

Law News

Newsletter for commercial clients

Summer 2022



Welcome...

...to the summer issue of Law News.

In this edition, our lawyers explore the latest case news and updates in their areas of corporate & commercial law, property disputes, employment, business immigration and charity law. As always, we're happy to help with any of your legal needs so please get in touch.

You'll also see we've recently hosted several webinars covering some of 2022's most talked-about topics for businesses, and they're now available to watch and listen back to at your leisure.

Bridget Redmond managing partner

What's in this issue?



- New global mobility route
- Tenancy checklist
- The Charities Act 2022
- A new gateway for pay equality
- Why businesses should check articles of association
- Holiday pay for part-year workers

People & practice news

We're pleased to congratulate the firm's longest-serving equity partner, **Paul Gordon**, who takes over as senior partner following **Nicholas Cox's** move to consultant, after 25 years' service and nine years as senior partner.

Paul, who is head of the dispute resolution team, has been ranked by national independent legal guide *Chambers UK* and has a broad range of specialisms, including commercial and intellectual property (IP) litigation.

Further promotions have been awarded to experienced residential property lawyer **Mary Young** and wills, trust & probate specialist **Laura Stone**, who are both now senior associates, while solicitors **Dorcas Guillebaud**, **Katie Duthie** and **Jessica Whooley** are promoted to associates. Congratulations all! ■



New reception & address as Imperial Square refurb progresses

Since 1 June, our postal and registered address has changed to **34 Imperial Square, Cheltenham GL50 1QZ**, following the official opening of our new reception. We look forward to welcoming you soon.

The new reception space comes alongside a complete refurbishment of our regency offices – Willans' home for over 60 years – which we began earlier this year with the help of many local businesses.

Coinciding with a move to hybrid working for our team of nearly 100 people, part of the project involves creating new, collaborative meeting and staff social areas to include coffee stations, 'quiet' seating and outdoor spaces, as well as new bike racks and showers to encourage staff to cycle to work. ■



Helen Howes
Solicitor, corporate & commercial

Helen helps clients with their corporate and commercial needs, as well as drafting and advising on general terms and conditions of business and commercial contract queries.

Why sole director companies should check articles of association

Solicitor **Helen Howes** explains the importance of ensuring a company is incorporated with carefully drafted articles of association, if there is only one director.

All limited companies must have articles of association, which set the rules company officers must follow. However, in the High Court decision of *Re Fore Fitness Investments Holdings Ltd (2022)*, the judge commented that the ‘model’ articles – the standard default articles – cannot be used in an unmodified form if a company only has one director.

The implication of this is that a company which has adopted the model articles must have at least two directors for any decisions taken by a director to be valid and binding. If it is operating with one director and has adopted the model articles, any decisions taken by the director are technically invalid and non-binding, which could potentially have ramifications on key decisions or contracts.

What are the model articles?

A company’s articles of association are effectively its constitution. When a company is registered, the default position will be for it to have the model articles (a standardised constitution set out in the Companies Act 2006) unless it specifically adopts a bespoke set of articles, tailored to that company.

How can I check?

Anyone can view a company’s articles of association online by visiting Companies House – GOV.UK (www.gov.uk) – if it has been incorporated

in England or Wales, and its adopted articles of association form a part of its public record. This record will either state ‘model articles adopted’ or a copy of its bespoke articles will be available to view, free of charge.

What should I do?

If you are looking to register a new or existing company and there will only be one director (or might be in the future), it would be advisable to ensure the company is incorporated with carefully drafted bespoke articles of association which permit this.

If the company is already incorporated with model articles and has just one director, you should review the articles of association to ensure no amendments have been made. If

none have, consider either appointing an additional director or, preferably, amending the articles to give the company flexibility to operate with a sole director. It would also be advisable to carry out a review of historic decisions taken by the sole director to ensure they are not potentially void.

Should you need any advice on this matter, we’d be happy to help. ■

“If the company is already incorporated with model articles and has just one director, you should review the articles of association to ensure no amendments have been made.”

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Webinar date for your diaries



Join our experts to hear the latest news & updates for employers:

Wednesday 5th October | 9.30am | Employment law update

In this free webinar, our employment & business immigration team provide an update on legislation, case law and immigration with practical advice for your business.

To register your interest, visit: willans.co.uk/events/

What we’ve been advising on...

Our **business immigration team** has been providing ongoing advice to Pentadel Project Management, based in Cheltenham, which was recognised as one of the UK’s Best Workplaces 2022 (small

businesses category) by Great Place to Work, the global authority on workplace culture. Specifically, the team has been advising the company on immigration matters and sponsoring Ukrainian refugees. ■



Our **agriculture & estates team** has recently acted in connection with the disposal of 17 acres of agricultural land marked for development as part of Cheltenham’s new cyber park near GCHQ. ■

New global business mobility route streamlines UK worker visas

As the world opens up for travel following the pandemic, there's good news for businesses looking to transfer overseas workers to the UK. Solicitor **Hayley Ainsworth** shares the latest.

