Law News

Newsletter for commercial clients

Autumn/winter 2024

Welcome...

to this year's final instalment of **Law News.**

In this edition, our teams share some fascinating insights into issues that may impact and inform your business, from fertility treatment and the workplace, to budget outcomes and shareholder disputes. We hope you also enjoy reading about our long-standing Gloucestershire-based client, Joedan and their 40-year business journey.

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?

Fundraising for Young Gloucestershire takes Willans total to £120k

Willans has raised £5,515.13 for the firm's 2022-24 charity partner, **Young Gloucestershire**, which takes our charity fundraising total to £120,000 in just over a decade.

We're committed to supporting local charitable causes and every two years, we partner with a charity to help them reach their objectives through fundraising events, competitions and other initiatives. Throughout 2022 and 2023, our charity committee organised internal staff bake-offs, quiz nights, Christmas carol concerts and more to raise money for Young Gloucestershire, a local charity who work with disadvantaged young people in our county.

Head of income generation & communications at Young Gloucestershire, Thomas Jones, said: "Thank you to everyone at Willans for the fantastic fundraising support. The funding landscape for all charities is very difficult at the moment, and the money Willans' staff have raised goes a long way in supporting our work with vulnerable young people."

Megan Bullingham, co-chair of Willans' charity committee, said: "We're delighted to have raised this amount for Young Gloucestershire to support their cause and help make a difference to young lives in Gloucestershire. We've really enjoyed working with the charity and hope to continue supporting them in the future."

In just over a decade, we're proud to have raised £120k for some fantastic charitable causes, including Sue Ryder, National Star College, LINC, Maggie's and Cheltenham Animal Shelter. As well as participating in a range of events and activities, our team and dedicated charity committee spend time volunteering for our charity of the year, giving back to the local community and helping in any way they can.

Despite the close of our charity partnership, Willans continues to support Young Gloucestershire through workshops, schemes and other opportunities wherever possible. ■

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.

Battery storage systems: why are they important to our energy infrastructure?

A combination of the UK's increasingly unreliable climate and a fluctuation in energy prices has given rise to a need for Battery Energy Storage Facilities – or BESFs – in this country.

BESFs are systems that can store excess energy produced by renewables during periods of good weather conditions and low demand, which can then be released during periods of high demand to compensate for any shortfall in output.

While many landowners may think that their land is unsuitable for such schemes, a recent planning appeal, which has given the green light to the development of a BESF within the green belt, may give cause for hope.

In the appeal, the planning inspector found that the potential harm to the green belt, in particular the safeguarding of the countryside from encroachment, was outweighed by the scheme's potential to contribute to the UK's energy network. Though planning will be considered on a case-by-case basis, the centrality of BESFs to our network infrastructure is likely to give rise to more successful applications in the years ahead.

Developers of BESFs, like developers of other renewable energy infrastructure, will likely wish to take on a lease of land to operate their sites, whether in the green belt or elsewhere, rather than buy the freehold outright. Furthermore, due to the need to obtain planning and grid connections, developers will often first take out an option for lease, whereby they are able to call for a lease of a site upon grant of a successful planning permission.

Like all leases, key terms such as compensation, rent reviews, and termination will need to be considered.

BESF leases also have unique considerations, as sometimes rent will be due to multiple landowners and often tied to output. Decommissioning of infrastructure need also be considered.

If you have any queries in relation to battery storage leases, please do not hesitate to get in touch. ■

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Property professionals seminar – register your interest

February 2025 | Email: events@willans.co.uk

In this free in-person training seminar, our experienced property litigation lawyers will discuss residential posession and dealing with compliance, as well as how to minimise the risk of disputes.

It will also cover the Renters' Rights Bill and how the proposed reforms will change landlords' obligations moving forward.

The session will be aimed at all professionals working in the property sector, such as estate agents, property managers and professional portfolio landlords, and will include a Q&A with our expert panel.

To register your interest and receive more details, email events@willans.co.uk

Fertility treatment and the workplace: understanding employee rights

In recent years, there has been a significant increase in individuals seeking fertility treatment. This trend includes not only heterosexual couples but also same-sex couples, single mothers, and those opting for surrogacy.

As more employees navigate this journey, it becomes increasingly important for employers to understand the legal requirements and best practices for providing support in the workplace.

