



COMMERCIAL BULLETIN

Your guide to the latest legal updates
from the team at Radius Law.

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CORPORATE & COMMERCIAL

Limiting liability for fraud.

A business cannot exclude liability for its own fraud to induce a contract but in a recent case¹ the High Court has concluded that ***it is possible to exclude liability for fraud in the performance of a contract.***

The High Court dismissed the notion that the clause would be unreasonable under the Unfair Contract Terms Act in this case; there was no inequality of bargaining power between the parties and the contract had been negotiated by lawyers.

Economic Crime and Corporate Transparency Act 2023.

Companies House has confirmed that the initial changes to new verification processes were [introduced last week](#). Exact timing on other parts of the Act (including the new failure to prevent fraud offence) is still to be confirmed.

Avoiding conflicts of interest.

In a recent case² the Court of Appeal provided some useful guidance on a director's duty to avoid conflicts of interest.

The Companies Act requires a director to avoid a conflict of interest with the company. This duty is not breached if the matter has been authorised by the directors without counting the 'interested' director or if the 'interested director' can show that the other directors were already aware of the conflict of interest or ought to have reasonably been aware.

In addition, the Court may grant relief from liability to a director who has breached their duties if it considers that the director acted honestly and reasonably.

This case concerned the sale of land from the company to one of the director's personal companies. The Court of Appeal adopting a pragmatic approach and recognising that the company had been managed informally decided that although the relevant director had not formally disclosed his interest in the sale this did not mean that the other directors were not aware of it. The case will now proceed to full trial.



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The UK Signs the 2019 Hague Judgments Convention.

The UK recently signed the Hague Convention². The Convention provides for judicial cooperation across contracting states. Once in effect, it requires domestic courts to recognise and enforce judgments obtained in the courts of other contracting states. The Convention will enter into force twelve months after ratification.

Informally contracting.

A Canadian Court has recently [ruled](#) that a buyer that responded to an email asking him to 'confirm the contract' with a thumbs up emoji had committed to the contract.



ADVERTISING & MARKETING

Misleading environmental claims.

Terms such as 'climate neutral' or 'climate positive' that rely on offsetting will be banned from the EU by 2026 as part of a crackdown on misleading environmental claims. Under the [new directive](#), only sustainability labels using approved certification schemes will be permitted.

Meanwhile the UK Advertising Standards Authority has announced plans to ban businesses from labelling products and services 'carbon neutral', 'net zero' and 'nature positive' on the basis of offsetting, unless the means of offsetting is proven by the business to be effective.

DATA SECURITY

Amazon France €32m for monitoring workers.

Amazon France has been fined €32m in France for being 'grossly negligent' about data protection law in connection with monitoring its workers.

Amazon used scanners that signalled when an employee scanned an item outside the optimum 1.25 second threshold and flagged 'idle time' of more than 10 minutes.

The French Regulator was concerned that scanners left workers feeling that they had to justify any work break at all and were therefore excessive.

The Regulator also penalised Amazon for providing privacy information to temporary workers only via the company intranet.



HelloFresh fined £140k for spamming.

HelloFresh has been fined by the Information Commissioner's Office (ICO) £140,000

HelloFresh sent 79 million emails and one million texts in a seven-month period.

The messages sent to customers had been based on a consent statement, **but it did not specify SMS**.

The ICO also found that customers were not provided with sufficient information that their data would continue to be used for marketing for up to 24 months after cancelling their subscriptions.

Deadline for new standard contractual clauses.

If a UK business transfers personal data outside of the countries that have been deemed to have adequate data standards by the UK government (A list of the 'adequate' countries can be found on the [ICO's website](#)) they must have 'appropriate safeguards. The most common safeguard has been the use of the EU standard contractual clauses ('SCCs'). **By 21 March, all contracts relying on the old EU SCCs for UK transfers must be updated** and use either the UK International Data Transfer Agreement ('IDTA') or the SCC's with the UK Addendum.

AI

The EU Member States have approved the final draft of the Artificial Intelligence Act. This is the first legislation of its kind and it requires that generative AI technology complies with specified transparency measures and controls. **Breaches can result in fines of up to €35 million or 7% of annual worldwide turnover.** UK businesses may be caught by the legislation if they use any AI that effects EU citizens.

Meanwhile the UK Information Commissioner has launched the [first chapter](#) of its consultation series on how UK data protection law applies to Generative AI.

EMPLOYMENT

New Legislation

Government issues guidance on changes to holiday pay

In the January issue we reported that new rules on calculation of holiday accrual and pay for part-year and irregular hours workers will apply from 1 April. The Government has now issued [guidance](#) on the changes, which:

- includes examples of irregular hours workers and part-year workers
- explains how employers can calculate accrual and payment of statutory leave for those workers.

New Acts Coming into Force in Early 2024

In the 2023 July issue we reported that a series of new Acts would come into force in 2024, pending issue of regulations. Regulations have now been issued, creating new employee rights, as follows:

From 8 March 2024:

Paternity Leave Adjustments⁴

- Right to take paternity leave at any time in the first year of the child's birth or adoption and to split it into two separate one-week blocks.

