

Law News

Newsletter for commercial clients

Spring 2024



Welcome...

to the latest edition of our newsletter for commercial clients, **Law News**. With insight into the worlds of employment law & business immigration, corporate & commercial, real estate, agriculture & estates and litigation & dispute resolution, this issue provides plenty of legal perspective on the topics affecting you and your business.

As ever, we would be happy to help with any issues you're facing, so please don't hesitate to get in touch.

Bridget Redmond | Managing partner

What's in this issue?

- This year's employment law changes
- Energy efficiency
- Protected beliefs
- Biodiversity net gain
- Changes to company law
- Possession claims
- Copyright & the public domain

We are proud to be co-headline sponsors of SoGlos Gloucestershire Business Awards for a third year running



For the third consecutive year, we're excited to be co-headline sponsors of SoGlos Gloucestershire Business Awards 2024 – an annual celebration of the county's most inspirational, successful and innovative businesses.

Nominations for this year's awards are now closed, with judging due to take place between June and September. The winners will then be announced at a live ceremony on Thursday 17 October, hosted this year at Hartpury University.

The ceremony brings finalists and sponsors together to recognise the dedication and calibre of businesses and businesspeople in our region – from entrepreneurs and start-ups, to family-owned businesses and the top 100 companies.



Chris Wills, partner in our corporate & commercial team, has been on the judging panel for the past three years and said: "Every year, I learn something new about business in the region and what it takes to achieve success. Often it's the stories of those businesses that really stand out, as well as the people behind them.

"Our county is one to be proud of and as Willans is a firm with Gloucestershire at its heart, we couldn't pass on the opportunity to champion the companies that make it thrive." ■



Matthew Clayton

Partner, head of department

Employment law & business immigration

Matthew heads our highly rated employment law & business immigration team and has over 25 years' experience in his field.

CIPD seminar

It was great to team up once more with the **CIPD**, as we delivered our latest employment law seminar at DoubleTree by Hilton on 24 April.

Thank you to all who came. We look forward to putting on more informative events throughout the year - keep your eyes on our **events & training page** for the latest updates.

Navigating the future: protected beliefs in the workplace

Employment law & business immigration partner **Matthew Clayton** looks into the challenges employers can face surrounding protected beliefs.

In the past few years, we have witnessed a significant rise in employment tribunal cases centring around a conflict between the protection of employees' rights to express their beliefs, and the rights and freedoms of others. Dealing with such conflicts in the workplace can be extremely difficult for employers, especially when the case revolves around a public post on social media platforms like Facebook or X (formerly Twitter).

What is a protected belief?

'Religion and belief' are among the nine protected characteristics defined by the Equality Act 2010. Employees with protected characteristics are protected from discrimination by employers and their employees. 'Religion and belief' encompasses religious and philosophical beliefs, as well as the absence of belief.

Determining what qualifies as a 'protected' philosophical belief is left for the courts and tribunals to decide. The leading case in this area established criteria known as the 'Grainger test' (named after the claimant in the case), so that for a belief to be protected, it must:

- be genuinely held
- be a belief, not an opinion or viewpoint based on the present state of information available
- relate to a weighty and substantial aspect of human life and behaviour
- attain a certain level of cogency, seriousness, cohesion and importance
- be worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others.

Does the way in which the belief is expressed matter?

While employees have the right not to be discriminated against or harassed due to their protected beliefs, it is important that those beliefs are expressed in a manner that is not objectionable and do not infringe the protected characteristics of others.

When evaluating the way in which an employee's belief is expressed, you should take into account the content and tone in which it was expressed. You should consider the likely audience and the potential reputational risk involved. If you seek to take action as a result of a belief being expressed, you should always consider what the legitimate aim of your action is – such as safeguarding the rights of other individuals. In doing so, you should evaluate whether your aim is significant enough

to warrant restricting the expression of one belief in favour of another, and explore whether there are less intrusive methods of achieving this.

Case law also demonstrates that it is the hasty and disproportionate response that gets employers into trouble and may result in high compensation.

What should you do?

The law provides protection for a wide range of beliefs, including those that may be perceived as controversial, unpopular or even offensive. This places employers in a delicate position when trying to balance one individual's freedom to express their beliefs with the rights of others. This is especially when the line between a sincerely held protected belief and hate speech is thin, and the consequences of misjudgement can be significant.

