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COLLECTIVE REDUNDANCY: ADVOCATE-GENERAL RECOMMENDS RESTORING STATUS QUO

EMPLOYMENT

Advocate-General Wahl has published his long-awaited opinion on the "Woolworths" collective redundancy consultation case. The case caused panic amongst employers when the Employment Appeal Tribunal ruled in July 2013 that the UK's rules were incompatible with the underlying EU Directive. Until that decision, employers operated on the basis that their collective consultation obligations were only triggered where 20 or more redundancies were proposed within 90 days at a single site. In a radical change, the EAT held that a business' entire workforce was the correct measuring unit, so a company making 20 or more redundancies across its whole business would need to consult collectively.

The right to consultation matters because up to 90 days' pay can be awarded to a worker if the employer fails to consult properly.

The point was referred to the European Court of Justice (ECJ), along with another case from Northern Ireland involving the demise of the Bonmarché chain, and a Spanish case involving the closure of an off-shoot of the Ministry of Finance. The procedure in the ECJ is for an Advocate-General to give a detailed opinion for the full Court to consider. The Court is not obliged to follow the opinion, but does so in roughly 75 per cent of cases.

Advocate-General Wahl has concluded:

- that the UK has correctly implemented the requirements of the Directive;
- that the word "establishment" in the Directive (also used in the UK legislation) means the local unit to which the potentially redundant employees are assigned;
- national courts in each member state must decide precisely how that local unit is defined; but
- the purpose of the Directive is to protect local communities from mass redundancies.

USDAW, which brought the claim on behalf of its redundant members in the Woolworths case, has noted that the UK legislation has always produced an odd result of this opinion in company-wide insolvencies, where workers in larger stores are entitled to consultation - and potentially compensation - while those in smaller branches are not. It remains to be seen whether that argument impresses the full Court.

CONTACT DETAILS
If you would like further information or specific advice please contact:
HAYLEY ROBINSON
DD +44 (0)20 7849 2969
hayley.robinson@macfarlanes.com

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MACFARLANES LLP
20 CURSITOR STREET LONDON EC4A 1LT
T: +44 (0)20 7831 9222 F: +44 (0)20 7831 9607 DX 138 Chancery Lane www.macfarlanes.com