



# Public Sector England Training



# Contract Law Update

Clare Hardy, Senior Associate

# Change in Law

*Westminster City Council v Sports and Leisure Management Limited* [2021] EWHC 98 (TCC)

- Loss of revenue caused by restrictions to address pandemic
- How should this be allocated between the parties?

# Change in Law

- Contract terms included:
  - Contractor paid management fee to local authority
  - Adjustment to financial terms following local authority notice of change
  - Changes to contract arising from change in law
  - Restrictions on leisure facilities amounted to change in law

# Change in Law

- Court found:
  - Management fee not reduced to zero
  - Local authority not obliged to pay contractor
- Contract was based on standard terms but nuanced

# Force Majeure cases

2 Entertain Video Ltd v Sony DADC Europe Limited [2020] EWHC 972  
(TCC)

Totsa Total Oil Trading SA v New Stream Trading AG [2020] EWHC 855  
(Comm)

# Good Faith – express and implied

*TAQA Bratani Limited and Others v Rockrose UKCS8 LLC [2020] EWHC 58 (Comm):*

*Cathay Pacific Airways Limited v Lufthansa Technik AG [2020] EWHC 1789 (Ch)*

# Formation and Variation

- **Formation – be careful**

*Joanne Properties Ltd v Moneything Capital Ltd [2020] EWCA Civ 1541*

- **Variation – follow the rules**

*Kabab-Ji S.A.L (Lebanon) v. Kout Food Group (Kuwait) [2020] EWCA Civ 6*



# Interpretation

- Interpreting worked examples

*Altera Voyageur Production Ltd v Premier Oil E&P UK Ltd*  
*[2020] EWHC 1891 (Comm)*

# Notices provisions

## *Towergate Financial Limited v Hopkinson [2020] EWHC 984 (Comm)*

SPA clause - “The Purchaser shall not make any Claims against the Warrantors nor shall the Warrantors have any liability in respect of any matter or thing unless notice in writing of the relevant matter or thing (specifying the details and circumstances giving rise to the Claim or Claims and an estimate in good faith of the total amount of such Claim or Claims) is given to all the Warrantors as soon as possible and in any event prior to:

- the seventh anniversary of the date of this Agreement in the case of any Claim solely in relation to the Taxation Covenant;
- the date two years from the Completion Date in the case of any other Claim; and
- in relation to a claim under the indemnity ... on or before the seventh anniversary of the date of this Agreement.”

## *Dodika Ltd v United Luck Group Holdings Ltd [2020] EWHC 2101 (Comm)*



# Data Protection Update

Hayley Lewis, Senior Associate

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# Agenda

- How has data protection law in the UK changed now that the Brexit transition period has ended?
- What is the impact of the transition period coming to an end on data transfers to and from the UK?

# How has data protection law in the UK changed?

## Up to end of transition period

- GDPR
- Data Protection Act 2018 (supplemented GDPR)

## After transition period

- UK GDPR (but same rights, duties and obligations as under EU GDPR)
- Data Protection Act 2018
- Some organisations – ‘frozen’ GDPR
- Some organisations – may have to comply with both regimes

# How have personal data transfers been affected?

## Up to end of transition period – UK/EU

- UK continued to be treated as member state of EU for purposes of personal data transfers
- Personal data could be transferred freely between UK and EU and vice versa

## Up to end of transition period – EU/rest of world

- Transfers of personal data outside EU could only take place if:
  - Recipient country benefitted from European Commission Adequacy Decision; or
  - Data exporter and importer put an appropriate safeguard in place (e.g. SCCs); or
  - An exception applied (e.g. explicit consent)

# How have personal data transfers been affected?

## After transition period – EU to UK

- UK became ‘third country’
- But temporary ‘bridge’ is in place
- Draft adequacy decisions have been published
- But there are no guarantees...

## After transition period – UK to EU

- As UK is no longer part of EU, UK GDPR restricts data transfers outside UK
- But UK government has provisionally made an adequacy decision in favour of the EU

# How have personal data transfers been affected?

## After transition period – UK to rest of world

- UK government has recognised Adequacy Decisions already granted by European Commission
- If there is no Adequacy Decision in place:
  - Appropriate safeguard (such as SCCs); or
  - Exception

## After transition period – UK to rest of world

- If you are relying on an appropriate safeguard, do not forget about Schrems II
- Requirement for data transfer risk assessment
- You may need to put additional safeguards in place
- Or the transfer may be unable to take place...



# Conclusions

- Data protection law has a new name in UK but very little substantive change in the law – yet...
- Data transfers have been affected, but steps taken by EU Member States and UK government have minimised impact
- Keep your fingers crossed that the draft Adequacy Decisions are approved
- Remember the need for a data transfer impact assessments if you are relying on SCCs or other appropriate safeguards
- Organisations may need to make some changes to their Privacy Notices and ROPAs

# Any questions



# Contact details



**Clare Hardy**  
Senior Associate

+44 (0) 29 2039 1766  
clare.hardy@geldards.com



**Hayley Lewis**  
Senior Associate

+44 (0) 29 2039 1785  
hayley.lewis@geldards.com

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**Cardiff**

4 Capital Quarter,  
Tyndall Street  
Cardiff, CF10 4BZ  
Tel: +44 (0)29 2023 8239

**London**

80 Coleman Street  
London  
EC2R 5BJ  
Tel: +44 (0)20 7620 0888

**Derby**

Number One Pride Place  
Pride Park  
Derby DE24 8QR  
Tel: +44 (0)1332 331 631

**Nottingham**

The Arc  
Enterprise Way  
Nottingham NG2 1EN  
Tel: +44 (0)115 983 3650