Employers may be unsure about their duties and responsibilities regarding employees undergoing fertility treatment, which can be a highly stressful experience. Employees often face significant emotional and physical challenges, along with financial pressures, especially if they choose private treatment. Balancing the demands of fertility treatment with workplace responsibilities can be difficult, particularly when time off is needed for medical appointments or due to feeling unwell. Indeed, many employees may choose to keep their treatment details private out of concern for potential repercussions, which can make it difficult for employers to support their staff.

Time off for fertility appointments

Currently, there is no statutory entitlement to time off specifically for fertility treatment. A common misconception is that employees can take time off for antenatal appointments and this includes fertility appointments, but this right only applies once a pregnancy has been confirmed. Therefore, employees undergoing fertility treatment must use their holiday entitlement or request unpaid leave for such appointments.

If treatment leaves them unwell, their absence would fall under the company's sickness policy, determining their eligibility for statutory or company sick pay. Similarly, fertility-related sickness absence should be managed according to the company's established sickness policy. Employers should handle requests for time off for fertility treatment appointments in the same manner as any other medical appointments.

Some employers are beginning to introduce special leave policies for those undergoing fertility treatment to help employees understand their options and plan accordingly. It is advisable for such policies to recommend scheduling appointments outside of working hours whenever possible to minimise workplace disruption.

Legal protections against discrimination

Employers must approach fertility-related issues with caution, as employees undergoing treatment may be protected under the Equality Act 2010. The European Court of Justice (ECJ) ruling in *Mayr v Bäckerei und Konditorei Gerhard Flöckner OHG [2008]* determined that a woman undergoing fertility treatment is considered to be pregnant from the moment her eggs are harvested and fertilised, just before the embryo is transferred to her uterus.

This "protected period" begins shortly before implantation. Regardless of the outcome, once fertilised eggs are placed in her body, the woman is legally regarded as pregnant. Although, it's worth noting that this protected period does not apply if the eggs are merely frozen, they need to be fertilised and about to be implanted.

Additionally, dismissing an employee due to fertility-related sickness absence could lead to claims of sex and/or pregnancy discrimination. In *Sahota v Home Office,* the Employment Appeal Tribunal (EAT) supported this view, noting that the "important" phase in fertility treatment occurs "between the follicular puncture and the immediate transfer of the in vitro fertilised ova." While employers may not have access to specific treatment details, it is wise to treat employees undergoing fertility treatment as if they qualify for pregnancy discrimination protection if the employer is aware of their situation.

Fostering a supportive workplace environment

Given the increasing number of employees seeking fertility treatment, fostering a supportive workplace environment is crucial. Clear policies and a sensitive approach can help employees navigate this challenging journey, while proactive planning can reduce workplace disruption. Open and empathetic communication, supported by well-defined policies, can enhance employee morale and loyalty, ultimately contributing to a more inclusive and supportive workplace culture.

Indeed, due to the increased uptake of fertility treatments, it's probably only a matter of time before we see specific legislation and further case law expanding the rights of those undergoing such treatment, so businesses would do well to get ahead of the curve. ■

Jenny Hawrot

Partner & head of employment law & business immigration

Recently named a "next generation partner by national legal guide *The Legal 500*, Jenny helps clients with a range of employment-related matters, including TUPE, general employee relations and HR work.

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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.

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Peter Raybould

Partner

Corporate & commercial

Peter is a corporate law specialist with extensive experience in mergers and acquisitions, private equity investment, reorganisations, shareholders agreements and general corporate advice.

The budget 2024 – what does it mean for business owners?

After weeks of endless speculation, the Chancellor delivered her first budget statement on 30 October.

In the build up to the main event, the government was at pains to deliver the message that it wants to encourage investment and boost growth to the UK economy. The government wanted to give businesses the certainty they need and have confidence that the UK intends to remain competitive from a global standpoint.

While the changes announced were not as bad as some feared, it is still the case that the changes announced on budget day will have a significant impact on businesses and individuals alike. So, what were the main things in the Chancellor's statement that will impact local businesses and their owners going forwards?

Tax

The first pledge was to keep the headline rate of corporation tax at 25% and maintain the small profits rate at 19%. Research & development (R&D), patent box and intangible assets tax regimes were kept in place.

