



COMMERCIAL BULLETIN

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

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CORPORATE & COMMERCIAL

Companies House changes

The Economic Crime and Corporate Transparency Act 2023 ('ECCTA'), introduces significant changes to Companies House. Some changes were implemented in 2024, but further changes are expected this year, including:

- Commencing from the Autumn, there will be new identity verification requirements for new directors and PSCs. Identity verification for existing directors and PSCs will be required at the time of the relevant company's next confirmation statement.
- [New financial penalties for non-compliance](#)¹. Companies House will provide warnings first but may subsequently issue fines for non-compliance. Financial penalties will range from £250 to £2,000. In addition, there may be daily penalties until the breach is corrected.
- Also expected this year is a requirement that all corporate entity directors must consist solely of natural persons.

Directors' fiduciary duties

The Court of Appeal has ruled that directors taking **preparatory steps to set up a competing business before resignation does not breach fiduciary duties**. In this case², the directors' actions were deemed preparatory and not conflicting with their duties as they resigned shortly after receiving approval to register their new company. This decision highlights that preparatory steps alone do not constitute a breach unless they involve a conflict of interest or actions against the company's best interests.

Commercial Court rejects the longstanding "Shareholder Rule" as an exception to privilege

In a significant ruling, the English Commercial Court has **rejected³ the longstanding 'Shareholder Rule', which prevented companies from asserting privilege against their shareholders**. The court found that it is outdated and no longer sustainable under modern legal principles. The ruling may be appealed, given its departure from longstanding precedent, but it aims to ensure companies can have candid discussions with their legal advisers.



EFFECTIVE CORPORATE GOVERNANCE

25th March, 2025

10:00AM – 4:00PM

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Liability and set-off clauses

The Court of Appeal's recent judgment in *Topalsson v Rolls-Royce*⁴ examined set-off of counterclaims and interest provisions in relation to liability caps.

Rolls-Royce's claim was for nearly €8m, however the Court accepted that Topalsson had a claim for €800,000 in unpaid fees.

The contract had a liability clause which **capped the total liability of either party to the other to €5m.**

The High Court applied the set off for the unpaid fees **before the liability cap.** In other words, it calculated the claim as €8m less the unpaid fees of €800,000 = €7.2m and then reduced this again to €5m to match the liability cap.

Topalsson appealed arguing that the set off for its unpaid fees should be applied **after the liability cap.** The Court of Appeal agreed with Topalsson. Rolls-Royce's claim was reduced to €5m less the unpaid fees = €4.2m

Additionally, the Court of Appeal found that interest for late payments was outside the cap, as including it would deny Rolls-Royce its remedy for late payments.



No waiver of right to terminate despite continuing to perform contract for six months.

The High Court has ruled⁵ that an energy supplier had not waived its right to terminate a customer contract despite continuing performance for six months after the right to terminate first arose.

The Court ruled that a party **can only waive a right if it has actual or blind-eye knowledge of the right to terminate.**

In this case the Court determined that the relevant individual had neither actual nor blind-eye knowledge. The relevant clauses in the contract were complicated and therefore the energy supplier was only deemed to have knowledge of the termination right after it had received legal advice.

ADVERTISING & MARKETING

SkyKick v Sky - The Supreme Court's ruling on bad faith

The Supreme Court's ruling in *SkyKick v Sky*⁶ has clarified that overly broad trademark registrations can be challenged for bad faith. The case began in 2016 when Sky sued SkyKick for trademark infringement. The Supreme Court found that some of **Sky's trademarks were registered in bad faith due to the lack of intent to use them for all specified goods and services**. That said, the Court of Justice of the European Union (CJEU) clarified that a determination of bad faith does not invalidate the entire trademark. Instead, if contested, the applicant's trademark specification may be reduced to the goods and services that should have been originally applied for.



CONSUMER

Business to Consumer contracts – what's fair?

The Court of Appeal⁷ has addressed terms in a lawyer's contract requiring a consumer client to pay full fees even if a hearing was cancelled. Under the Consumer Rights Act 2015 ('CRA'), unfair terms that create significant imbalance between parties are unenforceable.

The lawyer argued that the terms were fair and, in any event, core terms such as price are not subject to any fairness test under the CRA.

The Court ruled against the lawyer. Whilst a price clause is not subject to any fairness test, this clause was about whether a price was payable rather than the actual price. Further, as **the clause placed all the financial risk on the consumer without acknowledging the barristers' ability to mitigate losses – the clause was unfair and therefore unenforceable**.

DATA SECURITY

Data Controllers responsibility for Sub-Processors

Data Protection Law obliges organisations that control personal data ('Data Controllers') to manage any organisations that process personal data on their behalf ('Data Processors'). A new [Opinion](#) published by the European Data Protection Board however has stated that the **Data Controllers obligations extend to the entire**

supply chain – in other words, to all sub-processors. According to the Opinion, Data Controllers' obligations include:

- maintaining information on all processors and sub-processors, including identity and processing details;
- verifying that all sub-processors provide 'sufficient guarantees' to implement the appropriate measures to protect data subjects;
- verifying that data processing contracts are in place with the initial processor and the additional processors.

ICO urges information sharing to tackle fraud

The Information Commissioner's Office (ICO) has published new [guidance](#) to encourage the sharing of data to tackle fraud, emphasising that data protection laws do not prevent responsible data sharing.

