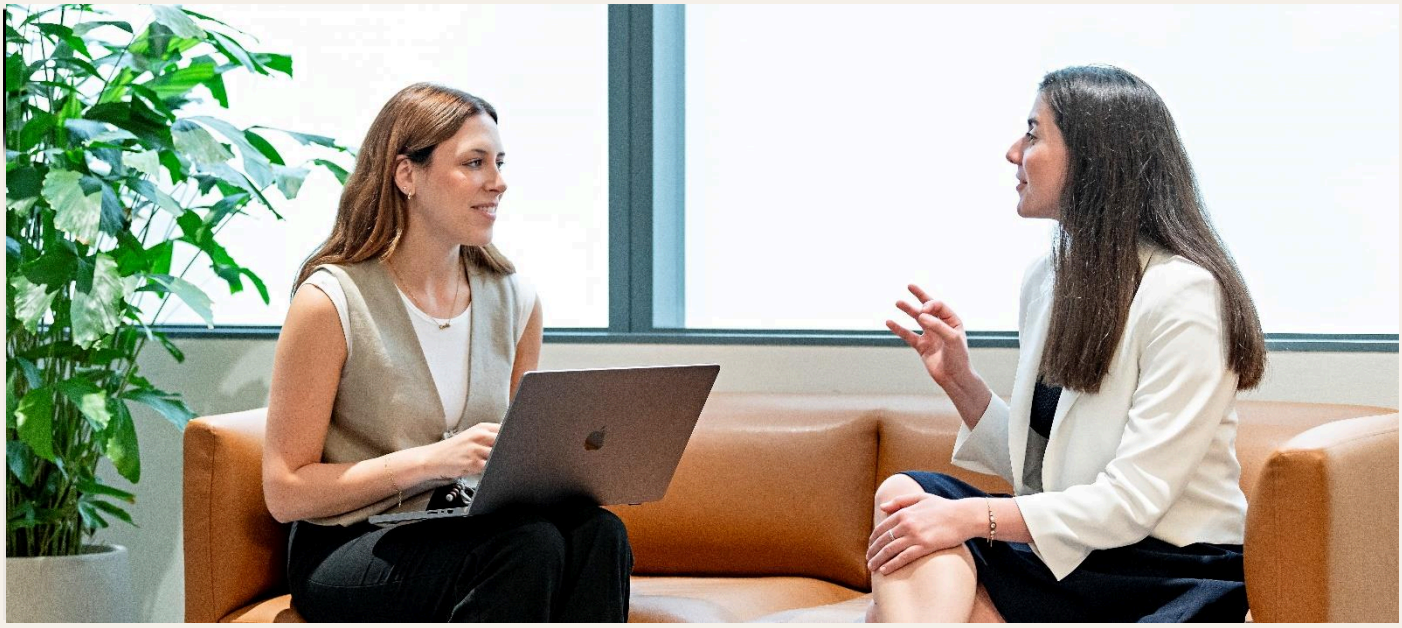
Spring Newsletter
April 2025



Letter from the Editor
Charlotte Hamilton

It has been a busy first quarter of 2025 in the corporate, commercial and employment sectors.

In this edition of our Newsletter, I have summarised the report issued by the Investment Security Unit of the Government (ISU) on the effectiveness of the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 (NARs). For businesses in the 17 sectors considered sensitive, the NARs dictate whether a notification must be made to the ISU for any proposed acquisition having considerable impact on the timing of an acquisition.

Becci Collins, Solicitor in our Employment team, has summarised the new right introduced by the Statutory Neonatal Care Pay (General) Regulations 2025 for parents to take neo-natal care leave, to receive statutory neo natal care pay and what steps employers should be taking now.

Ewan Ooi, trainee in our Banking team and **Samantha Aldridge**, paralegal in our Employment team discuss the importance of careful drafting in legally binding agreements and how it can protect businesses.