While the legal position is not straightforward, case law now offers guidance on how to navigate such conflicting situations in the workplace, although it will always be very fact specific. You can take proactive steps by implementing sensible policies outlining the behaviour you expect from your staff. However, you must be cautious not to unreasonably restrict your staff in their activities outside work, particularly when there is no clear link with, or impact on, your organisation.

Where a balancing exercise is needed, you should follow the guidance provided by case law before taking any hasty action. Additionally, seeking expert legal advice is advisable.

To read this article in full, please [click here](#) or visit our website by scanning the QR code below. ■



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Minimum Energy Efficiency Standard Regulation: where are we at?

Real estate associate, solicitor **Emma Thompson** provides an update regarding MEES, and where it leaves landlords and tenants.



Emma Thompson

Associate, solicitor
Real estate

Recognised by independent legal guide *The Legal 500*, Emma helps local and national clients with all aspects of their real estate legal needs.



Our real estate team previously reported on the Minimum Energy Efficiency Standard (MEES) Regulations 2023 updates back in May 2022. To view the article, [click here](#) or scan the QR code above.

From 1 April 2023, commercial properties must have an Energy Performance Certificate rating of at least 'E'. From this date, it became unlawful for a property to be let – or continue to be let – at 'F' or 'G' rating. Failure to comply with these standards could lead to fines of £150,000.

As part of the ongoing targets to reduce UK emissions, the government had previously proposed that the minimum energy efficiency standard would be raised to 'B' by 2030 with an interim rating of 'C' required by 2027.

However, following the prime minister's autumn announcement that energy targets were being scaled back, the government announced that the previous proposed timelines will need to be updated

to allow sufficient lead in time for both landlords and tenants. Therefore, while we are likely to see an increase in the minimum standards of energy efficiency for commercial properties, this will no longer be as soon as previously anticipated.

As further updates on the MEES standards for commercial properties are issued by the government, our real estate team will continue to ensure that both landlords and tenants are aware of key dates.

We can advise and support on engaging with existing occupants of properties where works need to be done, or ensuring that existing and/or new leases include relevant EPC provisions. Please do get in touch, we'd be happy to help. ■



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Free webinar: business immigration for employers Tuesday 25 June | 9:30-11am

Join our highly rated employment law & business immigration team at our next free webinar this June, where our experienced lawyers will provide the latest guidance covering what you and your business need to know when employing non-UK workers.

Perfect for directors, senior executives, business owners, HR professionals and in-house legal advisors, our friendly team will be on hand to answer any questions you may have.

[Click here](#) or scan the QR code for more information and to book your place now.





