

# Perspectives

Legal updates for the world of higher education



June 2019

Dear Colleague

Much has been written and said by commentators already about the Review of Post-18 Education and Funding. You can see our initial comments about the Augar Report on our new [website](#) and on our blog [fusion](#). You will also find back copies of this publication on our website, as well as a range of other resources about legal developments relevant to all the sectors which we focus on as a legal practice.

In addition to the Augar Report, I have been thinking about the issues raised by this year's BBC Reith Lectures. The first Reith Lectures were given by Bertrand Russell in 1948 on the topic "Authority and the Individual", followed by Robert Birley with a series of lectures on "Britain in Europe" in 1949. This year's lectures have been delivered over the last few weeks by Lord Sumption who retired at the end of 2018 as a Justice of the UK Supreme Court upon reaching the mandatory retirement age of 70. His theme was "Law and the Decline of Politics".

## Politics, law and the judiciary

The central question raised by Lord Sumption is whether some issues facing our society should be answered by the political process, rather than by unelected judges through a legal and judicial process. He raises topics, as examples, where individuals can, and do, differ on what the governing law in a society should be, such as assisted dying and abortion. He advocates for the political process and legislation as the better way for a society to mediate an outcome for these difficult issues, rather than for the outcome to be left to be determined by the courts.

In the fourth of his lectures, which was given at George Washington University and drew upon his experience as an historian, Lord Sumption highlights the difference between the US and the UK models of democracy. The US model is described as a legal model with a written constitution dating back to 1789 with its various amendments (the first ten being known as the Bill of Rights). The UK model of democracy is described as the archetypal political model of democracy with no written constitution. Lord Sumption asks what we can learn from the US model and whether US judges are drawn much more into what he describes as essentially political matters.

## Human rights

Closer to home, Lord Sumption raises concerns about the extent to which judges of the European Court of Human Rights are involved similarly in questions which would be better decided through the political process. I recently visited Berlin and, notwithstanding the apparent flourishing of enterprise, research and culture in this beautiful city, I was reminded by the physical architecture and memorials which speak of the brutality and divisiveness of the significant chapters in the history of the twentieth century. Lord Sumption reminds us that the European Convention on Human Rights came into force in 1953 in the aftermath of World War II to act as a safeguard against serious human rights violations and to protect individuals' political freedoms.

Lord Sumption asks whether the human rights agenda and jurisprudence has gone too far by giving over important political decisions to judges. The lectures make us think about how should difficult and contested issues be best decided in a democratic society. Lord Sumption suggests that there are only two categories which stand scrutiny as 'fundamental' rights where there is a need for some 'higher' law to stand above the will of the legislative arm of the state.

The first of these are "rights to a basic measure of security of life, liberty and property, without which life is reduced to a crude contest in the exercise of force." The second group of rights are those "such as freedom of expression, assembly and association, without which a community cannot function as a democracy at all." He recognises the "problem of majoritarian tyranny" but concludes that the "the only effective constraints on the abuse of democratic power are political".

We would commend our readers to listen to the full series of lectures as this brief summary does not do justice to the breadth and the depth of insight and argument pursued by Lord Sumption. The 2019 Reith Lectures raise important issues which are worthy of serious thought by us all as they challenge us to reflect on our understanding of our constitutional democracy and how, as individuals and communities, we may live well together into the future.



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## Tribunal dismisses challenge to compulsory retirement age for Oxford academic



The employment tribunal has [dismissed](#) claims from Professor John Pitcher against Oxford University and St John's College arising from his compulsory retirement at the age of 67. Mills & Reeve (Nick Abbott and David Faulkner) represented the College in these proceedings.

As the employment judge said at the beginning of the Tribunal's lengthy judgment:

*"This case exemplifies the much vexed question of how does an employer, in a fair and transparent way, allow for changes to take place by creating opportunities for advancement of those in its workforce from different backgrounds to achieve their full potential while at the same time balancing the needs and interests of those in senior positions who desire to remain employed?"*

This is certainly the issue which has attracted the most public comment to date, though in fact the judgment addresses the legitimacy of a number of other aims behind the compulsory retirement policy, including the overarching aim of safeguarding high standards of teaching and research, and holds that all of the aims contended for were legitimate in law.