They summarise two cases highlighting how enforceability depends on the use of clear and precise wording and why legal advice is needed when drafting the terms of commercial agreements and employment contracts.

Please see the key dates section for upcoming corporate, commercial and employment law updates and as always, please be in touch with any queries.

We will be discontinuing this newsletter after this edition.
It will be replaced by our brand new newsletter: 'The Fineprint'.

The Fineprint

'The Fineprint' is designed for founders, entrepreneurs, and owner-managed businesses who are passionate about growing their ventures and staying informed about the latest industry trends and legal updates.

If you're a business owner, startup founder, or an entrepreneur looking to gain insights, practical advice, and inspiration, this newsletter is for you.

For more information please see here, You can opt out at any time.

Key findings from the governments review of the Notifiable Acquisition Regulations

By Charlotte Hamilton

Key findings:

- **Scope of the NARs**
- **Proportionality and minimising the impact on businesses**
- **Confidence on the applicability of the NARs**

On 20 December 2024, the Government, including the Investment Security Unit (ISU), reported on its first review of the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 (NARs). The NARs give the Government power to intervene in investments and other acquisitions of control in the UK economy to protect national security as part of the National Investments and Security Act 2021 (NSIA Regime).

Acquirers must notify the Government of certain acquisitions of control over entities that carry out particularly sensitive activities in 17 areas of the economy in the form of a 'mandatory notification', and acquirers must receive approval before completing the acquisition. For example, in the sector of Artificial Intelligence, research into artificial intelligence or developing or producing goods, software or technology that use artificial intelligence for the purpose of the identification or tracking of objects, people or events, advanced robotics or cyber security are considered sensitive activities. If a target entity carried these out the acquisition would be a notifiable acquisition requiring mandatory notification.

Key findings were collated from three Annual Reports spanning 4 January 2022 (the implementation date of the NARs) to 31 March 2024 and a Call for Evidence from stakeholders (including legal firms, trade bodies and Business Representative Organisations, banks or investors and businesses operating within the sectors referred to in the NARs). The full report is available online and we've summarised some key findings below.

Key finding 1: Scope of the NARs

- During the review period, 123 out of a total of 1,740 notifications were called in by the ICU for a full national security assessment, of which 37 were voluntary notifications.
- Of those 37 call-ins from voluntary notifications, 24 were asset acquisitions and so out of the scope of mandatory notification regardless of the scope of the NARs. This relatively low number of call-ins indicates that the scope of the NARs is appropriate and there are no significant gaps.
- Of the 123 notifications, only 14 were acquisitions that were not notified but were picked up by the Government's market monitoring. This also indicates that the scope of the NARs is appropriate and there are no significant gaps.
- In the Call for Evidence, stakeholders considered the scope of the NARs to be up to the Government to decide but suggested expanding the scope to include Generative AI in Artificial Intelligence, Life Science Research and Development and Pharmaceuticals in the Synthetic Biology area.

Key finding 2: Proportionality and minimising the impact on businesses

- During the review period, 4.9% of mandatory notifications and retrospective validation applications were called in. This suggests that a large proportion did not warrant being called in. The review did not consider this to indicate a disproportionate burden on businesses.
- All notifications that were not called in were cleared to proceed within the statutory time limit of 30 working days, generally placing relatively small burdens on businesses and investors.
- In the Call for Evidence, stakeholders considered the Government to be best informed on the kinds of activities that should be covered by the NARs. No particular sector needed to be removed. There was a suggestion that the sectors of Advanced Materials, Artificial Intelligence, Communications, and Defence could be further clarified. However, the Government confirmed the wide interpretation is intentional to enable them to review each notification and consider the particular facts and what might be a threat to national security.

Key finding 3: Confidence on the applicability of the NARs

- Only a small number of voluntary notifications were rejected because they should have been mandatory (18 out of 74 rejected forms). The guidance available to assist in understanding a "trigger event" for a mandatory notification and what falls in the remit of sensitive activities could be improved to help reduce this number and ensure that if parties are investing the time in making a notification that it is the correct notification.

