



VALEMUS

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THE BRIEF

Welcome to the
April 2018 edition of
Valemus Law's monthly
news bulletin.

The Brief brings you topical legal updates affecting business as well as news of developments in Valemus Law's services.

Valemus Law is a full service, cost effective commercial law firm with nationwide coverage achieved through the use of modern technology.

Valemus Law's solicitors are senior commercial lawyers specifically selected for their exceptional strategic commercial knowledge and entrepreneurial spirit.

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Acas on employers, overtime and suspensions; apprenticeship levies and MBAs; and workers should be asked about their schooling and parents' background to improve diversity.

07 Brexit and Creative Industries

The government has published its response to the report of the Digital Culture, Media and Sport Committee on the potential impact of Brexit on the creative industries.

WHO'S WHO AT VALEMUS LAW



Oliver Brice
**Managing Director and
 Solicitor, Company
 Commercial and Corporate**

Prior to founding VLaw Limited in April 2007, Oliver was the Group Legal Director of the Macmillan Publishing Group. A commercial solicitor, Oliver specialises in general commercial contracts; supply, distribution and agency agreements; asset/share sales and purchases; joint ventures; investments; and IP assignments.



James Hilsdon
**Director and Solicitor,
 Commercial Litigation**

James specialises in commercial litigation and contentious insolvency. He joined Virtual Law in November 2009 from City of London firm, DAC. He specialises in contract breaches, shareholder and director disputes and specialist insolvency measures.

COMPANY COMMERCIAL AND CORPORATE

OLIVER BRICE
 Career History: Taylor Wessing

SUZANNE DIBBLE
 Career History: DLA Piper

REBECCA POWELL
 Career History: Garretts; DJ
 Freeman

TESS BEAUMONT
 Career History: Olswang

SARAH HUGHES
 Career History: Trowers &
 Hamlins

TRACEY BICHENO
 Career History: Price
 Waterhouse; Norton Rose

EMMA NUTBEEN
 Career History: Olswang

NEIL SIBLEY
 Career History: Sibley Law

ALEX JOHNSTONE
 Career History: Olswang

COMMERCIAL LITIGATION

JAMES HILSDON
 Career History: Clifford
 Chance; Harneys; Appleby
 Global; Davies Arnold Cooper

MICHAEL ENGLISH
 Career History: Simmons &
 Simmons; Clyde & Co

PETER FITZPATRICK
 Career History: Berrymans

EMPLOYMENT AND IMMIGRATION

MICHAEL ENGLISH
 Career History: Simmons &
 Simmons; Clyde & Co

KATHERINE MUNN
 Career History: Stephenson
 Harwood; Pinsent Masons;
 Maxine Cox

JANE MOORMAN
 Career History: DJ Freeman;
 Pinsent Masons; Howard
 Kennedy

SUZANNE COE
 Career History: Pinsent
 Masons; Andersen Legal

LARA AKINLUDE
 Career History: Havillands
 Solicitors

COMMERCIAL PROPERTY

DAVID BARNES
 Career History: Speechly
 Bircham; Lawrence Graham;
 Alsop Stevens

CHRISTOPHER PEDDER
 Career History: Mace, Trowers
 & Hamlins

INTELLECTUAL PROPERTY

LIZ SPROSTON
 Career History: Olswang;
 Rowe & Maw

TRACEY HUXLEY
 Career History: Linklaters;
 Shoosmiths

JANE BUNCH
 Career History: Olswang

EMMA NUTBEEN
 Career History: Olswang

ALEX JOHNSTONE
 Career History: Olswang

KIM HUGGINS
 Career History: DLA Piper

Brexit: UK and EU negotiators publish joint statement on progress made in drafting withdrawal agreement

The UK and EU negotiators published a joint statement on 19 June 2018 recording the progress made since the publication on 19 March 2018 of the draft withdrawal agreement.

Background

On 19 March 2018, the UK government and the EU published a coloured version of the draft withdrawal agreement highlighting the areas of agreement and disagreement and reflecting the progress made in the negotiation round of 16-19 March 2018.

On 19 June 2018, the UK and EU negotiators published a joint statement outlining the progress made on the terms of the draft withdrawal agreement since the publication of the draft on 19 March 2018. The European Commission notes that, under the caveat that nothing is agreed until everything is agreed, the progress recorded in this joint statement will be reflected in the withdrawal agreement in full.

