



# COMMERCIAL BULLETIN

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

MARCH 2025

# Nº 88

## COMMERCIAL & CORPORATE

### Indefinite contracts are valid

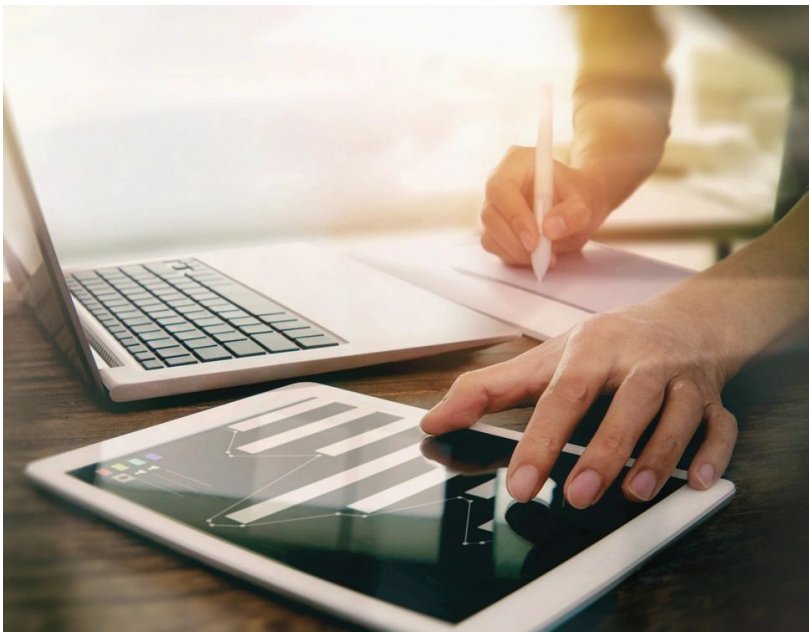
The High Court has ruled<sup>1</sup> that **a contract that allowed only one of the parties to terminate was valid**. The case concerned a trademark licence which only allowed the licensor to terminate. The licensee argued that it must have an implicit right to terminate as otherwise the contract could be indefinite.

The Licensee also argued that if the licence agreement was indefinite, it is a restraint of trade as it imposed restrictions on how it could trade. The Court dismissed the licensee's arguments. The contract was clear and unambiguous and therefore the Court was not willing to imply terms into it.



### Exclusion of liability

The Court of Appeal has dismissed EE's appeal<sup>2</sup> against a decision that their claim fell within an exclusion clause. The case involved a spat between EE and Virgin. Virgin had breached an exclusivity clause in its contract with EE by diverting customers to alternate networks. The problem for EE, however, was that the contract **included a wide exclusion of liability for loss of anticipated profits**. EE argued that the exclusion of liability clause did not reflect the intention of the parties and would leave EE with virtually no claim for Virgin's breach of contract. Nevertheless, the Court of Appeal upheld that the exclusion clause did preclude EE's claim.



### New UK Procurement Act goes live.

In February, the [UK's Procurement Act 2023 went live](#). **The aim of the Act is to streamline public procurement and increase transparency** (making it easier to find and bid for contracts with a central digital platform). It is hoped that the changes will boost SME participation. Additionally, it introduces stricter measures against competition law breaches, including mandatory exclusions for suppliers found liable for the most serious anti-competitive practices.

## ADVERTISING & MARKETING

### Court of Appeal victory for brand owners

In a landmark decision, the Court of Appeal sided with Thatchers Cider Company against Aldi Stores for trademark infringement and passing off. Aldi's cloudy lemon cider packaging was deemed too similar to Thatchers', likely causing consumer confusion and unfairly benefiting from Thatchers' established reputation. The ruling emphasised the importance of the overall product impression over individual elements.



## ESG

### UK HQ's liability for global supply chain

In a significant case<sup>4</sup>, the Court of Appeal allowed 24 migrant workers from Nepal and Bangladesh to proceed with claims against Dyson in English courts. These workers allege forced labour, abusive conditions, and even torture by Malaysian suppliers in Dyson's supply chain. Initially, the High Court ruled that Malaysia was the proper jurisdiction, citing Malaysian laws and the location of abuses.



However, **the Court of Appeal overturned this, arguing that the real dispute involved the oversight by Dyson's UK entities.** The focus of the trial would be on how Dyson's UK-based entities implemented and enforced its policies and standards for working conditions in its overseas supply chains. This decision highlights the substantial implications for UK-based companies with global supply chains, emphasising the importance of rigorous policy enforcement to avoid legal challenges in their home jurisdictions.