National insurance

The rate of employers' national insurance contributions increased from 13.8% to 15% and the threshold at which employers' contributions become payable falls from £9,100 to £5,000. Although the employment allowance has been increased from £5,000 to £10,000 per year and will be available to all companies going forwards, this is a significant cost increase, especially for small businesses, eating into profits and cashflow.

Capital Gains Tax

A key point to note is the changes to the capital gains tax (CGT) regime, specifically the changes to business asset disposal relief (formerly entrepreneur's relief). Although there is no immediate change, increases to the applicable tax rates will come into play soon. The £1M qualifying band remains the same, but from 6 April 2025 the applicable 10% rate will increase to 14% for disposals of shares made on or after 6 April 2025, and will increase again from 14% to 18% for disposals made on or after 6 April 2026.

This means that tax bills on share sales of up to £1M will increase by up to £40,000 for the 2025 tax year and up to £80,000 for 2026. The applicable rate for CGT on disposals above £1M has increased by 4% from 20% to 24%, or by £40,000 for every additional £1M of sale proceeds, and this is effective from 30 October 2024.

What does this mean?

It remains to be seen what impact this has on the marketplace in general or on an individual's appetite to sell their company. It is possible, for example, that would-be sellers may look to hold onto their companies for longer so that business values increase to mitigate any rise in tax liability, potentially stymying the flow of deals we are currently seeing. Given the financial strains of increased cost of borrowing which are already prevalent for businesses, the question is whether the October budget will promote the economic growth the government desires. Time will tell.

Should you be in need of advice following the Chancellor's budget announcement, please get in touch. ■

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Willans Christmas carol concert in aid of Cheltenham Open Door

Wednesday 18 December | 6.15pm for a 6.30pm start

We invite you and your family to join us for our annual Christmas carol concert, with seasonal readings and popular carols led by local choir, Severn's Eight.

Taking place at the stunning Cheltenham College chapel on Bath road, the evening is free to attend and donations will be collected on the night for our charity of the year, Cheltenham Open Door. **Click here to book your seats.**

The treatment of a business on divorce

For the average divorcing couple, the former matrimonial home is often the most valuable asset to be divided. However, it's important for all assets owned by either of the parties to be taken into account, which means businesses commonly have a part to play in divorce settlement talks.

For a business owner whose income is dependent on the success of their business, the prospect of a sale can cause real concern. When dealing with business interests, it's important to always seek expert advice. In particular, an independent valuation of the business will help to establish how much weight should be given to it in negotiations.

Different types of businesses will be valued in different ways, and it doesn't always follow that a successful business will be particularly valuable in a capital respect. For example, the value of a small business may be more in its ability to produce a steady and healthy income for the owner, or the value may be in the owner themself and the specialist knowledge they have. Even where the business has stock and equipment, this may be required to produce an income for the owner, as opposed to being an asset which can simply be sold and divided between the parties.

Where the business has significant assets such as property, the overall value of the business is likely to be greater, but it is still critical to consider the importance of such assets to the functioning and success of the business and business liquidity generally. The source of business interest is likely to be relevant. Family businesses passed down through the generations, much like farming businesses, will be treated differently in divorce settlement discussions to business interests which have evolved during the course of the marriage.

Although there can be some anticipation surrounding businesses on divorce and an assumption that this will increase the overall assets available for division between the parties, this is not always the case. The court will have a duty to consider both parties' needs, which includes not just their capital and housing needs but also their income needs. If breaking up or selling parts of a business will significantly reduce one party's income below what they need to meet their outgoings, it may be necessary to keep the business intact.

Where a business is retained by its owner, any significant disparity in its value compared with the capital owned by the other party may be dealt with by way of offsetting. This is a practice by which the value of one asset, in this case the business, is set off against the value of another asset, for example the former matrimonial home. The non-business owner might retain more of the equity of the former matrimonial home so that both parties end up with the same amount of capital, but from different resources. However, there would still need to be a consideration of whether the business owner can meet their capital and housing needs if the business is being retained for income purposes, which may make offsetting inappropriate.

Overall, the treatment of a business in divorce settlement talks is often complicated and will be dealt with on a case-by-case basis. Our specialist family lawyers can advise not only on how to approach business interests in this context, but also how it might be possible to protect them by way of a pre-nuptial or post-nuptial agreement. ■

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Joeli Boxall

Solicitor

Family law

Joeli is a family lawyer who advises clients at various stages of their relationships, from divorce to financial remedy and pre and post-nuptial agreements. She is chair of the Gloucestershire Junior Lawyers Division.

