



VALEMUS

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THE BRIEF

Welcome to the
March 2019 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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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



Brexit: House of Commons rejects withdrawal agreement and triggers extension end date of 12 April 2019

The House of Commons voted against a government motion for the approval of the withdrawal agreement on 29 March 2019, triggering an end to the first extension of the Article 50 period on 12 April 2019.

On 28 March 2019:

- The government tabled a motion for the approval of the withdrawal agreement. Unlike the “meaningful votes” on 15 January and 12 March 2019, this was not a motion under section 13(1)(b) of the European Union (Withdrawal) Act 2018
- The Leader of the House explained that the government’s motion gave the House of Commons (HoC) the opportunity to secure the extension of the Article 50 period to 22 May 2019, which was conditional on the HoC approving the withdrawal agreement by 29 March 2019
- The Speaker confirmed that since the government’s motion did not cover the political declaration, it complied with his ruling that it had to be substantially different from the proposition rejected by the HoC on 12 March

On 29 March 2019, the HoC voted 344 to 286 against the government’s motion for the approval of the withdrawal agreement. This means that:

- The Article 50 period will only be extended to 12 April 2019. However, the UK will not necessarily leave the EU on 12 April 2019, as the UK government might, for example, agree a second extension with

the European Council

- The European Council expects the UK to indicate a way forward before 12 April 2019 for its consideration. (The EU maintains that the withdrawal agreement cannot be re-opened, but the political declaration could be re-negotiated.
- The ongoing indicative vote process now has a new significance. This process arose from concerns that the UK would leave the EU with no deal on 12 April 2019. It aims to identify a way forward that could secure a HoC majority, and its second stage is scheduled for 1 April 2019.

Following the vote, the President of the European Council confirmed that he would call a special European Council meeting on 10 April 2019 to discuss the latest Brexit developments.

Amendments to rules on marketing to children and naming prizewinners



On 28 March 2019, CAP announced the introduction of changes to the CAP Code concerning naming prizewinners and marketing to children. The amendments to the Code follow the consultation launched in November 2018 as part of CAP's wider exercise of updating the Code to align with General Data Protection Regulation ((EU) 2016/679) (GDPR).

The first amendment increases a child's age of consent to the use of their personal data for marketing from 12 to 13 years (rule 10.15), to align with the GDPR. CAP has also introduced a distinction between the processing of personal data for marketing:

- "Online services": personal data of under-13s can only be processed with verifiable parental consent.
- "Other marketing purposes": verifiable parental consent for processing under-13s' personal data is not needed if a marketer can demonstrate compelling reasons for relying on the child's consent, and that they have had particular regard to the child's privacy rights.

The second amendment concerns the publication of the name and county of prizewinners (rule 8.28.5). Under the previous version of the rule, promoters were required to obtain winners' consent to publicity at the time of entry. However, CAP considered that this might not be consistent with the new requirement for consent under the GDPR, which provides that consent must not be a condition of service and may be withdrawn. CAP

has modified the requirement so that promoters must either publish or make available on request information that indicates that a valid award took place – ordinarily the surname and county of major prizewinners and, if applicable, their winning entries. In addition:

- Promoters must inform entrants of their intention to publish or make available on request certain information (surname, county and possibly the entry itself). Entrants must have the opportunity to object to such publication, or ask for less information to be published/made available.
- If an entrant objects to publication or asks for less information to be published/made available, the promoter must nevertheless provide such information to the ASA if the promotion is subsequently challenged.
- Prizewinners must not be prejudiced by the publication of personal information and, in limited circumstances (for example, in relation to National Savings), promoters may need to comply with a legal requirement not to publish such information.

The changes to the Code took effect from 14 March 2019.

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Employment Round-Up March 2019



New guidance on women's progression in the workplace

The Government Equalities Office has published new guidance for employers on actions to promote women's progression in the workplace. The guidance, which consists of an infographic alongside an action note, explains that one of the key drivers of the gender pay gap is the fact that women are not fulfilling their progression potentials in the workplace. It highlights that this is largely due to the disproportionate number of women working part-time, and the impact this can have on issues such as pay progression. The guidance offers five broad suggestions for tackling these issues:

- Create an inclusive culture.
- Support women's career development
- Progression for part-time workers.
- Improve recruitment and promotion processes.
- Measure and evaluate policies to support diversity and inclusion.

Frank Field MP urges government to end gig economy injustice

In a new report, independent MP Frank Field has called on government to end the "rampant injustice" experienced by some gig economy workers. In the report, Field sets out evidence that some employers continue to breach the employment rights of those that were wrongly classified as independent contractors. He argues for a fast-track system for employment tribunal cases involving worker status. He is also in favour of the introduction of a single labour market regulator.

Field said, "Unions are caught up in court cases that are going on for seven years. The idea that the law

is working is farcical." His report comes after heating engineer Gary Smith lost a claim for alleged holiday pay arrears of £74,000 from Pimlico Plumbers despite the Supreme Court confirming his worker status in 2018.

NHS whistleblower to challenge NDA at tribunal

An NHS worker, Sue Alison, who blew the whistle on a series of cancer misdiagnoses is bringing an employment tribunal claim to challenge the non-disclosure agreement she was asked to sign. Alison will be arguing, in an attempt to get it revoked, that it was unlawful to ask her to sign the agreement without legal representation. According to Alison, she has been blacklisted by the NHS and has been asked about the incident during several job applications.

Apprenticeship levy: sharp increase in firms under investigation for underpayment

HMRC data uncovered by law firm UHY Hacker Young has revealed that the number of firms being investigated for underpayment of apprenticeship levies has increased from 33 in 2017-18, to 84 in the following year. According to the law firm, this is largely caused by miscalculations and a decreasing level of understanding about the levy.