The European Council stated in its negotiating guidelines of 23 March 2018 that it would return to the remaining withdrawal issues (and the framework for the future relationship) at its 29 June 2018 meeting. The joint statement of 19 June 2018 was put forward with a view to that meeting.

Areas of agreement

Part three of the draft withdrawal agreement (separation provisions) will apply from the end of the

transition period, and aims to clarify what will happen if procedures are ongoing at the end of that period, when EU law would generally stop applying to the UK. There is now agreement at negotiators' level on the following articles of part three, and the agreed text is annexed to the joint statement:

- Article 42: Goods placed on the market.
- Articles 47, 94 and 95: VAT
- Article 56: Intellectual property
- Article 63: Jurisdiction, recognition and enforcement of judgments.
- Articles 72(2) and 73: Ongoing public procurement and similar procedures.
- Article 79. This was the only article that remained outstanding under the title on Euratom-related issues. Article 79 addresses the ownership and rights of use and consumption of special fissile materials in the UK at the end of the transition period.

Agreement was also reached at negotiators' level on the following annexes to the withdrawal agreement, and the agreed text is annexed to the joint statement:

- Annex y+7 on time-limits for customs procedures mentioned in Article 45(1) (ending of temporary storage or customs procedures). These time-limits set an end date for the application of Regulation (EU) No 952/2013, which lays down the Union Customs Code (UCC).

Brexit ...continued

- Annex y+4 (list of network and information systems and databases referred in Articles 46, 49, 94 and 95). This list relates to customs, excise, VAT, and tax and duty recovery assistance.

Goods placed on the market

Previously, Article 42 was the only article that remained outstanding under the title dealing with goods placed on the UK or EU market before the end of the transition period. The UK government has now accepted the European Commission's draft wording for Article 42, which requires the UK and the member states to make information available.

VAT

The draft withdrawal agreement provides for Council Directive 2006/112/EC (Principal VAT Directive) to apply to cross-border supplies of goods between the UK and EU initiated before the end of the transition period (and delivered after that date).

It is now agreed that taxpayers' rights and obligations under the Principal VAT Directive in relation to such supplies and supplies made before the end of the transition period will continue for five years after the end of the transition period. By way of exception, eighth directive reclaims must be submitted by 31 March 2021 and amendments to VAT returns in respect of one-stop shop services supplied before the end of the transition period must be submitted by 31 December 2021 (Article 47).

In respect of these matters, it is also agreed that Council Regulation 904/2010 (administrative co-operation) will apply for four years after the end of the transition period and Council Directive 2010/24/EU (mutual assistance directive) will apply to any claims within five years of the end of the transition period (Articles 94 and 95).

Intellectual property

Article 56 deals with the situation where applications for supplementary protection certificates for plant protection or medicinal products (or applications to extend their duration) are pending in the UK at the end of the transition period. The UK government has now accepted the European Commission's draft wording, which provides for the continued application of relevant EU law in such situations. Some of the other articles under this title are still under negotiation.

Jurisdiction, recognition and enforcement of judgments

Previously, Article 63 was the only article that remained outstanding under the title dealing with judicial co-

operation in civil and commercial matters that are ongoing at the end of the transition period. This title aims to clarify when the relevant provisions of EU law will continue to govern such matters. Article 63 addresses the jurisdiction, recognition and enforcement of judicial decisions, and related co-operation, including the application of the Recast Brussels Regulation (Regulation (EU) 1215/2012).

Ongoing public procurement and similar procedures

Previously, Articles 72(2) and 73 were the only articles that remained outstanding under the title dealing with the treatment of public procurement procedures and similar procedures that are ongoing at the end of the transition period. The UK government has now accepted the European Commission's draft wording for: Article 72(2), which requires compliance with the non-discrimination principle in relation to ongoing procedures.

Article 73, which sets out the EU law applicable to review procedures.

Areas outstanding

The joint statement reports that the following issues have been discussed, but are still outstanding:

- Protection of data processed before the end of the transition period.
- Geographical indications.
- Treatment of ongoing police and judicial co-operation in criminal matters.
- Finalisation of ongoing EU judicial and administrative procedures at the end of the transition period and possible new procedures concerning facts arising before the end of the transition period.
- Consistent application and interpretation of the withdrawal agreement by both the EU and the UK.
- Dispute settlement (see Practice note, Brexit: withdrawal agreement text: Dispute settlement).