Willans HR support

Is your organisation in need of support with day-to-day or strategic HR? Would it benefit from joined up advice from lawyers and HR consultants?

Willans is pleased to officially launch a **HR support** consultancy to assist businesses of all sizes.

Our HR experts can help with workplace grievance procedures, TUPE and redundancy processes, policy reviews, staff training and more.

Hifsa O'Kelly

Associate, solicitor

Employment law & business immigration

Hifsa advises clients on a wide range of employment matters, including defending tribunal proceedings, HR matters and the general management of employees.

Equal pay claim: *Thandi and others v Next Retail Limited*

Over 3,500 predominantly female retail consultants employed by Next Retail Limited (Next) collectively brought an equal pay claim against their employer.

The claim was on the basis that the work carried out by the predominantly female retail workers was of equal value to the operative work carried out in the warehouses by predominantly male workers. Therefore, it was discriminatory for Next to pay the male warehouse employees significantly more by way of basic pay, premiums and bonuses, in comparison to the female retail workers.

In the first instance, in 2023, the employment tribunal (ET) established that both groups were doing equal work of equal value. This led to the question of whether Next had any material factors which they could rely on as a defence to justify the disparity in pay. Consequently, in 2024, the ET reconvened to assess whether such defence could be relied upon.

Next argued that the reason for the elevated pay was due to the following factors:

- market forces and market price
- recruiting and retaining adequate staff
- preserving performance (night shifts, overtime, and public holidays)
- incentivising productivity
- incentivising attendance (especially, during periods of demand)
- business viability, resilience and performance (including that of any Group companies and subsidiaries).

The ET found there was no direct discrimination, since there were females working in the warehouse who received the same amount of basic pay and had the same opportunity to obtain premiums and bonuses when compared with males in that field. Additionally, the pay discrepancy in relation to the bonus and premium payments was influenced by attendance and productivity and therefore was accepted as a material defence, justifying the pay disparity.

However, by contrast the ET did find that Next's conduct in how they benchmarked pay did amount to indirect discrimination. Next had used market benchmarks for warehouse staff which were based on a predominately male labour market, despite approximately 78% of their retail staff being female and approximately 53% of the warehouse staff being male. The ET held that the primary reason for this benchmarking was cost cutting alone. Next could have opted to pay the elevated rate for both retail and warehouse workers, but instead chose to maximise their earning potential.

The ET outlined that cost alone could not be a "trump card" to justify disparity in pay between men and women as this would defeat the aims of equal pay legislation. Ultimately, there must be a "more compelling business reason for such arrangements" that go beyond simply making more profit. Next failed to establish this and as a result, the female workers won their claim for equal pay.

What does this mean?

This case is a key reminder of the various grounds on which equal pay claims can be brought. Firstly, the work undertaken by men and women does not need to be identical; it is sufficient that it is of 'equal value' to the business, as was the case here.

Secondly, it provides clarification that cost saving alone cannot be used to justify unequal pay, especially if a business can afford to pay its staff equally, but chooses not to. You must have a compelling business reason for the discrepancy which is legitimate and proportionate.

This case makes it clear that the legal duty to pay your male and female workers equally should never be sacrificed due to a desire to make a greater profit. ■

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Helping Joedan on their journey

For almost three decades, Willans has advised a nationally renowned specialist in trade supply and home and commercial improvements. Here, in the first of a series of articles, we reflect on their journey through commercial property and business acquistions.

With headquarters in Gloucestershire and an ever-expanding business and property portfolio, Joedan is a thriving family-run company, which over the years has evolved to become a leader in its sector.

"We have 240 employees, which includes fathers and sons, mothers and daughters, and even three generations of the same family," says John Purcaro, founder of the business, which was named after his son, Joseph and daughter, Daniella.

Approaching its 40th anniversary next year, Joedan was "started from the kitchen table" by John and his wife, Nicky. As both a manufacturer and installer, it provides a complete solution for customers. As well as manufacturing over a thousand windows per week, the company supplies its products to a network of 28 showrooms across the UK.