2022 has been a year of exciting developments in the business immigration world. So far, the biggest news is UK Visas & Immigration (UKVI) opening the new global business mobility route in April.

This introduced five subcategories to enable businesses to transfer their overseas employees to the UK to undertake temporary assignments. These are:

- senior or specialist worker route – to replace the existing intra-company transfer route and allow senior managers or specialist employees to transfer to the UK to undertake a temporary work assignment.
- graduate trainee visa – to replace the intra-company graduate trainee visa and designed for employees on a graduate training role who wish to be transferred to the UK for a work placement.
- UK expansion worker visa – to replace the sole representative of an overseas business visa and allow senior employees to come to the UK to undertake work involved in expanding the UK presence of their overseas business.
- secondment worker visa – a highly-anticipated visa, which allows overseas workers to be temporarily seconded to the UK as part of a high value contract or investment.
- service supplier visa – replacing the temporary work – international agreement route. This visa is for overseas workers who are contractual service suppliers and need to undertake an assignment in the UK to provide services covered by one of the UK's international trade commitments, such as the General Agreement on Trade in Services (GATS).

The new routes, designed to be more streamlined and 'fit-for-purpose' than those previously in place, launched on 11 April 2022 and have been largely well-received.


Streamlining appears to be a major goal of the home office this year, which is also planning to roll out a new IT management system for those businesses that sponsor workers.

If you're in need of advice on the right sponsorship routes for your overseas workers, we'd be happy to help. ■



Hayley Ainsworth
Solicitor, employment law & business immigration

Hayley helps clients with a wide range of business immigration and employment matters, from tribunal proceedings to employee relations.

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Our **real estate and strategic land & development team** have been working with a well-known housebuilder on all post-site acquisition matters and dealing with the plot sales on its development

of 32 houses. The teams have also been acting for the developer of a site comprising two commercial units and four apartments being constructed on a prominent waterfront site in Devon. ■





Matthew Clayton
Partner, employment law

Matthew leads our employment & business immigration team and has over twenty years of experience in the field.

Holiday pay for part-year workers explained

What are the implications for employers with staff who don't work the entirety of the year, such as seasonal workers? **Matthew Clayton** explores a recent case and the issue of paid holiday.

On 20 July 2022, the Supreme Court upheld the Court of Appeal's earlier decision in *Harpur Trust v Brazel* that part-year workers should not have their paid holiday pro-rated.

What are the laws on paid holiday?

The Working Time Regulations 1998 (the WTR) state that a full-time employee or worker is entitled to 5.6 weeks of paid holiday per year. Under section 224 of the Employment Rights Act 1996 (ERA), those working atypical hours will have their holiday pay calculated using their average earnings over the preceding 52 weeks. Any week in which the worker did not work, or earn wages, is ignored.

Previously Acas guidance stated that holiday pay entitlement for those working atypical hours be calculated at 12.07% of the hours worked in the preceding week; this was on the basis that when 5.6 weeks' statutory holiday is deducted from the 52-week calendar year, the working year amounts to 46.4 weeks. 5.6 weeks annual leave equates, therefore, to 12.07% of the working year.

Harpur Trust v Brazel

In this case, Ms Brazel was a music teacher for a school run by the Harpur Trust. Her contract was permanent, but for term-time only and Ms Brazel was paid for the hours she taught, which varied weekly. Ms Brazel took annual holiday at the end of each term, in three tranches.

In line with Acas' now removed guidance, when calculating her holiday pay, the trust multiplied the hours Ms Brazel worked by 12.07%, and then multiplied that figure by her hourly rate of pay.

Ms Brazel brought an unlawful deduction of wages claim in the Employment Tribunal, arguing that the correct approach in terms of her holiday pay was to apply the "week's pay" calculation set out in s224 of the ERA. The trust argued that, among other things, it was absurd that some who worked for a few days each year would be entitled to a larger percentage of holiday pay than someone who worked full time.

The Employment Tribunal dismissed Ms Brazel's claim, but the Employment Appeal Tribunal (EAT) and the Court of Appeal (CA) upheld her appeal. The matter reached the Supreme Court, which upheld the EAT's and the CA's decision.

What is the correct approach to holiday pay for part-year workers?

The Supreme Court found that the entitlement to 5.6 weeks' holiday applies to full and part-year workers, without pro-rating. For those with no normal working hours, pay ought to be calculated by averaging the number of hours worked over the previous 52 weeks.

What should you do?