Under the rules, which came into force on 6 April 2017, companies with an annual payroll of over £3 million must pay 0.5% of the total amount they pay out in wages into a government pot which can later be accessed to fund apprenticeships. However, according to a YouGov survey carried out in early 2019, 29% of employers thought the levy was just a type of tax. The HMRC data reveals that just 48% of the available

Employment round-up continued.

£3m in funding had been used by November 2018.

Partner at UHY Hacker Young, Clive Gawthorpe, suggested that the increase in the number of investigations indicates that HMRC is now "widening its net" to focus on smaller firms with smaller underpayments. He said, "We have seen additional problems arise among large businesses where several different parts of the same businesses group may be liable to pay the levy. However, there is little guidance to help businesses calculate their liabilities."

Just 5% of employers have analysed ethnicity pay gap

A new report from PwC has revealed that 95% of companies have not assessed their ethnicity pay gap. The research, which surveyed 80 companies, also found high levels of concern about legal and GDPR issues (40% of respondents). According to the figures, 75% of employers do not currently have the necessary data to properly analyse their gap. The report comes after a government consultation on mandatory ethnicity pay reporting closed on 11 January 2019.

Ethnicity is largely seen as more indicative of pay than gender. For example, a 2018 Resolution Foundation Report found that black male graduates were earning £7,000 less on average than their white counterparts, with Pakistani and Bangladeshi men also earning significantly less than their white peers.

Co-chair of the multicultural business network at PwC, Mary Agbesanwa, urged employers not to wait for legislation before analysing their ethnicity pay gaps. She said, "the longer you leave it, the more complicated and costly it will become and the more corners you may end up cutting. Starting now with the necessary planning and honest communication will earn employee trust and confidence and could reduce the risk of regulatory or legal implications."

UK failing to implement European Social Charter for workers, says report

A European Committee of Social Rights (ECSR) report on the European Social Charter has found that many member states are falling behind with their compliance with international legal obligations concerning workers' rights. The report focused on the implementation of rights such as the right to reasonable working hours, fair pay and protection against harassment in 35 countries and territories in the period between 2013 and 2016.

The UK was found to be in violation of several areas of the Charter. The report concluded that the UK offers an inadequate minimum wage and fails to provide a sufficient legal framework for overtime payments.

It additionally highlighted the lack of a right for all workers to be paid on public holidays and asserted that protections against dismissal for taking industrial action were inadequate.

New Acas guidance on neurodiversity in the workplace

Acas has published new guidance on handling neurodiversity in the workplace. Neurodiversity, which refers to the different ways the brain can use and interpret information, affects one in seven people in UK through forms such as attention deficit disorder, autism, dyslexia and dyspraxia. The new guidance explains what neurodiversity is and highlights the different types of neurodivergence and the difficulties they may bring.

The guidance goes on to explain the importance of employers taking steps to support neurodiversity in their workplace. Employers may be obliged to treat certain types of neurodivergence as a disability under the Equality Act 2010 and make any necessary reasonable adjustments. The guidance also draws attention to the other benefits that creating a more inclusive workplace can bring. For example, this can highlight the employer's commitment to diversity and inclusion, increase feelings of safety and empowerment and help retain skilled staff and reduce recruitment costs.

The guidance sets out steps for managers to take in response to neurodivergence. For example, managers should be supportive towards team members who disclose their neurodivergence and remember to keep all issues confidential. It suggests that, in order to identify the specific actions that should be taken for each individual, an assessment must be made about how neurodivergence affects them in particular. It sets out different experts who should be contacted if unsure about which adjustments to make.

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Key Employment Law Changes in April 2019

1 April 2019

National minimum wage. The national minimum wage rates for the five categories of workers are increasing on 1 April 2019. The current figures were prescribed by the National Minimum Wage (Amendment) Regulations 2019 (SI 2019/603).

6 April 2019

“Aggravated” breaches of employment law. As announced in the government’s Good Work Plan, the draft Employment Rights (Miscellaneous Amendments) Regulations 2019 introduce an increase for the maximum penalty for an “aggravated” breach of employment law from £5,000 to £20,000. At the time of writing the Regulations are still in draft. Subject to the Regulations being made, the increase will take effect from 6 April 2019.

Tribunal awards and statutory payments. The Employment Rights (Increase of Limits) Order 2019 (SI 2019/324) increases the limit applying to certain awards of employment tribunals, and other amounts payable under employment legislation from 6 April 2019.

Itemised payslips. The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 (2018/529) is due to come into force on 6 April 2019. Under the Order, the right to itemised payslips will be extended to all workers (as defined under section 230(3) of the ERA 1996) who will be able to enforce this right at an employment tribunal. Also, under the Employment

Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 (SI 2018/147) payslips will need to itemise the number of hours paid for where a worker is paid on an hourly rate basis from 6 April 2019.

7 April 2019

Statutory payments. The Social Security Benefits (Up-rating) Order 2019 (SI 2019/480) raises the level of statutory maternity, adoption, paternity and shared parental pay to £148.68 per week on 7 April 2019. Statutory sick pay rises to £94.25 on 6 April 2019 (see Legal update, April 2019 increases to statutory maternity, paternity, adoption, shared parental and sick pay).

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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.



VALEMUS

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.

**FOR MORE
INFORMATION,
CONTACT US.**

 2nd Floor, 9 Savoy Street
London WC2E 7EG

 + 44 (0)330 100 0320

 info@valemuslaw.com

www.valemuslaw.com