Klára Grmelová

Solicitor

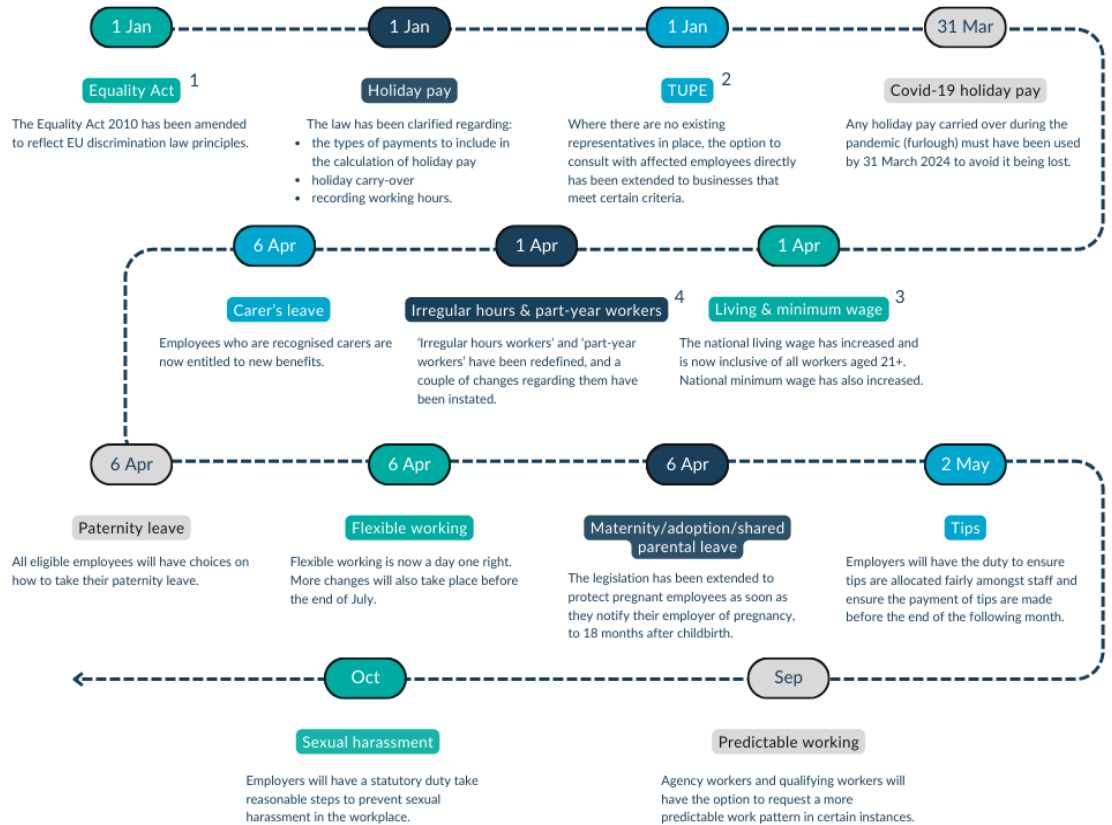
Employment law & business immigration

Klára helps clients with a range of employment law and business immigration-related matters, including sponsor licence applications and management, as well as data subject requests.

Employment law changes: a 2024 update

Our **employment law & business immigration** team have put together a useful timeline to help you and your business keep on top of developments throughout the year.

For several years, employment law has not appeared to be top priority for legislative development. With the likes of covid-19 and Brexit stealing the limelight, we have seen very few substantive changes. 2024, however, is shaking this up and we will finally see some significant developments this year.



January

¹ Impacts on various areas – perhaps most notably the definition of 'disability' – which will amend the evaluation of 'normal day-to-day' activities to consider a person's ability to participate fully and effectively in working life on an equal basis with other workers.

Changes can also be found in:

- indirect discrimination
- equal pay claims
- discrimination in recruitment processes
- protection for new mothers.

² Criteria includes businesses:

- with fewer than 50 employees; and
- with any number of employees where a transfer of fewer than 10 employees is proposed.

Note: Despite these amendments coming into effect on 1 January, they will only apply to transfers taking place on or after 1 July 2024.

April

³ The new rates are as follows:

- National living wage (NLW) for those over 21 increased to £11.44
- National minimum wage (NMW) for those aged 18-20 increased to £8.60, while increasing to £6.40 for apprentices and those under 18.

Those aged 21+ are now entitled to receive NLW. Different NMW rates continue to apply for those aged 18-20 and 16-17, and apprentices aged under 19 within the first year of apprenticeship.

⁴ For leave years commencing on or after 1 April 2024, employers:

- may introduce rolled-up holiday pay
- must calculate holiday pay based on the 12.07% accrual method.

For the full details on the rest of this year's changes, please visit our website. ■

Click [here](#) or scan the QR code to view the article in its entirety.



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Legal agreements for biodiversity net gain

Biodiversity net gain (BNG) is now mandatory for all new property developments in England. Agriculture & estates partner, Adam Hale, details the changes below.

Since 2 April 2024, grant of planning permission for the construction of one or more dwellings is conditional on a biodiversity net gain to natural habitats of at least 10%.

Though there are some exemptions for self-build and custom housebuilding applications, these new regulations demand significant adaptations to the legal agreements related to all future housing development.

Biodiversity net gain

To determine the BNG, the biodiversity value of onsite habitats before a development commences is compared against the (expected) biodiversity value of enhanced habitats allocated to the development.

Biodiversity value is calculated according to a biodiversity metric, based on such factors as the size, condition, strategic significance and type of habitat being assessed.

Legal agreements

In order to achieve the required BNG, the landowner/developer will need to enter into a legal agreement to:

- improve the onsite habitat
- enhance an offsite habitat and assign its biodiversity gain to their development
- purchase 'biodiversity credits'; or
- a combination of the three.

The legal agreement is typically either in the form of a planning obligation – known as a Section 106 agreement – made with the local planning authority, or a conservation covenant with a designated responsible body such as Natural England.

The agreement will set out:

- ongoing monitoring of the habitat, including how this is funded and who is to be responsible for it
- access arrangements for the responsible party, ensuring that the necessary consents and licences are in place
- the term of the agreement, with a mandate that the habitat improvement is maintained for a minimum of 30 years
- what alterations can be made to the habitat improvement plan over the agreed period, and how any disputes are to be managed.

