

# Business Law Newsletter



**Professional Contract Drafting for Business**



**Winter '23-'24 Edition**

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## Editorial

### ANY CHANCE FOR A 'FREE LUNCH'?

It's easy to put off doing sub-critical, but potentially business-enhancing, stuff that costs money we think we can't afford.

So, I have been looking around to see if there are some free online tools (we are an online service business after all) that could help.

I have chosen one to highlight, but there are many other free-to-use tools out there. I list some of them at the end to prove that there is such a thing as a 'free lunch' for SME entrepreneurs who want to dine out online!

My choice is **intellectual property (IP)**. That sometimes hidden, but potentially valuable, asset that lurks within a business or that's evident, but perhaps less understood and appreciated, than it should be.

The Intellectual Property Office has an online [support tool](#) to help understand and manage business IP. Be sure to choose the relevant sector, which includes- IP for education: IP for research: IP for business: IP health check: Business lifecycle framework: B2B toolkit: IP for investment (seeking equity finance to grow).

The two sectors that I experimented with are:

**IP Healthcheck**- took about 5-10 minutes to complete and to download a helpful confidential report, which can be used to concentrate on identified issues; and

**B2B Toolkit**- took 15-20 minutes to navigate through the toolkit, which allows a download of a Business Lifecycle Framework containing loads of useful information and links.

The checklist sets out the major considerations ahead of collaborating with one or more businesses and guides you through the 6 Steps to Collaboration with some high-level questions. It also has some downloadable templates such as a Material Transfer Agreement and NDAs

#### **Other free online business tools for SMEs:**

Cyber Security- [National Cyber Security Centre](#)

Advice on Data Protection- [Information Commissioner's Office](#)

4 ways to grow your small business- [Companies House](#)

Help to Grow- business support- [gov.uk](#)

Government support for SMEs- [The Pitch](#)

Enjoy some free online dining out this winter.

*Jeremy Cama, Editor*

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## Advertising

### CMA LIMITS META'S USE OF AD CUSTOMERS' DATA

The CMA has announced that it has secured commitments from Meta which will prevent it from exploiting its advertising customers' data, meaning businesses, and ultimately consumers, are protected.

Competitors of Facebook Marketplace that use Meta's platforms to advertise their products and services can now opt out of certain parts of their ad data being used by Meta to improve its Marketplace.

Competitors will have more autonomy over their ad data and Meta has pledged to limit how it uses this data when developing its products. This means Meta cannot exploit advertising customers' data to give itself an unfair advantage when competing with products or services sold by those advertising customers.

The final commitments provided address the competition concerns identified by the CMA. *LexiNexis TMT weekly highlights- 9<sup>th</sup> November '23*

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## AI Corner

### GOVERNANCE OF AI

The Science, Innovation and Technology (SIT) Committee has published the government's response to the interim report on the governance of artificial intelligence (AI). Read the Government's response [here](#).

### BLOCK A SCRAPER BOT

Many AI platforms depend on large-scale 'scraping' of content from the internet. This activity, carried out by [bots](#), almost inevitably involves the acquisition of material that is subject to copyright.

This raises legitimate concerns over the use and possible infringement of copyrighted material and countries, including the UK, are looking at ways of controlling and regulating these scraper bots.

There are some steps that can be taken by website owners and managers to try to limit bots' access to online content. These include: CAPTCHAs, pay walling and IP address blocking. Also, advanced analytics that can be deployed which use sophisticated algorithms and machine learning techniques to analyse various behavioural patterns, network characteristics, and other digital footprints left by visitors on a website.

### AI SAFETY INSTITUTE

In his Autumn Statement, the Chancellor announced that the UK needs to work with international partners to ensure the safe development of advanced AI systems.

The government will be launching the first [AI Safety Institute](#), backed by an initial £100m investment and is also developing its wider regulatory approach to balance innovation and safe adoption, and intends on publishing its response to the AI white paper by the end of 2023. A pilot AI Regulatory Sandbox will also be launched in Spring 2024.

## AI CANNOT INVENT A PATENT

The Supreme Court unanimously dismissed Dr Stephen Thaler's appeal relating to two patent applications made by an artificial intelligence (AI) machine called DABUS, holding that the Comptroller-General of Patents, Designs and Trade Marks was correct to hold that the inventor for the purpose of a patent application must be a natural person, and that applications would be taken to be withdrawn at the expiry of the 16-month period specified in the Patent Rules 2007, SI 2007/3291, r 10(3).