If you have employees or workers who work only part of the year, for example term-time workers, seasonal workers or those on zero hour contracts, you should:

- review and amend contracts of employment and payroll processes for the calculation of holiday pay
- conduct an assessment of the financial liability you may face for those staff members being paid using the previous method of 12.07% holiday pay per hour
- address whether you may face claims of unlawful deductions from wages; employees and workers can seek to recover deductions made over the period of two years before the date of the claim
- note that you may face arguments from outgoing employees that their accrued but unused holiday pay entitlement on termination of employment should be increased to take into account the underpayment of holiday pay which results from using the 12.07% method. This would not be limited to two years, but instead their claim could only go back a maximum of one year (i.e. for underpayment for 5.6 weeks statutory annual leave entitlement) or to the start of the current holiday year, or to the start of their employment if that is within the current holiday year.

If you'd like any guidance on holiday pay for part-year workers, please do get in touch. ■

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Our **corporate & commercial team** have been busy advising on business purchases and sales, as well as reviewing the terms & conditions for several companies. ■



Real estate solicitor, Charlotte Brunson, recently acted on behalf of **Cheltenham Civic Society** in its purchase of a new headquarters in Cambay Place, Cheltenham and the sale of its premises on Lypiatt

Terrace. The society's chair, Andrew Booton, said: "Charlotte kept the peace and calmly guided us to a very successful completion. We are now getting busy with the restoration." ■



A new gateway for pay equality

A recent case has paved the way for employers to be more transparent in identifying equal work and pay. **Jenny Hawrot**, partner in employment law, discusses.

For the first time, a tribunal has ordered a company to undertake an equal pay audit, after an employee issued multiple claims against them.

In *Macken v BNP Paribas London Branch*, the judge held that where there is insufficient evidence about why there is pay inequality, the company would need to undergo an equal pay audit. This has fundamentally opened a new gateway for pay equality in the workplace.

In the case, Ms Macken issued a claim against her employer for equal pay, direct sex discrimination, victimisation, and protected disclosure detriment and harassment. She was successful in all claims and was awarded more than £2m.

Despite having more relevant experience, Ms Macken, who was working in a male-dominated environment, was paid considerably less than a male equivalent. This was evident in both her salary and her bonus awards. She was also openly subjected to various forms of sexism in the workplace, such as when an employee left a “witch’s hat” on her desk.

“Employers should ensure they are adhering to the Equal Pay Statutory Code of Practice and that they are open with their staff regarding pay and pay progression.”

women working at BNP Paribas would have been in the same situation.

This judgment is important because it shows that tribunals are willing to compel employers to show more transparency in terms of equal pay. This puts a greater onus onto the employer to adhere to the Equality Act 2010.

To avoid breaches from happening, employers need to be able to identify equal work so that pay can reflect this. There are three ways work can be deemed as

being equal; like work (employees doing similar work should be awarded similar payment), work rated as equivalent (jobs rated by the job evaluation scheme as equivalent should receive equal terms) and work of equal value (equal demand, effort, skill and decision-making).

Employers should ensure they are adhering to the Equal Pay Statutory Code of Practice and that they are open with their staff regarding pay and pay progression.

It also helps to carry out regular pay audits, to ensure there are no possible pay discrimination issues emerging. In terms of the other claims Ms Macken made, it is important that employers have the right policies and training in place on equality and harassment, to ensure a safe and fair working environment.

For assistance on equal pay in the workplace, please don’t hesitate to get in touch. ■




Jenny Hawrot
Partner, employment law

Jenny is a partner in the employment & business immigration team. She helps clients with matters including TUPE, contracts, HR and general employee relations.



The tribunal could not find a sufficient reason why the employer made the decision to pay Ms Macken less than her male counterpart or why Ms Macken’s experience was overlooked in pay related processes. The tribunal also found that it was ‘logical’ that other

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Willans’ senior partner and head of the dispute resolution team, Paul Gordon recently won a case on behalf of **Stichd Sportsmerchandising BV** involving an intellectual property (IP) licence and

merchandising agreement, after Silverstone-based Formula 1 team, Force India went into liquidation. Stichd is part of the PUMA Group and design and produce merchandise

and apparel for various sports, including the Formula 1 market. When Force India went into administration, it was sold to Racing Point UK Limited, who later continued to operate the Racing Point F1 team.

However, there was no attempt made to transfer Stichd’s agreement and the company was forced to take High Court action when the then liquidators of Force India rejected their proof of debt. ■





Bethen Abraham

Paralegal, dispute resolution

Bethen is a paralegal in the dispute resolution team and mainly assists with residential possession matters, building disputes and vehicle disputes.

Tenancy checklist & top tips for landlords

Buy-to let landlords and those looking to enter the private rental market should always be on top of the requirements they face, says paralegal **Bethen Abraham**.

The obligations placed upon landlords are ever increasing and one aspect of these requirements are the various documents that must be served to tenants at the beginning of a tenancy.


