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The months key commercial legal stories that could affect your business

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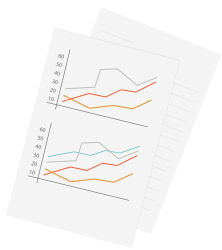
September 2017

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Our monthly round-up of key news and trend stories for in-house lawyers includes links to further recommended reading in Lexis®PSL. Non-subscribers can request a [free one-week trial](#) of LexisPSL to view this content.



Corporate & Commercial

Small Business Commissioner

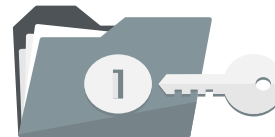
BEIS has announced that the new Small Business Commissioner (SBC) service should be available from October. The SBC will handle payment complaints made by UK small businesses (businesses with fewer than 50 employees) against larger businesses.

There are some exceptions to the complaints that it will consider. It will not, for example, become involved with whether a price is fair, but will deal with issues such as a larger business attempting to alter payment terms after a contract has been signed.

The [updated draft regulations](#) have been published. The SBC's decisions are not legally binding, but it does have the right to name and shame.

Further reading:

[Small Business Commissioner \(Scope and Scheme\) Regulations 2017](#)



Data Security

Data Protection Bill

The government has announced that it will create a UK Data Protection law to implement the new standards set by the General Data Protection Regulation (GDPR). The GDPR is directly applicable EU law but with Brexit on the horizon, the need for a local law is understandable.

The law will also deal with some of the permitted derogations from the GDPR, as follows:

- setting the minimum age to consent to data processing at 13
- allowing private businesses to process data about criminal convictions e.g. as part of an employer's background checks concerning a new employee
- allowing automated decisions (e.g. for credit checks)—provided there are suitable safeguards in place
- replicating the current exemptions for journalistic activity

- exempting research organisations from the requirement to respond to subject access requests where this would significantly hamper them from their objectives, and
- implementing a suitable regime for processing of personal information for national security or the 'prevention, investigation, detection or prosecution of criminal offences' for agencies such as the HMRC

Further reading:

[UK businesses must prepare for tougher data protection laws](#)



Employment

Employment tribunal fees were a bar against access to justice

The Supreme Court's recent decision in [R \(on the application of UNISON\) v Lord Chancellor](#) on employment tribunal fees is significant not only for employees but for all those denied access to justice. The court ruled that tribunal fees unlawfully interfered with the right of access to justice, and constituted indirect discrimination against women.

Further reading:

[Employment tribunal fees were a bar against access to justice](#)

[Employment Tribunals online service suspended following fees judgment](#)

[Supreme Court quashes unlawful employment tribunal fees regime](#)

Court of Appeal rules on multi-factorial approach to the public interest question

The question of whether a disclosure is in the public interest depends on the character of the interest served by that disclosure. It should serve a wider interest than the private or personal interest of the worker making the disclosure, taking into account all of the circumstances of the particular case.

Relevant factors may include the nature of the wrongdoing disclosed, the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed, the size and prominence of the alleged wrongdoer and the number in the group whose interests the disclosure served, according to the Court of Appeal in [\(1\) Chesterton Global \(2\) Verman v Nurmohamed](#).

Further reading:

[Whistleblowing: multi-factorial approach to the public interest question.](#)

Workers can be personally liable for whistleblowing detriment dismissals

There is no principled reason for excluding a worker from bringing a claim against a fellow worker for a whistleblowing detriment amounting to a dismissal (and no principled reason for the worker not being personally liable).

In addition, such awards against workers can be subject to the statutory uplift for a failure to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures, according to the Employment Appeal Tribunal (EAT) in [International Petroleum Ltd v Osipov](#).

Further reading:

[Workers can be personally liable for whistleblowing detriment dismissals.](#)

Holiday pay: pay for voluntary overtime normally worked must be included

Payment for voluntary overtime that is normally worked is within the scope of Article 7 of the Working Time Directive and therefore within the concept of 'normal remuneration' for the purposes of calculating holiday pay under regulation 13 of the Working Time Regulations 1998.

The worker does not have to be contractually 'required' to carry out that work for it to be included, according to Simler P in the EAT in [Dudley Metropolitan Borough Council v Willetts](#).

Further reading:

[Holiday pay: pay for voluntary overtime normally worked must be included.](#)



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