[33] no court can overturn its decisions.

The CAC is also required to resolve disputes under the Information and Consultation of Employees Regulations 2004,[34] and the Annual Report 2017/18 reveals that four applications were received in this period. The Employment Relations Act 1999 added an important new role in relation to the recognition and de-recognition of trade unions. The CAC receives the application for recognition and supervises the process, including the holding of a ballot amongst the affected employees, leading to a decision on whether recognition or de-recognition should be granted (see Chapter 18). It is required to establish a panel consisting of an independent chair, an experienced representative of employers and an experienced representative of workers to fulfil these functions. In dealing with these cases, the Act requires the CAC to have regard to the object of encouraging and promoting fair and efficient practices in the workplace (so far as is consistent with its other obligations). According to the CAC Annual Report for 2017/18, trade unions submitted 35 applications for statutory recognition, and 11 complaints about disclosure of information were received.

1.5.5 The Certification Officer

The **Certification Officer** is also appointed by the Secretary of State after consultation with Acas and is required to produce an annual report for them. However, he or she is not subject to directions of any kind from a Minister as to the manner in which his or her functions are performed. He or she is responsible for maintaining a list of trade unions and employers' associations and, if an application is submitted, has to determine whether or not a listed union qualifies for a certificate of independence. The Certification Officer also:

- handles disputes which arise from trade union amalgamations and mergers and the administration of political funds
- enforces the annual return requirements and the provisions of Chapter IV TULRCA 1992, concerning trade union elections[35]
- investigates breaches of a trade union's own rules relating to a union office, disciplinary proceedings, ballots (on any issue other than industrial action) and the constitution and proceedings of the executive committee or of any decision-making meeting.[36]

Under Schedule A3 of the Trade Union and Labour Relations (Consolidation) Act 1992 the Certification Officer has investigatory powers and can make enforcement orders, and Schedule A4 enables him or her to impose financial penalties. Schedule 2 of the Trade Union Act 2016 allows him or her to exercise certain powers without an application or complaint being made. In relation to all these jurisdictions, an appeal can be lodged on a question of fact or law.[37]

1.5.6 The Information Commissioner

This officer replaced the Data Protection Commissioner in 2001. The Information Commissioner has a number of general duties, including the preparation and dissemination of Codes of Practice for guidance.[38]

KEY LEARNING POINTS

1 The most important source of law governing industrial relations is legislation enacted by Parliament.
2 Legislation sometimes allows for a Minister or a statutory body to issue Codes of Practice.
3 The most relevant Codes of Practice for employment law are issued by Acas, the EHRC, the Information Commissioner and the Secretary of State.
4 The case law approach of the courts means that they are bound by the decisions of judges in higher courts.
5 At the time of writing, national courts must follow the decisions and guidance given by the CJEU.
6 At the time of writing, European laws take precedence and are directly effective against the state or emanations of the state, if not transposed correctly.
7 Employment tribunals are specialist bodies, whose decisions can be appealed against, on points of law, to the EAT.
8 Acas has the general duty of improving industrial relations and provides advice, individual and collective conciliation, and arbitration services.
9 The CAC deals with complaints about failure to disclose information for the purposes of collective bargaining.
10 The CAC also has an important role to play in the procedure for the statutory recognition of trade unions.
11 The Certification Officer maintains lists of employers' associations and trade unions, issues certificates of independence and has extensive powers under the Trade Union Act 2016.

Notes

1 See section 205 TULRCA 1992.
2 Section 207A TULRCA 1992 provides for tribunal awards to be adjusted in certain circumstances where there has been a failure to comply with a code.
3 In this book, references to the decisions of the Supreme Court include cases decided by its predecessor.