Some of the compliance documents that must be dealt with correctly include:

- a tenancy agreement signed by both parties
- a valid gas safety certificate (GSC)
- a valid energy performance certificate (EPC)
- a valid electrical installation condition report (EICR)
- evidence the deposit is protected, such as a copy of the tenancy deposit certificate and prescribed information
- a how to rent booklet.

As well as this, if you have failed to protect the tenant’s deposit, you may be liable to return it in full and pay a fine for the non-compliance, which could be three times the value of the deposit.

Therefore, it’s important to check that everything is in order before serving a notice to repossess the property.

If you have failed to comply with any of the above, it may be that the breach can be retrospectively resolved with our assistance. If you have any questions in relation to a tenancy, please get in touch with our dispute resolution team for advice. ■

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Top tips for landlords

Should you wish to recover possession of your property by serving a notice, you will need to ensure that you have complied with all landlord obligations, including the service of relevant documents.

Failure to do so may prevent you from serving a valid notice to recover possession of your property from the tenant.

For example, if you do not have a valid GSC or EPC in place and the tenancy commenced after October 2015, then you will be prevented from serving a valid Section 21 notice to evict the tenant. Although you can still produce a Section 8 notice, these can be defended by the tenant, and they will be able to raise your non-compliance issues.



Free webinars to catch up on

Business immigration for employers – a guide to the latest rules and key points to consider when sponsoring non-UK workers.

Working with the menopause – a detailed look at the potential impact on your organisation and how best to support your workforce.

Spring commercial property update – an insight into development land and the Commercial Rent (Coronavirus) Act 2022.

Visit [willans.co.uk/webinars](https://www.willans.co.uk/webinars) to listen back.

The Charities Act 2022

Charity law solicitor **Charlotte Brunsdon** shares the latest on the new Charities Act.



After key changes to the law were proposed in May 2021, the new act received royal assent on 24 February 2022, and was passed into law as the Charities Act 2022.

The changes made include:

- access to a wider pool of professionals that charities can seek advice from when disposing of charity land (i.e. not just those that meet the strict definition of a “qualified surveyor”) and a change to the format of that advice so it is less prescriptive
- more flexibility regarding permanent endowment (i.e. assets intended to be held by a charity forever). For example, charities with permanent endowment can now borrow up to 25% of its value without needing to obtain consent from the Charity Commission. There is also a new statutory power to make certain social investments using permanent endowment, even if they may see a negative or uncertain financial return
- making the rules concerning amendments to governing documents consistent so that the same test and criteria apply to all charities, whatever their legal structure
- extending the statutory power for charities to pay trustees for services supplied to a charity (even if not expressly stated in a charity’s governing document) to the provision of goods by a trustee to a charity
- a new statutory power for trustees to make small “ex gratia” payments up to a certain level and dependent upon the gross income of the charity (e.g. £1,000 or less for charities with a gross annual income of up to £25,000), without needing to obtain the prior consent of the Charity Commission, and the ability for trustees to delegate the decision to make such ex gratia payments
- amending the rules surrounding the register of mergers to avoid the need to maintain a shell charity to receive ongoing legacies
- clarifying as to when it is necessary to seek Charity Commission approval to change the purpose of a gift where the charitable purpose cannot be carried out e.g. a failed fundraising appeal
- enabling the Charity Commission to authorise trustees to be paid for exceptional skill and work they have carried out for their charity, where it would be unjust not to do so
- giving corporate charities “trust corporation status” automatically if they administer charitable trusts, so that appointment by Charity Commission scheme does not need to be sought.

If you are a trustee and have any questions about the act, or how it might affect your charity, please don’t hesitate to contact us. ■



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Charlotte Brunsdon

Associate, solicitor, real estate & charity law

Charlotte specialises in advising charity and not-for-profit clients on various property matters, as well as other charity law issues.

She is recommended by national legal guide, *Chambers UK*.



Free to download: Reasons for making a will

According to Law Society figures, most people have not made a will.

If you’re buying or selling a business, or your circumstances have changed, download our guide to making a will:

www.willans.co.uk/document/reasons-for-making-a-will/

SoGlos Gloucestershire Business Awards finalists revealed



As co-headline sponsors of this year’s SoGlos Gloucestershire Business Awards, we are delighted to congratulate the final shortlisted businesses, which were revealed in July.

After 382 nominations were made by 178 different businesses, a panel of judges decided which companies and individuals should go through to the final stage. The winners of the 22 awards will be announced later this year.

Partner and head of Willans’ corporate & commercial team, Chris Wills commented: “You think you know all the businesses there are to know in Gloucestershire – then you get a list like this and realise there are still so many fantastic businesses out there, doing fantastic things.”.

Find out more about the awards at: www.soglos.com/business-awards/ ■

Contact

For advice on any of the issues covered in Law News or any other area of law, these are the partners to contact in the first instance.

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