As with all cases where a compulsory retirement age is challenged on the grounds that it is discriminatory, the tribunal had two tasks: to assess the legitimacy of the aims behind the imposition of the policy, and to decide whether adopting it was a "proportionate" means of achieving those aims. Both issues were decided in favour of the University and the College. They had adopted broadly similar arrangements, since most academic posts at Oxford (including the posts held by Professor Pitcher) are joint appointments by the University and one of its constituent colleges.

The legitimacy of aims in relation to compulsory retirement has been considered in considerable detail by the European Court of Justice in a number of cases, as well as on one occasion by our own Supreme Court in a case involving a partner in a solicitors' firm. So the tribunal was in large measure guided by legal precedent in deciding that the stated aims behind the policy were legitimate.

The issue of proportionality turned on the precise arrangements that both the University and the College had put in place, not just in relation to the age selected, but by providing for exceptions in defined circumstances and for regular reviews of how the policy was working and making adjustments as necessary. The tribunal also needed to consider whether there were any other means of achieving the stated aims behind the compulsory retirement policy which would have been less disadvantageous to those academics who wished to continue working: it concluded that there were no realistic alternatives.

This is believed to be the first employment tribunal case about the imposition of a retirement age in a traditional employment context, since the rule which allowed employers to retire staff at the age of 65 was abolished in 2011. Although it is a first instance decision it will be of considerable interest to other employers, particularly in the higher education sector and in some of the initial press coverage has been said to presage the wider use of compulsory retirement arrangements for academic staff. That remains to be seen.



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## Rising to the challenge: Achieve more. Together.



Each year a group of Mills & Reeve trainees work together to scope, plan and co-ordinate a sponsored challenge which people from across the firm participate in. In recent years we have supported charities [Young Minds](#), [Dogs for Good](#) and [Bloodwise](#). This year our chosen charity is the [Albert Kennedy Trust](#), the UK's leading national LGBTQ+ youth homelessness charity. AKT provides invaluable support and safe accommodation to vulnerable young people, helping them to escape abusive and unsafe environments. The charity also equips them with the skills and finances to help them move into independent living.

One in four young people at risk of homelessness identify as LGBTQ+. Research indicates that compared to youth in general, LGBTQ+ young people are at a significantly higher risk of exposure to a range of experiences that are associated with becoming homeless, most notably parental rejection, physical violence, emotional abuse and mental ill health.

### The Coniston challenge

This year's challenge on 15 June took place around Coniston in the Lake District, with 106 Mills & Reeve staff and family members involved, with each of our six offices and a broad range of roles represented. Each of us took part in three activities- a hike to the summit of the Old Man of Coniston, a canoe trip across Coniston water and last but not least, donning wetsuits to ascend Church Beck, which involved ducking under obstacles, traversing and jumping into deep pools and climbing waterfalls.

After a very wet week in the build-up, the weather held out for the most part. The clouds parted in the afternoon to reward some of our hikers with fantastic views at the top of the Old Man of Coniston. Unfortunately those hiking in the morning were faced with harsher conditions, but spirits were high and we persevered nonetheless!

The Church Beck scramble involved for some a daunting (20 foot+) jump down a narrow gorge and a climb up a waterfall. We experienced the "energizing" temperature of the water in the beck, whilst clad in a fetching combination of wetsuits, shorts and climbing helmets. In the words of one team member: "I never want to see a wetsuit or pair of XL shorts again...". We were all extremely glad of the warm showers, camaraderie and hot meals back at the youth hostel afterwards!