## DATA SECURITY

### Court rules on the meaning of consent

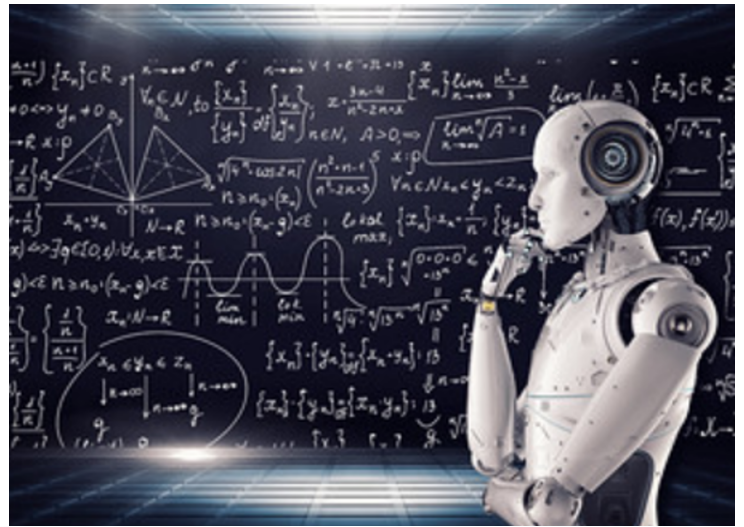
In January, the High Court ruled in the case of *RTM v Sky Betting and Gaming*<sup>5</sup>. RTM, a recovering gambling addict, claimed that SBG unlawfully processed his personal data without valid consent. The court found that the consent obtained by SBG was invalid as it was not freely given, informed, specific, or unambiguous. **RTM's compromised state meant he could not make autonomous decisions.** This ruling emphasises the importance of active and conscious consent in data processing. The consent mechanism used by Sky may have been acceptable in another setting, but they had not considered the circumstances and the probable state of mind of their customers.

### EU AI Act

As of 2 February, the first rules under the EU Artificial Intelligence Act (AI Act) started to apply.

We previously reported about the AI Act in our [May Bulletin last year](#). The regulation sets 4 risk levels: Unacceptable, High, Limited and Minimal and places differing obligations on organisations depending on the risk level.

UK businesses may be caught by the regulations as they are broadly scoped and will apply to both providers and deployers of in-scope AI systems that are used in or produce an effect in the EU.



The EU Commission has also published guidelines on AI system definition. Any business that's producing AI should review the guidelines to understand whether its product is in scope or not.

### New ICO guidance on processing employment records

In February, the UK Information Commissioner's Office (ICO) released [new guidance](#) to address the lawful collection, maintenance, and management of employment records, balancing the need for records with workers' privacy rights. It includes guidelines on collecting, maintaining, and using employee data, and checklists for employment functions. This applies to all employment relationships, clarifies legal obligations, and provides a compliance framework while noting additional legal responsibilities like health and safety or employment law.

## New guidance on consent or pay models

The ICO has issued new [guidance on 'consent or pay' models](#), **confirming they can be lawful under UK GDPR if users have a genuine choice.**

These models present users with a choice to either consent to the processing of their personal data for purposes like personalised advertising in return for access to a product or service, or pay a fee to access the product or service without personalised ads.

Any business that is considering a consent or pay model must first complete a data protection impact assessment (DPIA). The DPIA must consider power imbalance, appropriate fees, equivalence, and privacy by design.

Key differences exist between the ICO's guidance and the EU GDPR, with the latter being stricter.

## EMPLOYMENT LEGISLATION

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### Statutory neonatal care leave and pay

Parents of children born on or after 6 April 2025 will be entitled to statutory neonatal care leave and pay.

**Eligible employees whose child is receiving seven or more consecutive days' neonatal care will be entitled to up to twelve weeks' leave and pay.**

<https://www.legislation.gov.uk/ukdsi/2025/9780348268041>

<https://www.legislation.gov.uk/ukdsi/2025/9780348268034>

### Amendments to Employment Rights Bill

The Government has responded to consultation exercises on the Employment Rights Bill and tabled a series of amendments to the Bill, including:

- Doubling the maximum protective award for failure to inform and consult on collective redundancies.
- Agency workers to have the right to a contract which reflects the hours they regularly work.
- An obligation on hirers of agency workers to offer guaranteed hours.
- All employees will be eligible for statutory sick pay (SSP) at the lower of 80% of average weekly earnings or the current rate of SSP.
- Umbrella companies to be regulated for the purposes of employment rights.

<https://www.gov.uk/government/collections/make-work-pay>

## RECENT CASES

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### Religion or Belief

#### Higgs v Farmor's School – Court of Appeal decision

The Court of Appeal (CoA) has issued its decision in the long-running case of Higgs v Farmor's School.