As a result of its success, Joedan has acquired a series of businesses over the last two decades; firstly, one of its biggest trade customers in Winchester in 2008, followed by another in Kent in 2014. In 2018, it acquired a business in the Isle of Wight, as well as two more sites in Bournemouth and Manchester in 2020.All acquisitions and commercial property sales were dealt with and advised on by Willans' **corporate & commercial** and **real estate** teams.

Most recently, Joedan has further expanded on the Isle of Wight, acquiring a business and its primary operational facility in October 2024. In fact, in the last six months alone, Willans has advised Joedan on one business acquisition and the purchase of four commercial property units, helping the company to continue its plans for expansion.

"Our most recent acquisition will increase our presence on the Isle of Wight," says John, "but also, as we plan to grow the existing manufacturing base, this will create employment for upcoming generations on the island. This is all part of a growth strategy for Joedan Holdings, which we plan to expand even further across the UK, generating more future employment opportunities."

Clearly, underneath the company's business goals is an awareness of its potential impact and a commitment to leaving a lasting legacy for generations to come. This is echoed within the business' 2025 plans for one of its most recent property purchases.

"One of the commercial units we've purchased on the Isle of Wight will contain a Joedan virtual reality showroom, where there'll be no physical products on display, but virtual reality software will allow customers to see what their windows and doors will look like in their homes, before they buy," John explains.

Alasdair Garbutt, a partner in our real estate team, has advised the Purcaro family for many years. "It's been a pleasure to work with John, Joseph and indeed Joedan over the years. I've no doubt the company will continue to achieve what they set out to and Willans will be with them every step of the way."

All in all, our firm has advised the Purcaro family, Joedan Group and Joedan Holdings on a wide range of legal matters, from **corporate & commercial** and **real estate** to **litigation, employment** and **wills, trusts & probate**.

Reflecting on the working relationship between Willans and Joedan, John Purcaro is sure of one thing. "Has Willans helped us to grow our business? 100%. I believe the most important thing in business is your suppliers and Willans has been a huge part of our journey.

To find out more, visit: www.joedan.co.uk and look out for the next in our Joedan series, coming soon.■

Alasdair Garbutt
Partner, real estate

1996
THE YEAR WILLANS BEGAN WORKING WITH JOEDAN & THE PURCAROS

Chris Wills
Partner, corporate & commercial

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WILLANS DEPARTMENTS HAVE ADVISED THE PURCAROS

Li Garrod
Associate, solicitor, real estate

Unfair prejudice petitions: recent case overturns 40-year precedent

In a recent shareholder dispute, it's been found that unfair prejudice petitions are subject to statutory limitation periods.

Paul Gordon

Partner, head of department

Litigation & dispute resolution

Katie Charlton

Trainee solicitor

Litigation & dispute resolution

This landmark judgment – in *Thg Plc v Zedra Trust Company (Jersey) Limited [2024] EWCA Civ 158* – has overturned a previous precedent and extensive case law which has stood for 40 years.

The case concerned an appeal as to whether a limitation period applied to a petition under section 994 of the Companies Act 2006, and the Court of Appeal was asked to consider whether statutory limitation periods applied to unfair prejudice petitions.

In his judgment, Lord Justice Lewison explored the practical reasons why no limitation period should apply. However, it was found that these reasons did not pose an insurmountable obstacle and that there were ways around any issues that may be raised in imposing the limitation period. Ultimately, the Court of Appeal considered that the different limitation periods ought to apply depending on the relief sought.

It found that where relief being sought by company shareholders is not only payment of money, unfair prejudice petitions are subject to statutory limitation periods under the Limitation Act 1980; which amounts to 12 years from the date on which the cause of action arose.

In circumstances where the only relief sought is for money, the claim will be subject to a six-year limitation period. In clarifying this position, the Court of Appeal suggested that petitions which sought to buy-out the majority's shareholding were not likely to be considered claims for the recovery of money and would therefore be subject to the 12-year limitation period.

Ultimately, one of the questions that the Court of Appeal addressed was: what can be considered the relevant cause of action when dealing with limitation? It was suggested that the limitation period begins when the petitioner is aware (or should be aware) of the event that has provided grounds for bringing a petition.

If you have concerns about a potential claim for unfair prejudice, our experienced team of shareholder disputes solicitors are here to help. ■

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