Dr Thaler had listed an artificial intelligence (AI) machine he owned called DABUS as the inventor when making the patent applications. The court was asked to determine three principal issues: (i) does the term 'inventor' for the purposes of the Patents Act 1977 (PA 1977) extend to AI machines; (ii) will the owner of an AI machine be the owner of any invention devised by it; and (iii) was the Hearing Officer for the Comptroller entitled to hold that the two patent applications would be taken to be withdrawn.

*Lexis Nexis- News Analysis*

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## Autumn Statement- key announcements for SMEs

In the Autumn Statement 2023, on 22 November 2023, the Chancellor of the Exchequer, the Rt Hon Jeremy Hunt MP, announced a series of measures aimed at stimulating growth and investment in UK businesses, including the headline measure of making full expensing of capital allowances for corporation tax permanent.

### PERMANENT FULL EXPENSING OF CAPITAL ALLOWANCES

The Chancellor announced that full expensing of capital allowances will be made permanent in the Autumn Finance Bill 2023. Investments that companies make in plant and machinery will continue to qualify for a 100% first-year allowance for main rate assets and a 50% first-year allowance for special rate (including long life) assets.

### SMALL AND MEDIUM-SIZED ENTERPRISES (SME)

The Chancellor outlined the government's commitment to ensuring early-stage, innovative companies have access to the investment they require in order to grow and develop. Alongside other measures, the Chancellor announced that the government will legislate in the Autumn Finance Bill 2023 to extend the existing sunset clauses for the Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCT) from 6 April 2023 to 6 April 2035.

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To further support innovative businesses to help their growth and scale up, the government is extending the [British Business Bank's Future Fund](#). The Future Fund scheme assists UK-based companies by equal matching funding from private investors. The extension will provide at least a further £50m additional investment to the UK's most promising R&D-intensive companies.

Another key challenge facing SMEs is the cash-flow implications of late payments, which restricts small businesses from investing and innovating. Alongside the publication of the Payment & Cash Flow Review Report and action taken through the Procurement Act, the government pledges to introduce more stringent payment time requirements. From April 2024, firms bidding for large government contracts over £5m will have to demonstrate that they pay their own invoices within an average of 55 days, tightening to 45 days in April 2025, and to 30 days in the coming years.

### **ADDITIONAL TAX-RELIEF FOR RESEARCH & DEVELOPMENT (R&D) INTENSIVE LOSS-MAKING SMES**

The Chancellor announced that the rate at which loss-making companies are taxed within the merged scheme will be reduced from 25% to 19%. In addition, the threshold for additional support for R&D intensive loss-making Small and Medium Enterprises (SMEs) will be lowered to 30%. The government aims for this measure to benefit additional 5,000 businesses for the accounting period commencing on or after 1 April 2024.

Following a consultation launched on 13 January 2023, Hunt announced that the current R&D Expenditure Credit and SME schemes will be combined from April 2024 onwards, in an aim to simplify the process and provide additional support for UK companies to drive innovation.

### **SUPPORT FOR SMES**

In attempt to encourage prompt payments, the government has announced the introduction of a requirement for firms bidding for government contracts over £5m.

From April 2024, qualifying firms will have to demonstrate they pay their own invoices within an average of 55 days, tightening to 45 days in April 2025, and to 30 days in the coming years. This is intended to tackle the cash-flow implications of late payments, which hold small businesses back from investing and innovating. This goes alongside the publication of the [Payment & Cash Flow Review Report](#) and action taken through the Procurement Act 2023.

*Lexi Nexis- Autumn Statement Analysis*

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## Companies

### COMPANY LAW CHANGES COMING

Companies House has announced the proposed timing for implementation of certain changes to company law made by the Economic Crime and Corporate Transparency Act 2023 (ECCTA 2023). Implementation of the changes requires secondary legislation and so is dependent on Parliamentary timetables. It will not occur before 4 March 2024.

The changes expected to be implemented by Companies House on 4 March 2024 will increase its powers to query information and request evidence, allow it to carry out stronger checks on company names, introduce new rules relating to registered office addresses and registered email addresses and requirements for companies to confirm that they are being formed for a lawful purpose and will carry out lawful activities.

