



Welcome to the  
September 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.

## HIGHLIGHTS

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Valemus welcomes Corporate Lawyer Charu Babel, who brings a wealth of corporate transaction experience to the Valemus practice portfolio.

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September's employment news highlights Tribunal powers to determine contract terms in unlawful deductions claims, and new gender pay gap initiatives.

# 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

### CHARU BABEL

Career History: Simmons & Simmons; Fieldfisher

## 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



## Introducing Charu Babel, Corporate Lawyer

**Valemus Law extends a very warm welcome to transactions expert, Charu Babel, who joins the firm's Corporate and Commercial Practice.**

Charu qualified into the corporate transactions department at Simmons & Simmons following a six month secondment to their Milan office. She gained a breadth of experience in a range of corporate transactions for public and private companies including small initial public offerings onto AIM.

She then moved to Fieldfisher, where over the next 8 years she diversified her experience working for public sector bodies, becoming the firm's lead associate for the firm's rail clients.

In addition, she undertook transactional work and commercial reviews across a range of other sectors from television and publishing, to life sciences.

Charu has extensive experience in a wide range of corporate transactions and commercial agreements working with both public and private companies across varied sectors. She has advised companies at various stages including startups seeking investment, companies fundraising to expand/make acquisitions and those wishing to restructure. She has worked on a number of transactions with cross border elements having worked at two international City practices.

Charu has been a trusted advisor for companies continuing to advise on shareholder/director issues and commercial matters as they arise. She has also been requested for short term secondments by clients. Charu works closely with her clients to ensure their goals are met and is commended for her calm considered approach.

Charu's full profile, including her specific expertise, and contact details can be found on our website at:

<http://www.valemuslaw.com/charu-babel-corporate-and-commercial/>



# No deal Brexit? Producing and labelling food technical notice

**The government has published a technical notice on producing and labelling food in a no deal Brexit scenario. The notice highlights the immediate effects that a no deal outcome would have on food labelling practices and the issues faced by natural mineral water producers.**

## Background

### No deal Brexit

“No deal Brexit” describes the situation where the UK and the EU fail to conclude a draft withdrawal agreement by the time of the UK’s exit from the EU. This would mean no transition period, and a sudden “cliff-edge” break in the application of EU rules to the UK at 11pm on 29 March 2019. For more information on a no deal scenario.

### Technical notices

On 24 September 2018, the government published its third tranche of technical notices. These notices aim to provide guidance and information for UK businesses and citizens on how to prepare for a no deal Brexit scenario.

One of the notices released as part of this tranche relates to food production and labelling, and this update provides a summary of that notice. The notice itself is short and clear and it is recommended that subscribers read the notice in full when advising their clients on the likely effect of a no deal Brexit. Producing and labelling food after no deal Brexit scenario

EU-based rules relating to food labelling and compositional standards (for certain foods such as jam, honey, instant coffee and bottled water) would be

rolled over as part of the European Union (Withdrawal) Act 2018 and fixed by statutory instruments where necessary. The notice acknowledges that some changes will need to be made to the legislation to reflect the fact that the UK will no longer be an EU member. Non-EU based rules on compositional standards (such as those for bread, flour and products containing meat) will remain unchanged.

The issues mentioned in the notice will be subject to full public consultation, although the government has not given any further details or dates of when the consultation will take place.

### Food labelling: origin of food and address

Food labelling requirements are set out primarily in the Food Information to Consumers Regulation ((EU 1169/2011) and the related Implementing Regulation on the Origin of Meat ((EU) 1337/2013). These rules aim to ensure that consumers have easy access to information to help them make informed choices on what to buy and eat. For instance, multi-ingredient food must have an ingredients list with allergens highlighted, and pre-packaged food must have a name to accurately describe the product.

The notice highlights how labelling practices will change in a no deal scenario:

#### ***Business address on labels.***

Labels on pre-packed products sold in the UK must include the name and UK address of the responsible food operator. This is the business under whose name the food is marketed in the UK, or the UK importer if that operator is not established in the UK.

In a no deal scenario, an EU address alone would no

# No deal Brexit... continued.

longer be valid for the UK market and similarly, a UK address alone would no longer be valid for the EU market. As such, a post-Brexit label would need to include a UK address and an EU address to ensure that it is valid for both the UK and EU markets. The notice gives the following examples to highlight the issue:

- A business based in France sells products to the UK. Currently, that business can give its name and address in France on products sold in the UK. In a no deal scenario, that business will need to provide the address of a responsible business in the UK; it may need to set up a UK hub or work with an importer.
- A business based in the UK sells products to France. Currently, the label on the product provides the address of a UK business. In a no deal scenario, the UK address will no longer be valid; the business will now need to provide an address for the responsible business or importer into the EU, in one of the remaining EU member states.