- There were 39 recorded offences of completing a notifiable acquisition without approval. This is out of a total of 1,994 notifications received, indicating that businesses generally understand the NARs and their application.
- The Call for Evidence showed that 55% of respondents indicated they understood the activities that might come within the scope of the NARs. However, 25% said they did not, but this was not specific to the scope of activities and could refer to other aspects of the NSIA Regime, including understanding what constitutes a “trigger event”. Clarification and guidance on some activities within the scope of the NARs will be beneficial particularly in Advance Materials, Artificial Intelligence, Defence and Synthetic Biology due to the breadth and technical nature of these areas. This includes carving out sections for Semiconductors and Critical Minerals into their own sectors.

Summary of Key findings

Overall, the review found that the NARs were generally achieving their objectives, albeit with some room for improvement. Having assisted clients with notifications under the NSIA Regime, we would agree with the key findings.

However, it is imperative that an acquisition within the scope of the NARs is identified early so that full and accurate information can be submitted to the ICU to consider and review in a timeframe that does not negatively impact the transaction.

Please be in touch if you would like to discuss a potential acquisition that you think may come within the scope of the NARs or if you have any further queries regarding the NSIA and NARs.

Careful drafting of contracts: why does it matter?

By Samantha Aldridge and Ewan Ooi

Recent judgements in the Court of Appeal and High Court have shown how the precise wording of a contract will be closely examined in a dispute and the financial consequences of getting it wrong.

Read on to find out how the wording of an exclusion clause prevented EE from bringing a claim of what they considered to be worth £25 million against Virgin Mobile. We also consider the common mistakes and eventual unenforceability of poorly considered restrictive covenants and the impact they can have for an employer.

Exclusion clauses and the case of EE Ltd v Virgin Mobile Telecoms Ltd [2025] EWCA Civ 70

In a recent case between EE Ltd ("EE") and Virgin Mobile Telecoms Ltd ("Virgin Mobile") the Court of Appeal delivered a significant judgment concerning exclusion clauses in commercial contracts.

Exclusion clauses are used to limit or remove a party's legal liability or obligations under the contract. In this case, the Court of Appeal upheld the exclusion clause contained in a Telecommunications Supply Agreement ("TSA") between the parties, preventing EE from claiming approximately £25 million in lost revenue from Virgin Mobile. Under the TSA, EE provided exclusive access to its mobile network for Virgin Mobile's 2G, 3G and 4G services during a specified period. The agreement contained an exclusion clause that stated that neither party shall have liability to the other in respect of "anticipated profits".

In 2019, with the launch of 5G services, Virgin Mobile partnered with Vodafone to provide 5G services and commenced migrating existing customers to Vodafone's network. EE claimed that this migration breached the exclusivity provision contained within the TSA, resulting in significant revenue loss.

Virgin Mobile fully denied EE's claim and stated that it was prohibited by the exclusion clause contained in the TSA. The verdict rested on the definition of "anticipated profits" and its effect on the exclusion clause.

The Court had to assess whether, upon true construction of the exclusion clause, the phrase "loss of anticipated profits" included EE's claim of "expectation losses". The Court emphasised that the language of the exclusion clause was clear and unambiguous, reflecting the parties' intention to allocate risks and liabilities explicitly.

The enforceability of restrictive covenants in employment contracts

The High Court in Quilter Private Client Advisers Ltd v Falconer [2020] EWHC 3294 (QB) ruled that a non-compete covenant included in an employment contract, when looked at in its entirety, was wider than reasonably necessary to be enforceable. The Court also ruled that the non-dealing and non-solicitation clauses were also void in the circumstances.

Non-compete covenants are designed to restrict a former employee from working for a competitor for a period of time following the termination of their employment.