Opportunities for landowners & developers

If you are a landowner or developer, there are opportunities for you to benefit when:

- the BNG of your onsite habitat is in excess of your requirements

- you were already funding the enhancement of habitats offsite of your development without it being considered as BNG
- you have an existing development that was not subject to BNG; and/or
- you have land available to use for habitat enhancement.

You may then be able to sell 'biodiversity units' to other developers, to allow them to meet their BNG requirements.

Your land will ideally be close to a proposed development and contain habitats of strategic significance, as these are favoured by the biodiversity metric. Offsite habitat BNG must be registered on the 'Biodiversity Gain Site Register' and be underpinned by legal agreement in the same way as onsite habitat enhancement.

Where neither onsite nor offsite habitat enhancement is a viable option to meet a development's BNG requirement, statutory 'biodiversity credits' can instead be purchased, with the proceeds used to enhance natural habitats across England. However, this can only be done as a last resort and will be costly.

If the terms of your legal agreement are not adhered to, a landowner/developer can be subject to enforcement action by the local planning authority or responsible body with whom the agreement was made.

Please contact us if you have any questions or queries in relation to these types of legal agreements. ■



Adam Hale

Partner

Agriculture & estates

Adam's varied client base includes rural businesses and private landowners. He advises on issues affecting landowning clients, ranging from rural land management to transactional work, with a particular focus on the disposal of development land.



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James Melvin-Bath

Senior associate,
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**Litigation & dispute
resolution**

James advises clients across a range of litigation areas, particularly landlord & tenant and contentious probate matters.



Bethen Abraham

Solicitor

**Litigation & dispute
resolution**

Bethen helps clients with residential possession issues, building disputes and disputes involving vehicles, but also works on other contract-based claims.

What does the law say?

Who can bring a claim for possession of a residential rental property?

What happens when a residential property has been rented out and you need it back? Our specialist **property litigation** team look into some key points owners and landlords need to know.

Who can bring the claim?

The property owner or the landlord can bring a residential possession claim. If you are the landlord but not the property owner, you should make sure that you have the relevant permission to bring proceedings as part of your agreement with the property owner.

Rent-to-rent scenario

What happens if you rent the property to a company who rents the property out on your behalf, but you need the property back? In this scenario, it is likely that you will need to terminate the agreement with the company you let the property to, and also serve notice on their tenant or occupier. This process can be complex and will depend on the type of agreement as to how it should be terminated.

If you are in this situation, you should seek specialist advice before taking any steps to ensure that the agreements are terminated correctly and that the matter is dealt with sensitively to try to preserve relationships where possible.

Notice

The property owner or landlord can bring a claim for possession once they have served a valid notice. It is important that the correct notice is served based on the type of agreement with the tenant or occupier.

There are three main types of notices: notice to quit, Section 21 notice and Section 8 notice. Each notice type has different rules and notice periods to be provided in order for it to be valid.

Possession claim


Once the correct notice has been served but the tenant or occupier has not left the property despite it having expired, a claim can be issued by submitting the correct claim paperwork to the court and paying the court fee.

Serving the correct notice and issuing possession proceedings can be a complicated process and can easily be done incorrectly. If you issue a claim based on an invalid notice, the claim will almost certainly fail, and you will have to start the process over again. For this reason, you should seek advice and assistance.


Action to be taken

If you need to recover possession of a property from your tenant or occupier, please don't hesitate to contact our highly rated team. ■



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Property professionals seminar

In April, we welcomed property professionals – including estate agents, property managers and portfolio landlords – to our Cheltenham offices.

Our experienced property dispute lawyers guided attendees through the process of recovering possession, dealing with compliance issues, minimising the risk of disputes and more.



Changes to company law: what businesses need to know

Initial changes to company law – including the biggest changes to Companies House since it began – have started to take effect. Here, our **corporate & commercial** team highlight the key reforms that businesses need to know.

In October 2023, The Economic Crime and Corporate Transparency Act 2023 (ECCTA) received royal assent. The act introduced comprehensive changes to company law, marking a significant boost in the powers of Companies House to tackle economic crime and support economic growth.

The ECCTA will be implemented in a piecemeal fashion, with certain reforms having taken effect from 4 March 2024 (dependent on parliamentary timeframes, as some will require secondary legislation).

What's new?

There has been an increase in the registrar's powers to scrutinise information. An overriding principle of the ECCTA is to promote accuracy and improve the quality of the material held at Companies House, thus endorsing it as the gatekeeper of accurate company information.