Protocol on Ireland/Northern Ireland

The European Commission chief negotiator Michel Barnier has previously called for "substantive progress", before the European Council's June 2018 meeting, on the backstop option in the withdrawal agreement for avoiding a hard border between Ireland and Northern Ireland. On 19 June 2018, Michel Barnier said "Serious divergences remain, however, on the Protocol on Ireland/Northern Ireland."

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Practical Law

Employment Round-Up: June 2018



Acas publishes guidance for employers on overtime and suspensions

Acas has published two new sets of guidance for employers, on overtime and suspensions. The guidance on overtime highlights the importance of setting out terms relating to it in employment contracts or staff handbooks. It urges both employers and workers to keep detailed records of the amount of overtime worked and how much time off has been taken in lieu.

The guidance on suspensions provides employers with comprehensive advice on when to consider suspension from work. A suspension should only be considered if there is a serious allegation of misconduct, a medical reason to suspend, or a workplace risk to an employee who is a new or expectant mother. Suspension should not be used automatically in disciplinary matters and employers considering suspension should look at alternatives first, such as the employee working under supervision temporarily, or having their hours, role, or workplace changed.

GMB union reports Metropolitan Police to ICO

The GMB union has reported the Met Police to the Information Commissioner's Office (ICO) after they failed to respond to a freedom of information request. Following a two-year internal investigation, it was revealed in March that Scotland Yard played a role in the blacklisting of construction workers which left hundreds of them unemployed. GMB requested a report that came from this inquiry, including details of meetings between officers and blacklisting companies. Despite having until the end of May to fulfil the request, the Met failed to respond.

GMB National Secretary Justin Bowden said it was "shameful that the Metropolitan Police are obstructing GMB's quest for the truth" and that those spied on had a right to know what information was shared between the police, and for what purposes.

Amazon issues new guidelines to support transgender employees

Amazon has issued new guidelines to support transgender employees in the UK in order to boost support, diversity and inclusion. The guidelines, which were launched last week, include advice to employers and employees on a range of issues, such as transitioning in the workplace, access to bathrooms, dress codes, and using the correct names and pronouns.

Research published at the start of this year by LGBT+ rights charity Stonewall has shown that half of transgender employees in the UK have hidden the fact that they are transgender out of fear of discrimination at work. The research also showed that a quarter of transgender people have felt obliged to change jobs as a result of harassment and bullying, while 42% are not living permanently as their preferred gender identity in case it threatens their employment status.

Director of Media for Amazon UK Simon Johnson said, "Diversity and inclusion is good for our business and our customers, and transgender employees are an important part of our team." He also explained that alongside the new guidelines, Amazon also provides benefits that cover transgender services, which includes support for employees who are undergoing gender reassignment, as well as mental health support for employees and their dependants.

Employment Round-Up ...continued

House of Commons spent more than £2m on non-disclosure agreements for staff

The House of Commons has spent almost £2.5 million on non-disclosure agreements with employees over the last five years, according to official figures.

The data, which was released under the Freedom of Information Act 2000, showed that a total of 53 confidentiality agreements were used between 2013 and 2017. Although the agreements included confidentiality clauses, Commons authorities confirmed that the agreements would not have the effect of preventing employees who signed them from whistleblowing.

Tory chairwoman of the Women and Equalities Committee Maria Miller said that more transparency was needed on why these payments were made. She has called for the use of gagging clauses in employment contracts to be made "a thing of the past", and has questioned why such a relatively large amount of money was needed to deal with severance agreements.

Union granted limited right to seek judicial review of Deliveroo CAC decision on human rights ground

The Independent Workers Union of Great Britain (IWGB) has been granted a limited right to seek judicial review of the Central Arbitration Committee (CAC) decision that Deliveroo drivers were not workers for the purposes of the union's application for statutory recognition under Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992). At the permission hearing, the High Court rejected the majority of the IWGB's grounds of appeal, and found that the CAC had been entitled as a matter of law to find that riders are not "workers" within the relevant statutory definition. It granted permission for a judicial review based on the ground that the CAC failed to engage with the submission that the definition of a "worker" in TULRCA 1992 in the context of an application for trade union recognition must be interpreted in a manner compatible with Article 11 of the European Convention on Human Rights. The union has raised over £20,000 for the legal claim which is expected to begin next year.

Separately, Frank Field MP, chairman of the Work and Pensions Committee, will gather evidence from Deliveroo couriers over the next five weeks on their pay and conditions and working practices. According to Field, the inquiry (which has already taken evidence from workers at Hermes, Uber and Parcelforce), will examine whether "bogus self-employment is being peddled by those who benefit so handsomely from the gig economy, to avoid the obligations they have to their workforce".