4 The CJEU is the renamed European Court of Justice. In this book, decisions of the European Court of Justice will be treated as those of the CJEU.
5 *British Telecom v Sheridan* (1990) IRLR 27.
6 (2006) IRLR 143.
7 See *Marshall v Southampton and South West Hampshire Area Health Authority* Case 152/85 (1986) IRLR 140.
8 See *Amministrazione delle Finanze v Simmenthal* Case 106/77 (1978) ECR 629.
9 See *Litster v Forth Dry Dock Engineering Co Ltd* (1989) IRLR 161.
10 *Pickstone v Freemans plc* (1988) IRLR 357.
11 See *Marleasing SA v La Comercial Internacional de Alimentacion SA* Case 106/89 (1990) ECR 4135.
12 (1980) IRLR 208.
13 SI 2002 No 2034.
14 See *Commission v UK* (1994) IRLR 292.
15 See Cases 46/93 and 48/93 *Brasserie du Pêcheur SA v Federal Republic of Germany* and *R v Secretary of State for Transport ex parte Factortame* (1996) ECR 1029.
16 Certain claims can be heard by a chair sitting alone.
17 On tribunal practice and procedures see specialist texts. It should be noted that section 39 of the Scotland Act 2016 gives the Scottish Government power over the operation and management of employment tribunals in that country.
18 Rule 76 Schedule 1 Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, SI 2013 No 1237.
19 *R v Lord Chancellor* (2017) IRLR 911
20 Rules 70–3 Schedule 1 Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, SI 2013 No 1237.
21 Rule 34 Schedule 1 (see note 18).
22 Rule 3 Employment Appeal Tribunal Rules 1993, SI 1993 No 2854.
23 Rule 34A Employment Appeal Tribunal Rules 1993, SI 1993 No 2854.
24 Rule 36 (see note 18 above).
25 Section 209 TULRCA 1992.
26 Section 213 TULRCA 1992.
27 Section 210(3) TULRCA 1992.
28 See *Science Warehouse Ltd v Mills* (2016) IRLR 96 and *Compass Group Ltd v Morgan* (2016) IRLR 924.
29 See section 212(3) TULRCA 1992.
30 See Acas Arbitration Scheme (Great Britain) Order 2004, SI 2004 No 753 and 'The ACAS arbitration scheme for the resolution of unfair dismissal disputes: a guide to the scheme'.
31 See section 214 TULRCA 1992.
32 See *R v CAC ex parte Hy-Mac Ltd* (1979) IRLR 461.
33 See *R v CAC (on the application of the BBC)* (2003) IRLR 460.
34 SI 2004 No 3426.
35 See sections 256 and 32ZC TULRCA 1992.
36 Section 108A TULRCA 1992.
37 See section 21 Trade Union Act 2016.
38 See Part 5 Data Protection Act 2018.

Explore Further

READING

Cabrelli, D (2018) *Employment Law in Context: Text and materials*, 3rd Edition, Oxford: Oxford University Press. Chapters 1 and 2.

Davies, A (2015) *Employment Law*, Harlow: Pearson. Chapters 1, 2 and 4.

Smith, I, Baker, A and Warnock, O (2017) *Smith & Wood's Employment Law*, 13th Edition, Oxford: Oxford University Press. Chapter 1.

WEBSITES

Advisory, Conciliation and Arbitration Service: www.acas.org.uk (archived at https://perma.cc/A79Y-8SXC)

Chartered Institute of Personnel and Development: www.cipd.co.uk (archived at https://perma.cc/4EH7-YBH3)

Court of Justice of the European Union: www.curia.europa.eu (archived at https://perma.cc/55PB-QJP9)

Department for Business, Energy and Industrial Strategy: www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy (archived at https://perma.cc/2YGZ-SA8V)

Department for Work and Pensions: www.gov.uk/government/organisations/department-for-work-pensions (archived at https://perma.cc/2JRW-U45L)

Employment Appeal Tribunal: www.justice.gov.uk/tribunals/employment-appeals (archived at https://perma.cc/5YAY-ECH5)

Equality and Human Rights Commission: www.equalityhumanrights.com (archived at https://perma.cc/77M2-8UVU)

HMSO: www.legislation.gov.uk (archived at https://perma.cc/S2CQ-EZ7B)

House of Lords: www.parliament.uk/business/lords (archived at https://perma.cc/6BNK-3YEY)

International Labour Organization: www.ilo.org (archived at https://perma.cc/4557-HLJG)

Trades Union Congress: www.tuc.org.uk (archived at https://perma.cc/66BR-LZ9Z)

Online journals: www.xperthr.co.uk (archived at https://perma.cc/X476-XALQ)

Xpert HR is an excellent source of information for all the chapters in this book. It contains case law reports, articles and much more, and is updated very frequently. Some colleges have a subscription to it, and parts of the website are free to use.