To fulfil this role, the registrar is to be given increased powers to scrutinise and reject information that appears inconsistent with that already on the register. Companies House will take a vigorous approach to querying inaccurate or misleading information, and may even remove inaccuracies that were already on the register before new measures came into effect.

Companies House will also have the authority to conduct checks on company names that give a disingenuous impression to the public, and to prohibit company names that could potentially be used fraudulently or for the purposes of criminal activity (for example, if a company name implies a connection to a government body where no such connection exists).

Annotations on the register

As mentioned, Companies House may formally query information that it has identified as needing clarification by requesting information and supporting evidence, which companies will need to respond to within 14 days. Companies House have assured that there will be serious consequences to companies that do not respond to formal queries – non-compliance may include prosecution and financial penalties.

Where Companies House has queried information but has not received an adequate response, it will be able to annotate the register to let those who visit Companies House know that there are potential issues with the information.

Registered email address and office address

Under the ECCTA, every company must provide an 'appropriate' registered office address, meaning one where correspondence can be sent that would:

- be expected to come to the attention of a person acting on behalf of the company (a director, for example)

- be capable of being recorded by obtaining an acknowledgement of delivery.

In an additional requirement (that's been in force since 4 March), all companies will be required to provide Companies House with a registered email address, which will not be publicly available. The expectation is that Companies House will use the email address to correspond with the company in respect of updates and reminders. Emails sent to the address must come to the attention of those acting on behalf of the company.

Companies incorporated on or after 4 March will be required to supply an email address on incorporation. Existing companies will need to provide this when filing their next confirmation statement (when due after 4 March).

Statement of lawful purpose

On the incorporation of a new company, subscribers will need to confirm that they are forming the company for a lawful purpose. Confirmation statements from 5 March 2024 onwards will also require the company to acknowledge that the intended future activities of the company are lawful.

Do I need to do anything?

The application date for some of these measures is fast approaching (subject to implementation of secondary legislation) and it's important to be mindful of the comprehensive scope of the ECCTA.

Companies should therefore consider taking steps to:

- identify any inaccuracies or omissions in the information they have provided to Companies House
- review the registered office address to ensure compliance, noting that PO Boxes will not be permitted under the ECCTA
- identify an appropriate email address and ensure that processes are in place so that the email address is maintained by relevant people.

For more information, you can visit [Changes to UK company law](#), which offers practical advice on what you can expect over the coming months.

If you have any questions relating to the changes or any other query, please don't hesitate to contact our expert team. ■



Chris Wills

Partner, head of department

Corporate & commercial

Recognised by *The Legal 500* and *Chambers UK*, Chris leads our highly rated corporate & commercial team and has over a decade of experience. He works with a range of clients, from start-ups to multi-million pound companies with a global reach.



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Paul Gordon
Partner, head of
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**Litigation & dispute
resolution**

Paul helps individuals and businesses, both locally and nationally, to resolve a range of commercial and civil disputes. He often works on complex commercial litigation and intellectual property cases.

Mickey Mouse steams into the public domain

With the famous Disney character entering the public domain earlier this year, dispute resolution partner **Paul Gordon** reminds us of intellectual property and copyright law.

When considering copyright, even the most established characters must face the music. Copyright over creative works is only held in most jurisdictions for a set period.

Steamboat Willie is often seen as the foundation that changed Disney's position in history. This short film introduced non-speaking versions of Mickey and Minnie, which developed over the years into the characters we know today.

In the UK, the period for protections is typically 70 years from the date of the creator's death. However, where creative works are the product of a corporation – in this case, the Walt Disney Company – the corporate interest in that character is protected for 70 years from the end of the calendar year where the work was created. This means that, here in the UK, it could have been argued that Mickey and Minnie entered the public domain in 1998.

However, the complex nature of reciprocal international intellectual property rights – and the broad scope of Disney's legal protection – means that, functionally, Mickey and Minnie have remained protected under reciprocated United States law.

In the US, various steps have been taken over the years by Disney (and other parties) to extend the period of protection up to 95 years. This means that those early versions of Mickey and Minnie have

now entered the public domain and can be shared, performed, reused, repurposed and sampled.

Mickey himself was a reimagining of an earlier character designed by Walt Disney, Oswald the Lucky Rabbit, and so in the spirit of Disney's passion for animation and creative exploration, a whole new generation of artists may now seek inspiration in his early works. ■



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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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