

## Issue 19 July 2018

### GDPR is here – are you compliant yet?

*This article is directed particularly to those “fortunate” individuals responsible for GDPR compliance in their organisations. It is anticipated that in answer to the question are you fully compliant, many would answer no—in common with most UK businesses.*

There is a very good reason for that—there is still much debate about what the General Data Protection Regulation (“GDPR”) means and, unfortunately, however many times you read it, its meaning will not become clear.

Comfort should be taken from the opening words of Elizabeth Denham, the Information Commissioner, at the ICO’s recent Annual Data Practitioners’ Conference—“The 25<sup>th</sup> of May is not a deadline. It is a beginning.”

First let us dispel some myths:

*The Information Commissioner’s Office (“ICO”), the body charged with enforcing GDPR in the UK will be fining those who are not fully compliant. They say that is not their role, which is to assist compliance rather than punish. In 2016/17 the ICO issued fines in 0.1% of cases they investigated under the Data Protection Act 1998 (“DPA ‘98”). Those will have been the most egregious cases.*

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### Employer responsibilities for volunteer workers

*There are some organisations that depend on volunteer workers to survive, such as charities and fundraising bodies. Employers need to be aware that there are certain regulations that must be met when utilising volunteer workers. Sarah Whitmore, Employment Partner, here explains what employers need to do to stay on the right side of the law, and how they can support charitable organisations in doing so.*

Do voluntary workers need an employment contract?



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Although voluntary worker will not be given a contract of employment, most voluntary organisations provide them with a ‘Volunteer Agreement’ which is similar to a job description.

This volunteer agreement should set out the following details:

- the organisation’s insurance cover,
- their equal opportunities policy,
- any health and safety issues the volunteer may encounter,
- training that will be received as a volunteer,
- confirmation of expenses that will be covered,
- the level of support and supervision that will be on offer, and
- how any disputes will be resolved.

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## The customer is always right..?

*The Consumer Rights Act 2015 ("the Act") which came into force on 1 October 2015 has been billed as the biggest overhaul of consumer rights in a generation.*

The Act consolidated eight pre-existing pieces of legislation, including rules in relation to consumer rights and remedies in respect of goods, services and digital content, and unfair terms in consumer contracts and consumer notices. The Act forms a major part of the government's reform of UK consumer law.

A large proportion of the Act is based upon pre-existing laws and largely updated and clarified existing law. However, there are some new areas of law which the Act introduced which will impact upon how businesses deal with consumers.

### Definitions within the Consumer Rights Act 2015

A "consumer" is defined in the Act as "an individual acting for purposes that are wholly or mainly outside of that individual's trade, business, craft or profession". It is, therefore, likely that the Act will have an impact upon most businesses who sell to individuals.

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## Employee theft; when to investigate

*According to a poll commissioned by office-furniture supplier Kit Out My Office, more than two-thirds of UK office workers have admitted to stealing from their employers and colleagues at some time during their careers. With the cost of stolen items averaging at £12.50 and an estimated 15 million workers having confessed to employee theft, the cost to UK employers adds up to a staggering £190 million each year. For employers, dealing with employee theft can be a difficult process; Employment Lawyer, Emma Kemp, explains what steps you should take if you suspect one of your workers is stealing from your business.*

### Suspicion vs Facts

Theft of any sort is a serious accusation to make. If, as an employer, you suspect an employee of theft then obtaining evidence is a crucial part of the procedure as this will help to prove your suspicions to be either right or wrong. Making an accusation of employee theft without substantial proof can result in employees pursuing an Employment Tribunal claim against you.



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### Conducting an Investigation

Many employers are unaware of the fact that they have a legal obligation to conduct an investigation should they suspect an employee of stealing. The investigation must be seen to be fair and based on evidence alone. Should the case reach an Employment Tribunal, in order for an employer to successfully defend an unfair dismissal claim, the presiding judge will need to see a demonstration of fairness and impartiality.

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## Implied terms in commercial property leases

*Landlords and tenants alike are being warned of the importance of clear drafting in relation to their commercial property leases following the recent ruling in Hipwell v Szurek.*

In this case, Ms Szurek rented premises from Mr Hipwell to be a café for new or expectant parents. The terms of the lease were slightly unusual in the sense that they made no reference to the exterior of the property, the plumbing or electrical installations, or which party would have responsibility for them. Instead, the lease contained an "Entire Agreement Clause", stating that the lease "constitutes the entire agreement and understanding of the parties relating to the transaction contemplated by the grant of this lease and superseded any previous agreement between the parties relating to the transaction."

Two separate fire incidents occurred approximately a year into Ms Szurek's lease; the first on 23<sup>rd</sup> March 2013 which caused damage to the circuit breaker. After this incident, Mr Hipwell confirmed he would provide Ms Szurek with copies of the electrical certificate that had been, allegedly, completed before her lease of the property so that she could use this for insurance purposes. Mr Hipwell failed to provide her with the documentation, and following the second incident on 19<sup>th</sup> April 2013, Ms Szurek gave notice to terminate her lease.

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## Mental Health Awareness Week; what employers need to know

*Mental Health Awareness Week was in May, and served as an opportunity for employers to revisit current practices and confirm if their policy and culture matched up to best practice. The taboo of talking about mental health has started to shift, following several high-profile campaigns, but many employers are keeping quiet and avoiding conversations with staff, even though they have legal responsibilities and it has been shown to improve the bottom line. Chris Greep, Employment Solicitor, explains here the responsibilities of employers and how having robust policies can support them when managing a person with poor mental health.*



Chris Greep

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According to the Health & Safety Executive, over 11 million working days are lost each year because of stress in the workplace. Research among workers by MIND, the mental health charity, found that a continuing culture of fear and silence around the topic was adding up to a big cost to employers, with over 20% reporting they had called in sick to avoid workplace stress, and 30% saying they did not feel they would be able to speak openly with their line manager about the issue. Such figures highlight the need for companies to have strategies focused on mental health as part of employee wellbeing, to tackle stress-related absence and to avoid potential complaints or even litigation from staff.

### Employers and mental health

Employers have a legal duty to protect employees from stress at work by undertaking a risk assessment and acting on it.

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### In Brief...

In each issue of our Commercial Brief, we will bring you brief references to recent legal developments that could be of interest to you, our readers.

This issue of the In Brief includes the following topics:

- **Commercial agents entitled to indemnity or compensation even where termination occurs during a contractual trial period**
- **Setting up a rival business whilst misusing another party's data constitutes breach of express good faith clause**
- **Cactus shop not guilty of passing itself off as tattoo parlour when using the word "Prick"**
- **Spam emails: Royal Mail fined £12,000**



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