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Shilpen has a dual practice focused on dispute resolution and employment law. His expertise as a litigator is in high value commercial dispute resolution and contentious corporate and partnership matters, often involving an international element. He has conducted a number of reported cases and cross-border disputes and has a reputation for securing the best commercial outcome for his clients.

Shilpen also advises and represents employers, employees and professional clients in all aspects of employment and partnership law. He has expertise in restrictive covenants, discrimination, whistleblowing, restructuring and bonus disputes. He represents senior executives, self-employed professionals and company directors in connection with their entire workplace needs, including claims in the Employment Tribunal and the High Court.

Shilpen is a Londoner and is passionate about the capital's unique identity and cultural variety. He is a committed advocate and driver for diversity and inclusion in the workplace. Shilpen is a CEDR-accredited independent mediator and accepts appointments in relation to business and workplace disputes.

gunnercooke is one of the UK's fastest growing law firms, providing a wide range of corporate and commercial legal services to businesses, banks and financial institutions. The firm was founded in 2010 to challenge, improve and evolve the way that legal services are delivered. We believe that the legal industry serves neither clients nor lawyers the way it should. Our founders set about doing things differently from day one, flattening out the traditional hierarchy and establishing a new model based upon flexibility, transparency and freedom.

All gunnercooke lawyers have a client-focused approach and at least 10,000 hours' practising experience. They also

### QUESTION ONE

#### What are the key cultural factors surrounding employment and working practices that businesses should be aware of in your jurisdiction – and how can businesses access the local intelligence they need to integrate?

The UK offers a very business-friendly climate together with a progressive approach to employment law. Our laws are presently aligned with the EU which means employees enjoy the same basic rights and protections in this jurisdiction.

In my view the three main cultural factors that define the modern British workplace are flexibility, diversity and adaptable employment contracts.

We are undergoing a silent revolution in terms of working practices and the Covid-19 pandemic has brought widespread recognition that many employees can work effectively from almost anywhere. Businesses are questioning the need for expensive offices and how these spaces should be used. Meanwhile many employees have enjoyed working remotely from home and are reluctant to return to commuting to work five days a week. This is leading to innovation and a less prescriptive approach by employers, with many businesses trialling a hybrid model where employees can work partly from home (or anywhere) and partly from the office.

It is also essential to recognise that the British workplace is

operate on a fixed-fee basis, meaning work is scoped out from the outset and cost certainty is guaranteed. As a result, all clients have access to trusted advisors who have a breadth of experience and knowledge, enabling them to work on all matters from straightforward transactions to complicated cases that require complex solutions.

The firm has been recognised for 44 industry awards and currently employs over 330 legal professionals and management consultants across seven offices; London, Manchester, Leeds, Birmingham, Edinburgh, Glasgow and Berlin.

very diverse. We welcome every ethnicity, physical ability and personal orientation and each worker has a legal right to expect fairness and equal treatment from their employer. The Equality Act 2010 prevents discrimination and harassment of employees in relation to nine "protected characteristics" comprising age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The third key feature is the freedom to negotiate flexible remuneration terms and post-termination restrictions with workers. When it comes to paying staff we have minimum wage protection, but other than this employers are generally free to agree incentives, bonuses and commissions as they see fit. Employers can also protect the legitimate interests of their business by introducing contractual restrictions to prevent interference with customers, protect confidential information and guard against competition and poaching of senior employees. When breaches occur, an employer can be confident that properly drafted clauses will be recognised and robustly enforced by our Courts.

There is less freedom when it comes to industry sectors with recognised trade unions, as these will entail collective bargaining requirements which I have not touched on here.

### QUESTION TWO

#### What challenges have clients encountered as they merge their own corporate employment and agreement practices with local employment regulations? How have you helped them to navigate this during market entry?

In my experience EU businesses rarely struggle with the requirements of UK employment law. This is because the underlying protections are similar, but our requirements are often lesser and more flexible than what they are accustomed to. If anything, I think they find the process of hiring and firing in the UK quite straightforward.

Meanwhile US businesses, for example, do tend to need more adjustments when moving into the UK. This is because we have a fairly robust employment regime and employees have more statutory rights here than they do in America.

The first thing for a new employer to address in this jurisdiction is the employment contract. There is no legal requirement for an employee to have a written contract of employment, but every employee must be given a statement of minimum employment particulars. It is generally advisable to go further than this and produce full employment contracts together with an employee handbook dealing with workplace policies and procedures.

The Working Time Regulations 1998 (WTR) can sometimes come as a surprise to employers. These regulations require employers to take reasonable steps to protect workers' health and safety to ensure that each worker's average working time (including overtime) does not exceed 48 hours per week. There is a right to opt out of the maximum working week limit, but it must be dealt with expressly in writing.

The WTR also gives workers a right to receive a minimum of 5.6 week's paid holiday per year.

The protection against dismissal provided by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) can also be a potential banana skin for employers. This is a complex area but, briefly speaking, these regulations protect employees by automatically transferring them to a new

## TOP TIPS

### Preserving company culture as you build a team in a new market

- ✓ Know your company culture. What are the ethical priorities (and brand values) of the business and what are the existing strengths on which you want to build? If you have clear ideas it will be easier to transfer and instil these things.
- ✓ Ensure that you have bespoke employment contracts and an employee handbook that reflects the company's culture and requirements.
- ✓ Be open to flexible working and experimenting with this. Do not associate productivity or effectiveness with a physical presence in the office. This is even more important given health and safety considerations in the wake of the pandemic.

employer when a business is transferred or there is a change in the provision of services. If employers get this wrong, it can trigger claims of unfair dismissal.

TUPE does not apply to transfers into the UK from abroad, but transfers from other EU member states may be caught by local legislation. There is also uncertainty about the potential application of TUPE to a transfer of a business from the UK to another country. This is an area that needs careful handling.

### QUESTION THREE

#### What are the key steps businesses need to take to attract and retain talent in your jurisdiction – from progression expectations to financial incentives?

I think businesses entering the UK market need to be clear about their objectives and have a defined ethos and work culture if they want to attract the best British talent. Employers that are open-minded about work and how it is delivered will find this flexibility rewarded. If they also commit to investing in a diverse and inclusive workforce this will make the transition even better. There is a growing body of research linking diversity with increased productivity.

This is not to say that employers should not demand high productivity and deliverables from their workers. On the contrary, the UK is a jurisdiction where you can clearly set your standards, reward your staff accordingly and rely on the legal system to help with protecting your legitimate business interests.

It is essential to take specialist advice before making the decision to establish a presence here. This will ensure proper compliance with tax and other statutory requirements and also minimise the risk of inadvertent breaches of employment law which could result in expensive liabilities through claims in the Employment Tribunal or the Court.