

A black and white photograph of a business meeting. A man in a striped shirt is pointing upwards with his right hand, looking towards the top right. A woman with glasses is looking at him, and another man with glasses is looking down. There are sticky notes on a glass surface in the background.

COMMERCIAL BULLETIN

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Corporate & Commercial

New Block Exemption.

The Department for Business, Energy & Industrial Strategy ('BEIS') has confirmed that it will introduce a new Block Exemption to replace the existing retained EU law. The Block Exemption concerns agreements between producers, distributors and retailers. A consultation on the upcoming legislation has been launched and is to run until 16 March.

Mandatory climate-related disclosures.

In January new climate reporting regulations were made law¹ and will enter into force on 6 April. Large companies with more than 500 employees and a turnover of more than £500 million are in scope (which in the case of parent companies covers the whole group's aggregate turnover). Certain listed companies are also in scope. **A broad range of climate-related information will be required to be disclosed.** Official guidance on the Regulations is awaited.

Data Security

International transfers from the UK - new tools published.

With some minor exceptions, personal data may only be transferred outside of the United Kingdom if the [recipient country has been declared 'adequate'](#) or if other 'appropriate safeguards' have been put in place. Usually, the **only viable safeguard is to use standard contractual clauses** ('SCC') that have been approved by the Information Commissioner (ICO).

To resolve issues that arose from Brexit and other data protection concerns the ICO has [announced](#) new tools are immediately available for use for the international transfer of personal data, but they will only come into force on 21 March (assuming Parliament does not object).

The new tools include the IDTA (a new international data transfer agreement) and a UK Addendum - a form of addendum to the European Commission's standard contractual clauses.

The new tools can be used now although you may continue to use the old SCCs until 21st September. **All such arrangements must be converted to using the new tools by the 21st March 2024.**

The new tools, similar to the recently revised EU data transfer agreements, require any exporters of personal data to first **complete a privacy impact assessment**. The ICO published a [draft risk assessment](#) in 2021, but the final version is not yet available.

Advertising & Marketing

ASA to crack down on ‘greenwashing’ claims.

We have previously reported on the Competition and Markets Authority (‘CMA’) publishing its [Green Claims Code](#).

The ASA has now also published [guidance](#) similarly stating that absolute environmental claims must be supported by a high level of substantiation and relative claims (e.g. ‘greener’) must be supported by verifiable evidence that proves the stated environmental benefit over comparable products.

The ASA has already ruled against two brands. Firstly, Oatly² for its claim that ‘Oatly generates 73% less CO₂e vs. milk’. This claim could only be substantiated in respect of its Oatly Barista Edition compared to whole cow’s milk. Secondly, against Innocent³ for an advert that implied there was a direct association between choosing Innocent drinks and taking positive action to help the environment. The ASA concluded that Innocent’s products did not have a net positive environmental impact over their full life cycles, particularly with its use of non-recycled plastic for its bottles.



Employment

Equal pay audit ordered

In a recently published employment tribunal decision⁴, Stacey Macken, a female banker at BNP Paribas, received **compensation of £2 million+ after suffering from inherently sexist behaviour and gender pay issues**.

The Tribunal has also taken the unusual step of **ordering an equal pay audit** that must be undertaken and published by June. If BNPP discover further breaches, they will be required to equalise the pay between their male and female employees, including retro-actively aligning the salaries.

Whilst BNPP had already taken some steps to identify pay inequality and had already rectified discrepancies, the Tribunal criticised BNPP for still falling below the statutory guidance on equal pay, particularly that the process did not consider bonus payments.

High Court issues injunction halting Tesco’s “fire and rehire” plans

The High Court has issued an injunction⁵ stopping Tesco dismissing some of its warehouse operatives and re-engaging them on terms that did not include a premium pay that it had previously described as ‘protection for life’.

Whilst an employer is normally entitled to ‘fire and re-hire’ a Court may prevent it in some situations including when it contravenes a previously agreed commitment to not change the terms.



IR35 ‘grace period’ comes to an end

Since Tuesday 6 April last year, organisations (excluding small companies) that engage [‘off-payroll’ workers](#) (e.g. contractors hired through their own personal service company) are responsible for determining their employment status and paying Income Tax and NICs for those who are deemed to be akin to employees. From April this year it will be important that organisations pay close attention to decisions that they have made concerning such workers as the ‘grace period’ that allow organisations to escape liability for innocent mistakes will end.