This year's committee of Alasdair Dougan, Eilish MacDonald, Gabriel Swales and James Edmonds did a fantastic job organising the event. In their words: "We started planning for the challenge in October 2018 and we were really keen to organise an inclusive event for everyone at Mills & Reeve that was both challenging and fun. We are thrilled that the event turned out to be a success and it was great to see everyone working in teams, enjoying the challenge and socialising with colleagues they wouldn't normally get the chance to. The Albert Kennedy Trust is a fantastic charity supporting vulnerable people and communities so we are delighted to be able to raise such a significant amount on its behalf."

Thanks to the staff at YHA Holly How for providing accommodation and excellent catering and to All Terrain Adventures for the expert guiding of our teams along the way.

### Cycling London to Paris

Simultaneously to the event in Cumbria, 10 cyclists from various Mills & Reeve offices were cycling 183 miles from London to Paris, also fundraising for AKT. They left at 3pm on Friday 14 June from the Monument, outside our London office, bound for Paris to arrive in time to catch the train home on Saturday.

Approximately 13 ½ hours of riding time later, including 2377m of ascent (nearly twice the height of Ben Nevis) and a 4am start from the Dieppe ferry, the cyclists arrived at the Eiffel Tower with about 10 minutes to spare before a dash through the Saturday afternoon Paris traffic to the Gare du Nord to catch the Eurostar home.

Along the way there were some major highlights: the beauty of the South Downs in much needed glorious sunshine on the way down to Newhaven, the sight of maybe 200 bikes packed on the ferry, the section of quiet, forested bike path for most of the first 25 miles in France with dawn breaking and little pools of mist lying over the fields, a red squirrel, generous sized pastries, some very tranquil cows and a fantastic lunch in an unexpected place!







# Mills & Reeve increases partnership with seven internal promotions



Mills & Reeve will boost its number of partners to 132 with seven principal associates promoted on 1 June 2019.

The seven new partners are based in the Birmingham, Cambridge, London and Manchester offices of the law firm.

Carol Couse will be made up to partner in the sports team, Joanna Davies in the corporate real estate team, Lucy Collins in the projects and construction team, Melanie James and Andrew Secker in the employment team, Junaid Haroon in the corporate team and Doug McDonald in the commercial disputes team.

Justin Ripman, senior partner at Mills & Reeve said: “As always we’re thrilled to be able to welcome fresh talent into the partnership, and I’m especially pleased that we have been able to promote such an impressive cohort of associates, including some fantastic home grown talent.”

“Part of our 2020 strategy is to help our people develop and we’re really proud to be able to promote this very deserving group who are all great examples of the value we place on commercial skills, ambition and innovation.”

## The new partners



Carol has carved out a career advising high profile names across the sporting world. She is an expert on football regulatory matters including player transfers and contracts.



Andrew heads the London commercial employment offering and helps businesses manage the strategic financial and reputational consequences of the labour law issues they face.



Junaid works focuses on M&A, private equity investments and disposals particularly in independent health, life sciences and food and agribusiness sectors.



Joanna is a corporate real estate expert dealing with large-scale acquisitions and disposals, reconfiguring property portfolios and development projects.



Lucy is a specialist surety lawyer who has been advising the market since 1998. She is adept at finding commercial solutions to meet bonding and guarantee requirements.



Doug is a commercial litigator who specialises in high value contract disputes, with a particular focus on the technology and life sciences sectors



Melanie is an employment lawyer specialising in the life sciences sector. She is an expert in crisis management and thrives dealing with complex and challenging matters.

## About Mills & Reeve



Mills & Reeve offers a deep knowledge of the higher education sector and the commercial strength of one of the UK's leading national law firms.

Our multi-disciplinary team is ranked in tier 1 in the UK legal directories for advising the higher education sector.

We have supported our clients in over 75 jurisdictions through our international network of law firms around the world.

The Sunday Times has recognised us as a Top 100 Best Employer for the last 16 consecutive years; the only UK law firm to have achieved this. We work hard to create a culture where everyone feels that they contribute and can make a difference, delivering outstanding service to our clients.