The latest development in the gig economy follows the GMB union's legal claim against Amazon, on the basis that some of its affiliated workers are employees

(as opposed to independent contractors) and should therefore be entitled to employment rights including paid annual leave, holiday pay and sick pay.

Workers should be asked about their schooling and parents' background to improve diversity, government suggests

The government has suggested that employers should ask their employees about their schooling and the background of their parents to improve diversity in the workplace. According to the guidelines, Measuring Socio-economic Background in Your Workforce: Recommended Measures For Use By Employers, employers should create a multiple-choice questionnaire that will allow employees to detail more information on their socio-economic background, including the type of school they attended, their eligibility for free school meals, and the qualifications of their parents. The guidelines will be rolled out to some Civil Service departments this year and will remain open for other organisations to use at their discretion.

Apprenticeship levy being used to fund MBA programmes for managers

The apprenticeship levy has led to an increasing number of businesses sending managers and/or executives on business school courses, new research by the Chartered Association of Business Schools has revealed this week. According to the research, 80% of business schools have created affordable MBA programmes since the introduction of the levy, which entitles employers whose pay bill exceeds £3 million to 0.5% of pay bills over that amount for staff training (which can include money spent on educational courses, such as MBAs). Employers have suggested that in some instances, spending levy funds on MBA programmes (as opposed to creating new training courses internally) can be more affordable – this has led to TES, the education magazine, predicting that in the upcoming year, more than 1,400 executives are expected to enrol on MBA programmes which have been funded by the levy.

"Magic Circle" law firms submit gender pay figures including partners

The Business, Energy and Industrial Strategy (BEIS) Committee has published the correspondence it received from the "Magic Circle" firms following requests that they publish the gender pay gap figures of partners. The letters give details on the proportion of female associates and female partners, details on pay and bonuses, and the strategies the firms would adopt to close their gender pay gaps.



Government response to Select Committee report on potential impact of Brexit on creative industries

The government has published its response to the report of the Digital Culture, Media and Sport Committee on the potential impact of Brexit on the creative industries. Here we report on the discussion surrounding data protection and Intellectual Property.

Data sharing and data protection

The government will seek to agree the mutual recognition of EU and UK data protection frameworks to preserve the free flow of data, with its first priority being to establish the detail of what will happen during the initial implementation period. The Future Partnership Paper explained how the government plans to explore a UK-EU model for exchanging and protecting personal data. Part of the ICO's role will be to make sure that the UK is effectively represented under the EU's new "one stop shop" procedure for resolving data protection disputes.

The government adds that it strongly supports the European Commission's work on the proposed EU Free Flow of Non-personal Data Regulation.

Intellectual property

Enforcement: The government does not clarify how IP enforcement will operate after Brexit, as requested by the Committee. It says that discussions about IP protection are ongoing and that it will seek to ensure continuity on IP issues. It is also considering what IP-related provisions the UK would seek to include in future free trade agreements. It points out that

copyright is protected by international treaties that will remain unaffected by Brexit, and that as part of its IP enforcement strategy (see Legal update, Government publishes four-year IP enforcement strategy) it is in the process of reviewing the IP infringement enforcement regime with a view to reporting later in 2018.

Unregistered Community Design Right: The response confirms that the EU (Withdrawal) Bill will preserve current legislation on unregistered designs and that it will be discussing with various interested parties the impact of Brexit on the protection of such rights. It says that it has already confirmed that it bring legislation to establish new schemes to protect IP rights.

Artist's resale right: the government points out that the EU (Withdrawal) Bill will retain the Resale Right Directive (2001/84/EC) in UK law after Brexit.

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To guarantee that demand can be met without diminishing the quality of our business legal advice, Valemus Law only engages partner-level lawyers with at least 10 years experience. Our lawyers all hail from the Top 50 UK law firms and blue chip organisations and their exceptional expertise is recognised across the commercial sector. As a result, we include among our clients some of the biggest names in the automotive, air transport, oil and gas, defence, energy and environment and publishing industries. We also enjoy a reputation for helping to launch a number of successful start-ups in a range of industry sectors.



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Valemus Law provides access to all the business legal services offered by regular commercial law firms, but we go the extra mile to deliver value. From litigation advice to contract drafting, whether you are a sole trader or an executive within a global corporation, our goal is the same as yours: success.

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