To comply, organisations should:

- conduct a Data Protection Impact Assessment (DPIA);
- set up a data sharing agreement to clarify responsibilities;
- identify a lawful basis for sharing data;
- Adhere to UK GDPR principles: fairness, transparency, purpose limitation, data minimisation, accuracy, and security.

It's worth noting that the Economic Crime and Corporate Transparency Act 2023 also introduces the new corporate offence of [Failure to Prevent Fraud](#) (set to come into force on 1 September 2025) – so arguably data sharing to prevent fraud will then be an obligation.

EMPLOYMENT

Employment: Legislation

Workers may get six months to bring employment tribunal claims

Most employment tribunal claims must be made within three months of the alleged mistreatment or dismissal. In November 2024, the government proposed [a number of amendments](#)⁸ to the Employment Rights Bill, including ***extending the time limit for bringing employment tribunal claims from three to six months.***

Increase in compensation where employer fires and rehires in breach of Code of Practice

Employers who propose to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, must comply with collective consultation obligations. If employers fail to comply, Tribunals may order them to pay a protective award of up to 90 days' pay to each employee affected by the proposal.

A proposal to dismiss and re-engage 20 or more employees on new terms ('fire and rehire') will trigger the collective consultation obligations. ***From 20 January 2025, tribunals will have the power to increase protective awards by up to 25% if the employer fails to comply with the Code of Practice on Dismissal and Re-engagement.***

Government confirms 2025 statutory rates

From April 2025, the following rates will apply:

- £187.18 a week for maternity, paternity, adoption, shared parental and parental bereavement pay and maternity allowance.
- £118.75 per week for Statutory Sick Pay.
- National Minimum Wage will be:
 - £12.21 for workers aged 21 and over.
 - £10.00 for 18–20-year-olds.
 - £7.55 for 16-17-year-olds and apprentices.

EMPLOYMENT: GUIDANCE

The Equality and Human Rights Commission (EHRC) publishes additional guidance on duty to prevent sexual harassment

The EHRC has published a [checklist and action plan](#)⁹ for employers to help them comply with the duty to take reasonable steps to prevent sexual harassment of workers in the course of employment.

The checklist was originally designed for the hospitality sector, but it can be adapted to suit different workplaces.

ACAS publishes guidance on gender reassignment discrimination

ACAS have published new guidance on [gender reassignment discrimination](#)¹⁰ in the workplace, which:

- confirms that the protected characteristic of gender reassignment may include non-binary and intersex people.
- outlines steps that employers can take to prevent discrimination.

EMPLOYMENT: RECENT CASES

Comments about accent amounted to harassment related to race

Ms Carozzi is Brazilian and was employed as Marketing, Engagement and Partnerships Manager at Hertfordshire University. Her manager told her that her strong accent was difficult to understand. Ms Carozzi resigned and claimed that:

- the manager's comments amounted to harassment related to race.
- the employer's refusal to share notes of a meeting because they might be used against them in employment tribunal proceedings amounted to victimisation.

The Tribunal dismissed the claims because:

- the comments about the accent were not motivated by race.
- the employer would have withheld the meeting notes from any employee who intended to bring any type of claim.

On appeal, the Employment Appeal Tribunal (EAT) held¹¹ that:

- Harassment may occur when the harasser is not motivated by the protected characteristic.
- Comments about an accent may be related to the protected characteristic of race and, if they are unwanted and reasonably have the purpose or effect of violating dignity, they can amount to harassment.
- The Tribunal should have asked whether the refusal to supply the notes was to a material degree influenced by the fact that a discrimination claim had been made.

Employers should ***carefully handle performance issues that may be related to a protected characteristic and ensure that meeting notes are accurate***, as they may be disclosable if the employee brings a claim.

ANNUAL CONFERENCE

BUSINESS & LAW UPDATE FOR THE AUTOMOTIVE SECTOR

14 MAY, 2025

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UPCOMING EVENTS

25th March, 2025



Effective Corporate Governance

Grant Thornton 30 Finsbury Square London EC2A 1AG

On Thursday 25th March 2025, Radius Law and Sewells are coming together to host the first of their expert-led training programmes designed to simplify complex issues: Effective Corporate Governance.

[Book Now >>](#)

14th May, 2025



Annual Conference – Business & Law Update for the Automotive Sector

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

On Wednesday, 14th May 2025, Radius Law and The Motor Ombudsman are coming together to host their Annual Conference – Business & Law Update for the Automotive sector.

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Cases, laws, decisions referred to in this Bulletin

1	The Economic Crime and Corporate Transparency Act 2023 (Financial Penalty) Regulations 2024
2	Cheshire Estate & Legal Limited v (1) Blanchfield (2) Montaldo (3) MTCC Solutions Limited
3	Aabar Holdings SARL v Glencore PLC & Ors [2024] EWHC 3046 Comm
4	Topalsson GmbH -v- Rolls-Royce Motor Cars Limited [2024] EWCA Civ 1330
5	Ure Energy Limited v Notting Hill Genesis [2024] EWHC 2537 (Comm).
6	SkyKick UK Ltd and another (Appellants) v Sky Ltd and others (Respondents)
7	Michael Glaser KC & Anor v Katharine Jane Atay [2024] EWCA Civ 1111
8	Employment Rights Bill (Amendment Paper)
9	Preventing sexual harassment at work: checklist and action plan for employers
10	https://www.acas.org.uk/gender-reassignment-discrimination
11	Carozzi v University of Hertfordshire and another [2024] EAT 169



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