The changes will also allow the register to be annotated if information on it appears confusing or misleading, data matching to be used to identify and remove inaccurate information from the register and data to be shared with government departments and law enforcement agencies.

Read more about the changes [here](#).

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## Contract Tips for the Winter

**Consider Weather-Related Factors:** Consider the potential for disruption due to adverse weather conditions such as snowstorms, heavy rainfall, or freezing temperatures. You will want to check clauses in your contracts that address potential delays or performance issues caused by weather-related events and the consequences. Check especially if time for performance is of the essence, which imposes a higher level of requirement on you to meet time schedules and deadlines.

**Review Your Force Majeure Clauses:** Ensure that contracts include robust force majeure clauses that cover unforeseen events beyond the parties' control, including extreme weather conditions and cancellations of transport routes. Review these clauses carefully to understand the circumstances under which contractual obligations may be suspended or terminated.

**Plan for Remote Working:** With the possibility of inclement weather affecting travel and office operations, consider including provisions in contracts that address remote working arrangements. This may involve specifying communication channels, remote access to systems, and alternative means of performance.

**Monitor Your Supply Chain Risks:** Assess the potential impact of winter weather on your supply chain, including transportation delays, disruptions in delivery schedules, and

availability of raw materials. Also see above for weather-related factors and force majeure. Consider diversifying suppliers or establishing contingency plans to mitigate risks.

**Check your Insurance Coverage:** Review your business insurance policies to ensure you have adequate coverage for winter-related risks, such as property damage due to storms or business interruption caused by weather-related closures. Consider (with a broker if required) if additional coverage or adjustments to existing policies are necessary.

**Legal and Regulatory Compliance:** Stay informed about any changes to legal and regulatory requirements that may affect your business during the winter season, such as health and safety regulations related to cold weather working conditions or environmental regulations for snow and ice removal.

**Document Management:** Maintain accurate records of all contractual agreements, correspondence, and amendments related to winter contracts. Proper documentation is essential for resolving disputes and enforcing contractual obligations effectively.

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## **Data Transfers to the US**

The Information Commissioner's Office (ICO) has released guidance on completing a transfer risk assessment when transferring personal information to the US using the transfer mechanism under Article 46 of Retained Regulation (EU) 2016/679, the United Kingdom General Data Protection Regulation (UK GDPR). Article 46 of the UK GDPR lays out the 'appropriate safeguards' for making a restricted transfer of personal information to a recipient in the US.

UK GDPR prohibits restricted transfers of personal information outside the UK unless:

- the receiver is located in a third country or territory, or is an international organisation, or in a particular sector in a country or territory, covered by UK adequacy regulations, under Article 45 of the UK GDPR, also known as a data bridge;
- it is covered by an Article 46 transfer mechanism, including the IDTA, the Addendum and UK BCRs; or
- it is covered by one of the eight exceptions set out in Article 49 of the UK GDPR.

Read the ICO's guidance [here](#).

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## **Online Fraud**

The Home Office has announced a new voluntary agreement with leading technology companies, to reduce fraud on their platforms and services, which will be known as the Online Fraud Charter.

The Home Office has said that the Charter, the first agreement of its type in the world, will enable the government to join forces with companies including Amazon, eBay, Facebook, Google, Instagram, LinkedIn, Match Group, Microsoft, Snapchat, TikTok, X



(Twitter) and YouTube to better protect people across the UK from online scams, fake adverts and romance fraud.

Signatories agree to adopt the following measures within 6 months:

- ✓ **Blocking:** Deploy measures to detect and block fraudulent material
- ✓ **Reporting:** Have a simple and quick route to report fraudulent material
- ✓ **Takedowns:** Take action against fraudulent content and users straight away
- ✓ **Advertising:** Deploy measures to protect people from fraudulent adverts
- ✓ **Law Enforcement:** Have dedicated liaisons who will respond to law enforcement requests
- ✓ **Intelligence:** Sharing Engage with initiatives to quickly share information about frauds
- ✓ **Transparency:** Provide information about fraud risks and what is being done to address them
- ✓ **Comms:** Deliver simple messaging to support the public to recognise and avoid online fraud
- Horizon Scanning Contribute to horizon scanning exercises to stay ahead of the threat

Read the Fraud Charter [here](#).

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*Publisher: Atkins-Shield Ltd: Company No. 11638521*

*Registered Office: 71-75, Shelton Street, Covent Garden, London, WC2H 9JQ*

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