From 6 April 2024:

Carer's Leave⁵

- New right to a week's unpaid leave to provide or arrange care for a dependant with a long-term care need.
- Applies from the 1st day of employment ("day 1 right").
- Employers can postpone leave but may not refuse it.

Redundancy and family leave⁶

- Employees who are pregnant or returning from maternity, adoption, or shared parental leave will receive priority status for redeployment opportunities if their role becomes redundant.
- A failure to make an offer of suitable alternative employment constitutes an automatically unfair dismissal.

Flexible working requests⁷

- Will become a day 1 right.
- Right to make up to 2 requests in a 12-month period.
- Employers must respond within 2 months and consult with the employee before refusing.

ACAS has published a [revised statutory Code of Practice on flexible working requests](#) to reflect these changes.

FCA Announces Survey of Sexual Misconduct in Financial Institutions

The FCA has announced that it will **collect data on sexual misconduct cases at major banks and insurers** to give the FCA a better understanding of non-financial misconduct in the industry, as well as **insight into the use of non-disclosure agreements** in misconduct cases. The FCA will use the data to share best practice and inform its supervisory program when the new non-financial misconduct rules come into force.

The Equality and Human Rights Commission ("EHRC") Guidance on Employers' Obligations Towards Employees on Menopause/Perimenopause

The EHRC has published new [guidance on employers' legal obligations towards employees going through menopause or perimenopause](#).

The guidance:

- Contains videos explaining the nature of menopause and how symptoms can affect employees.
- Explains how to have conversations with employees about their symptoms.
- Recommends training to managers and senior employees.
- Suggests employers implement a menopause policy.

Recent Cases

Timing of Redundancy Consultation

The Employment Appeal Tribunal (“EAT”) has confirmed that consultation on redundancies should take place at the **formative stages of the redundancy plans when the workforce can still influence the plans and suggest a different approach**.

In this case⁸, consultation took place after the redundancy selection criteria had been chosen and applied and the employees scored, rendering the dismissal unfair.

Settlement Agreements Can Settle Future Unknown Claims

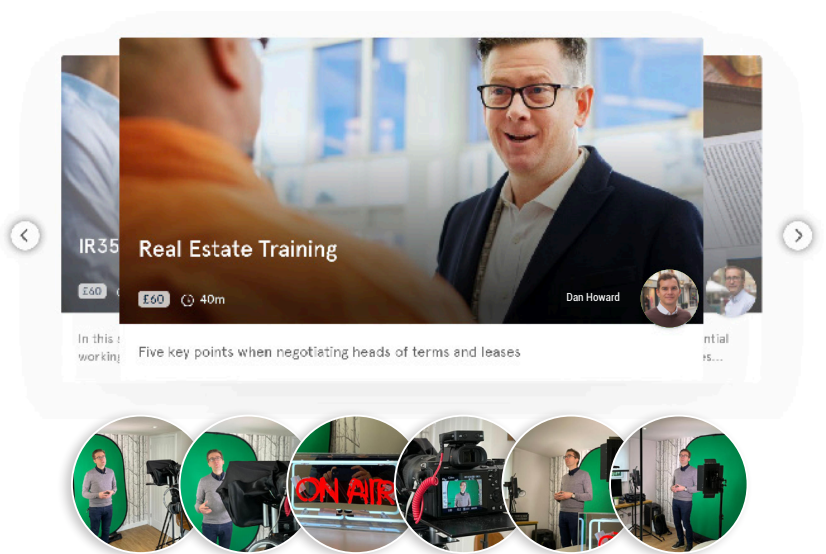
The Scottish Court of Session has confirmed⁹ that settlement agreements can settle a claim that was unknown or where the circumstances on which the claim is based did not exist at the time the settlement agreement was entered into, provided:

- It clearly identifies the claims to be settled, and
- The objective meaning of the words used encompasses settlement of the relevant claim.

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UPCOMING EVENTS

20th March, 2024



In-House Insights: Will Your Organisation be the Next Corporate Scandal?

Grant Thornton 30 Finsbury Square London EC2A 1AG

On Wednesday, 20th March 2024, Radius Law and Montresor Legal are coming together to host the next event in our In-House Insights series.

[Book Now >>](#)

15th May, 2024



Annual Conference – Business & Law Update for the Automotive Sector

The Motor Ombudsman's London offices, 71 Great Peter Street, London, SW1P 2BN

On Wednesday, 15th May 2024, Radius Law and The Motor Ombudsman are coming together to host their Annual Conference – Business & Law Update for the Automotive sector.

[Book Now >>](#)

Cases, laws, decisions referred to in this Bulletin

1	Innovate Pharmaceuticals Ltd v University of Portsmouth Higher Education Corporation [2024] EWHC 35 (TCC)
2	Humphrey & Humphrey v Bennett and Murphy [2023] EWCA Civ 1433
3	Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters
4	Draft Paternity Leave (Amendment) Regulations 2024
5	Carers Leave Regulations 2024
6	Protection from Redundancy (Pregnancy and Family Leave) Act 2023
7	Employment Relations (Flexible Worker) Act 2023
8	De Bank Haycocks v ADP RPO UK Ltd [2023] EAT 129
9	Charles Bathgate v TECHNIP UK Limited & others XA18/2



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