The government recognises the immediate impact of these requirements and is taking the following actions:

- Consulting with stakeholders on an option to continue to allow for food labels with an EU address to be placed on the UK market for up to 6 months post no deal Brexit. The notice does not provide any further details on this consultation.
- Allowing food that is already on the UK market with an "EU 27" address on its label to be sold until the stock finishes.
- Working with businesses and local authorities responsible for enforcing labelling standards to support adjustment to changes; no further details about this initiative is provided.

### **Labelling the origin of food.**

Post Brexit, the term "EU" in food origin labelling would no longer be correct for food or ingredients from the UK. Labels for foods comprising of both non-EU and EU products may also need amending. For example the use of "a blend of EU/non-EU blended honey" on labels would need to be changed to "a blend of honeys from more than one country", or wording along those lines.

The notice acknowledges that from April 2020, the country of origin or place of provenance of the primary ingredient of a food will be required on labels as part of EU rules. In light of this, the government says that it may seek views on whether similar national rules would be appropriate in the UK when EU rules no longer apply.

### **Natural mineral waters**

Natural Mineral Waters (NMWs) are currently subject to a specific recognition process to enable them to be marketed across the EU, pursuant to the Exploitation and Marketing of Natural Mineral Waters Directive (2009/54/EC). In a no deal scenario, the notice reiterates the position as stated by the European Commission in its Notice of 23 January 2018 to stakeholders on NMWs, that natural mineral waters recognised in the UK may no longer be recognised in the EU. As such, UK NMW producers would need to apply for recognition of their water through an EU member state and such applications would be treated as third country applications.

As for NMWs within the UK, the notice states that the government will amend all domestic regulations to ensure that the status of NMW recognitions granted by all nations within the UK would still be recognised across the UK. If not, UK NMW producers would need to renew their recognition within the UK internal market. The government also intends to amend relevant legislation so that the UK can make its own decisions on the recognition of both existing and future NMWs recognised by the UK.

### **Comment**

The issues mentioned in this notice may come as no surprise to those food businesses that have undertaken impact assessments on trading with the EU generally. However, it does highlight the immediate logistical and practical hurdles for affected businesses, which are likely to increase production costs and cause delays (consider the production of new food labels and potentially re-designing the packaging to fit the new labels, working with an importer when this was not previously needed and taking additional measures to ensure that they can continue to sell their food products in the EU).

The notice does state that the "UK government will maintain its current world-leading set of standards on food safety and labelling and food quality, ensuring high food standards at home and promoting high standards internationally". However, the notice does not say how the government plans to achieve this, nor does it give details on how it plans to support and help affected businesses to tackle these looming issues.

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## Employment Round-Up September 2018

### Employment tribunals have jurisdiction to determine terms of contract in unlawful deductions claims (Court of Appeal)

In *Agarwal v Cardiff University and others*, the Court of Appeal has held that employment tribunals have jurisdiction to interpret the contract of employment when hearing claims of unauthorised deductions from wages under section 13 of the Employment Rights Act 1996 (ERA 1996), contrary to what the EAT had decided in the same proceedings. In doing so, the court affirmed two earlier decisions of the EAT on the point which, in turn, relied on the Court of Appeal authority *Delaney v Staples* 1991 ICR 331.

The EAT in *Agarwal* had erred in its approach since it had relied on the Court of Appeal's decision in *Southern Cross Healthcare Co Ltd v Perkins and others* EWCA Civ 1442, a case which held that the tribunal did not have power to interpret a contract in the context of a complaint of failure to provide written particulars under section 1 of ERA 1996. *Southern Cross* was decided under Part II of ERA 1996, rather than Part I as in the instant case, and concerned a different provision altogether. Further, the EAT should have taken into account the Court of Appeal's judgment in *Delaney v Staples*, which held that a tribunal has jurisdiction to resolve any issue necessary to determine whether a sum is "properly payable" for the purpose of section 13.

Two other EAT decisions, *Weatherill v Cathay Pacific Airways Ltd* [2017] ICR 985 and *Tyne and Wear Passenger Transport Executive t/a Nexus v Anderson and others* 2018 ICR 1207 had departed from *Agarwal* at EAT level on the basis that it did not refer to *Delaney v Staples*, and had erred in its reliance on *Southern Cross*. As the judgment in the instant case states, it now seems plain that *Agarwal* at EAT level was wrong. It would be incoherent and unworkable if tribunals were not able to determine the terms of the contract when trying to ascertain whether a sum was properly payable.