New Personal Protective Equipment Duties

New regulations come into force on 6 April⁶ that **extend the obligation to provide PPE** to workers with a more casual employment relationship (e.g. agency workers). Employers are responsible for the maintenance, storage, and replacement of any PPE they provide, which must be given free of charge, with sufficient instructions, and training. It is worth adding that the [Health and Safety Executive has stressed that PPE should be a last resort, with engineering controls and safe systems of work considered first.](#)

Court of Appeal allows claim for six years unpaid holiday

We previously reported on the Supreme Court decision of *Smith v Pimlico Plumbers* that ruled Pimlico had been wrong to classify Mr Smith as a self-employed contractor rather than a worker.

Following this decision, the Court of Appeal⁷ has delivered another blow to Pimlico Plumbers ruling that Mr Smith **is entitled to paid holiday for all of the time that he had worked with the firm.** The Court of Appeal decision overturned earlier tribunal decisions that had rejected Mr Smith’s claims for unpaid holiday because he had taken periods of leave (albeit unpaid) and his claims for non-payment and unauthorised deduction of wages were now out of time. The Court of Appeal noted that whilst untaken annual leave can be lost at the end of each year, the employer must first show that it has **specifically and transparently given the worker the opportunity to take paid annual leave**, encouraged the worker to take paid annual leave and informed the worker that the right would be lost at the end of the leave year.

Unvaccinated care home worker was fairly dismissed

A tribunal has determined that a care home ***acted reasonably in dismissing a care home worker*** who refused to be vaccinated⁸. The care home had referred to the Government and Public Health advice throughout the disciplinary process and had a genuine concern that it would not be able to obtain insurance coverage if its staff were not vaccinated. It's important that each case will be considered on its own facts and a tribunal may not reach the same decision in another case particularly where the employment does not involve providing care to a particularly vulnerable section of society.

Bribery & Corruption

Global supply chain risk - Dyson

Leigh Day & Co, a high-profile UK claimant law firm, has recently publicised on its website that it had served a letter before action on Dyson in relation to ***forced labour at a former third-party manufacturing factory in Malaysia***.

Whilst Dyson did not own the factory and it is likely that it was an arms-length contract, it's understood that at the time of the alleged activity, the factory was producing goods almost exclusively for Dyson.

Leigh Day's assertion is that certain UK-based Dyson companies 'assumed' a duty of care to the factory workers. This principle was accepted in the Supreme Court in the Vedanta case, in which Zambia-based claimants leveraged a settlement against the UK parent of a Zambian mining subsidiary that had caused severe environmental damage.

Senior Counsel Event - Commercial Law Update

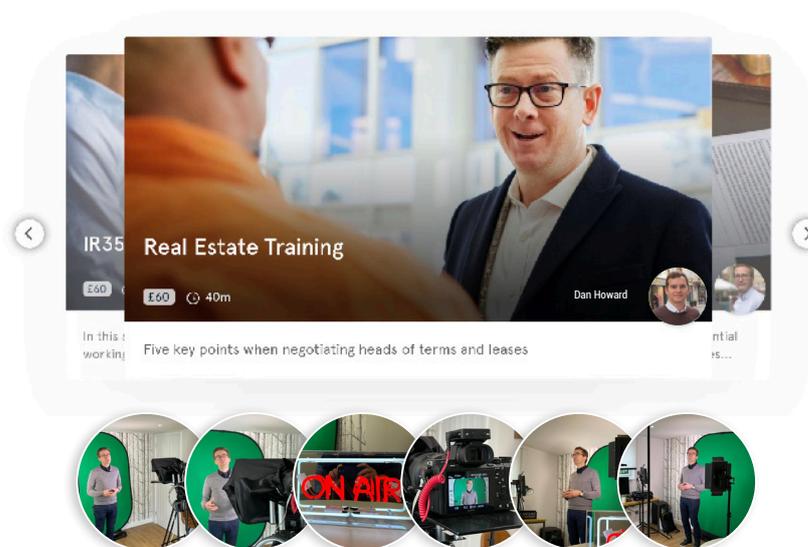
Radius Law's Iain Larkins and Sandra Martins will give a 'whistle stop' tour of the big commercial and employment law developments in the last 6 months and their impact on business.

30 March, 2022

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Cases, laws, decisions referred to in this Bulletin

1	The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 and The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022
2	ASA Ruling on Oatly UK Ltd t/a Oatly. Complaint Ref: G21-1096286 Oatly UK Ltd
3	ASA Ruling on Innocent Ltd t/a Innocent. Complaint Ref: G21-1111827 Innocent Ltd
4	Stacey Macken v BNP Paribas London Branch 2208142/2017 & 2205586/2018
5	USDAW & others v Tesco Stores Limited QB-2021-000988
6	Personal Protective Equipment at Work (Amendment) Regulations 2022.
7	Gary Smith v Pimlico Plumbers Limited [2022] EWCA Civ 70.
8	Ms C Allette v Scarsdale Grange Nursing Home Ltd: 1803699/2021



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