Mrs Higgs was dismissed for gross misconduct following a complaint from a parent that she had expressed 'homophobic and prejudiced views against the LGBT community' on Facebook. Mrs Higgs claimed direct discrimination and harassment on the ground of religion or belief.

The CoA held that:

- It is direct discrimination to dismiss an employee merely because they have expressed a religious or other protected belief to which the employer, or a third party with whom it wishes to protect its reputation, objects.
- The dismissal will be lawful if it is motivated by something objectionable in the way the belief was expressed, provided it was a proportionate response.
- The dismissal was a disproportionate response for several reasons including:
  - \* The posts were from other sources and were not grossly offensive.
  - \* Mrs Higgs had not expressed her views at work or displayed discriminatory attitudes towards pupils.
  - \* There was no evidence of damage to the School's reputation.

<https://caselaw.nationalarchives.gov.uk/ewca/civ/2025/109?query=higgs&court=ewca%2Fcivil>

## EQUAL PAY

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### Asda facing potential equal pay bill of £1.2bn

A Tribunal has confirmed that Asda's predominantly female checkout operators and shop floor assistants carried out work of equal value to their male counterparts in the warehouses and distribution centres.

The female staff are paid up to £3.74 less per hour. Asda will now have to show that there is a non-discriminatory reason why it pays them less than their male counterparts.

<https://www.theguardian.com/business/2025/feb/03/thousands-asda-workers-win-latest-stage-equal-pay-case>

## IR35

### Bryan Robson deemed to be an employee of Manchester United FC

The First-Tier Tax Tribunal (FTT) has decided that former Manchester United Football Club (the Club) captain Bryan Robson was an employee for IR35 purposes under an Ambassador Agreement between Mr Robson's limited company and the Club.

The agreement provided for a **licence of image rights and personal appearances** by Mr Robson.

The FTT concluded that **consideration payable for the licence of image rights is not subject to tax as employment income under IR35.**

As regards the personal performance of services by Mr Robson, the FTT found that the relationship was akin to employment because of:

- The Club's obligation to pay a fixed fee in return for Mr Robson's obligation to satisfy a minimum commitment of appearances
- The Club's control over Mr Robson's personal appearances
- Mr Robson's services being "part and parcel" to the Club's business.

The parties must now agree what consideration is attributable to the licence of image rights and what is attributable to the personal appearances.

[Bryan Robson Limited v The Commissioners for HMRC \[2025\] UKFTT 56.](#)



Don't miss our upcoming annual conference...

### AUTOMOTIVE LAW CONFERENCE

14th May, 2025

9:00AM – 5:30PM

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## SENIOR COUNSEL COMMERCIAL LAW UPDATE

26th March, 2025  
10:00AM – 11:00AM

[LEARN MORE](#)

### Cases, laws, decisions referred to in this Bulletin

1	<a href="#">Zaha Hadid Ltd v The Zaha Hadid Foundation [2024] EWHC 3325 (Ch)</a>
2	<a href="#">E Limited v Virgin Mobile Telecoms Limited [2025] EWCA Civ 70</a>
3	<a href="#">Thatchers Cider Company Limited (Thatchers) and Aldi Stores Limited [2025] EWCA Civ 5</a>
4	<a href="#">Limbu and Others -v- Dyson Technology Ltd and Others [2024] EWCA Civ 1564,</a>
5	<a href="#">RTM v Bonne Terre Ltd [2025] EWHC 111 (KB)</a>
6	<a href="https://www.legislation.gov.uk/ukdsi/2025/9780348268041">https://www.legislation.gov.uk/ukdsi/2025/9780348268041</a> <a href="https://www.legislation.gov.uk/ukdsi/2025/9780348268034">https://www.legislation.gov.uk/ukdsi/2025/9780348268034</a>
7	<a href="https://www.gov.uk/government/collections/make-work-pay">https://www.gov.uk/government/collections/make-work-pay</a>
8	<a href="https://caselaw.nationalarchives.gov.uk/ewca/civ/2025/109?query=higgs&amp;court=ewca%2Fcivil">https://caselaw.nationalarchives.gov.uk/ewca/civ/2025/109?query=higgs&amp;court=ewca%2Fcivil</a>
9	<a href="https://www.theguardian.com/business/2025/feb/03/thousands-asda-workers-win-latest-stage-equal-pay-case">https://www.theguardian.com/business/2025/feb/03/thousands-asda-workers-win-latest-stage-equal-pay-case</a>
10	<a href="#">Bryan Robson Limited v The Commissioners for HMRC [2025] UKFTT 56</a>



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