### Government awards around £500,000 to help tackle gender pay gap

The Government Equalities Office has announced that £489,050 from a new government start-up fund has been awarded to five organisations that help people return to work when they have taken a career break to care for others. The five organisations will facilitate work placements and set up training and skills enhancement opportunities for parents and carers returning to the workforce, working with 79 employers across law, finance, tech, retail, communications, advertising and marketing.

Studies have shown that 90% of potential work returners in the UK are women. The grant aims to help address the causes of the gender pay gap as career breaks and fewer years of full-time work have both been identified as contributing factors. The Minister for Women, Victoria Atkins, said "we are investing in returners to work, giving them the opportunity to refresh and grow their skills."

## **Inquiry into gig economy law and enforcement launched**

The Work and Pensions Committee has announced the launch of an inquiry into the enforcement of tribunal rulings in the context of the gig economy. Uber and courier firms will be called to give evidence to the inquiry to help identify whether any improvements are necessary to ensure workers are receiving their rights in practice. The inquiry follows a series of accusations that employers, including CitySprint and eCourier, are failing to follow tribunal judgments at the expense of workers. Chair of the Work and Pensions Committee, Frank Field MP, said "we will be looking to suggest any immediate changes that are required, both to the law itself as well as its enforcement, to ensure no company is able to evade justice".

## **CIPD and Mind publish mental health guidance for employers**

CIPD and Mind have launched a mental health guide for managers to help improve their response to issues of poor mental health in employees. The new guide, which replaces previous guidance, follows research carried out by CIPD into mental health policies in the workplace. The study found just 32% of organisations train line managers to support staff with poor mental health, despite it being the primary cause of long-term sickness absence for 22% of organisations. The guidance aims to help managers identify warning signs early on as currently only 42% of employees feel their manager would be able to spot them. It includes information, resources and tools to enable managers to support struggling employees effectively.

Head of Workplace Wellbeing at Mind, Emma Mamo, said "given how much of our lives are spent at work, and how common poor mental health is, it's really important that our employers and managers take an active role in helping us keep well and supporting us when needed".

## **Businesses to publish parental leave and pay policies**

Ten large companies, including Addleshaw Goddard and PwC, have agreed to publish details of their parental leave and pay policies on their websites. The change is a response to Jo Swinson MP's calls for all companies with over 250 employees to be required to publicly provide this information alongside gender pay gap data each year. Such a requirement would help avoid the need for candidates to ask about a company's policy in interviews. Swinson also sees the change as a marketing opportunity for firms to showcase their policies. She said, "I think this would lead to more questions being asked in board rooms and in local cafes about who has the better policy and that itself will drive change".

## **Cabinet: EU workers will not get priority after Brexit**

It has been reported that the cabinet has unanimously agreed that EU nationals should be subject to the same immigration rules as those from elsewhere once the UK has left the EU. It was reportedly decided that the immigration system would instead be based on skills. According to a source, the cabinet agreed on a principle of no bias towards workers from any part of the world. The decision follows a recommendation from the independent Migration Advisory Committee (MAC).

## **61% of employers fear imminent skills shortage**

The Open University has revealed that three in five employers reported that skills shortages had worsened since 2017. The university's "Business Barometer", which monitors the extent and nature of skills shortages in the UK, also found that 91% of employers spent a total of £6.3 billion in 2017 attempting to remedy such issues. Tactics ranged from hiring temporary staff to increasing salaries to attract talent. The survey revealed concern about the uncertainties surrounding the right to remain for EU citizens post-Brexit, with 48% of the 950 senior business leaders surveyed expecting Brexit to have a detrimental effect on talent pools.

Over half of those surveyed cited managerial roles as the most difficult to fill. Corporate director of The Open University, David Willett, said uncertainty about Brexit has led many workers to stay in their jobs, causing the labour market to become "stagnant" and deprive companies of essential skills. Willett argues that organisations need to develop sustainable methods, such as placing more focus on training, to eliminate the skills shortage.

## **Broadcasters to double number of disabled employees by 2020**

A Creative Diversity Network (CDN) scheme to increase the percentage of disabled people working in television has won the support of the BBC, ITV and Sky. The initiative is also backed by the Department for Work and Pensions. CDN, which monitors inclusivity in UK broadcasting, revealed that just 6.8% of those appearing on screen, and 4.5% of off screen workers are disabled. The CDN Doubling Diversity plan aims to help the industry better represent that fact that 18% of the overall UK population have disabilities. Sarah Newton, Minister for disabled people, said the scheme "will play an important role in ensuring that the UK's 14million disabled people feel represented in the media, with the potential to change public perceptions of disability for the better".

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Valemus Law offers practical, flexible, economical business legal solutions to a wide range of clients, from global organisations to entrepreneurial start-ups. We strive to ensure that all our clients obtain the value and professional experience that one would expect from a city law firm.

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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