In this case, there were carve-outs to the non-compete clause which allowed the employee to take up employment in certain geographical areas and the restricted period was limited to nine months. Nevertheless, the scope was held to be wider than reasonably necessary to protect the employer's legitimate business interests as the confidential information to which this particular employee had previous access was limited to a much smaller geographical area than contained in the clause.

The Court identified several factors which led to the restriction being unenforceable, including the employee's length of service, the notice period, the likely length of time it would take the employer to shore up its relationships with clients following the departure of an employee who held influence over the client relationship, and others. Traditionally, non-compete covenants are harder to enforce as they are the most onerous of post-termination restrictions.

There are other less onerous forms of protection which could provide sufficient safeguarding of an employer's legitimate interests, such as non-solicitation, non-deal and non-poach covenants. That said, non-compete covenants are still widely used and, contrary to common misconception, they are likely to be enforceable in certain circumstances, particularly when carefully tailored to address the particular threat the employee poses to the particular business, taking into account the employee's access to confidential information and influence on key relationships.

Key takeaways

Commercial contracts

The EE v Virgin Mobile ruling emphasises the critical role of clear and precise drafting in commercial contracts, particularly concerning exclusion clauses. It highlights that courts are inclined to enforce clear contractual terms as written, especially when negotiated between sophisticated parties. Businesses should carefully consider the language used in exclusion clauses to ensure it accurately reflects their intentions and adequately addresses potential risks.

Employment contracts

The ruling in Quilter Private Client Advisers v Falconer [2020] highlights the fact that employment contracts must not only contain the statutory terms required under the Employment Rights Act but importantly they should also contain terms tailored to the role of the employee, the industry, and the business to provide the protection required by employers. Our Corporate and Commercial or Employment teams is regularly instructed to draft bespoke employment contracts to best protect employer's business interests and seek remedies for potential breaches of post-termination restrictions contained in employment contracts, Share Purchase Agreements and Shareholders Agreements.

How we can help

If you have any questions about your commercial agreements or employment contracts, or if you need assistance regarding a dispute relating to an existing agreement, please contact a member of our Corporate and Commercial team or Employment team.

A new right for employees under the Neonatal Care (Leave and Pay) Act 2023

By Becci Collins

From 6 April 2025, parents can the Statutory Neonatal Care Pay (General) Regulations 2025, introduce a new right for parents to take up to 12 weeks' leave if their baby requires neonatal care, provided they meet the qualifying criteria. Parents may also be eligible for statutory neonatal care pay, depending on their length of service and pay. See below for some of the things employers should be doing to prepare for this new legislation.

Eligibility requirements

To meet the eligibility requirements, the baby must be born on or after 6 April 2025, and the employee must be one of the following:

1. A parent of the baby;
2. An intended parent of a baby born via surrogacy; or
3. Partner to the baby's mother (who is unrelated and living with them in an enduring family relationship) with the expectation they will have responsibility for raising a child.

The same principles apply in relation to neonatal care of a baby who is adopted.

Parents of babies admitted to neonatal care for seven continuous days or more in the first 28 days of their life will be entitled to 12 weeks of neonatal care leave. 'Neonatal care' is medical care which falls under one of three categories:

1. Medical care received in a hospital;
2. Medical care received following discharge from a hospital under the direction of a consultant (which includes ongoing monitoring and visits by healthcare professionals); or
3. Palliative or end-of-life care.

Neonatal care leave

Eligible employees will be entitled to this right from day one of their employment. The 12-week entitlement is in addition to any other leave to which the parent may be entitled. Parents will be entitled to one week's leave for each week the baby receives uninterrupted neonatal care.

Eligible parents will be required to take neonatal care leave within the 68 weeks immediately following the birth of the baby. Whilst on neonatal care leave, employees:

1. Remain entitled to the same terms and conditions of employment, except for pay;
2. Are entitled to return to their original role; and
3. Must not suffer a detriment for taking neonatal care leave (including dismissal, which would be automatically unfair).

Eligible parents who have taken six weeks of continuous neonatal care leave also benefit from extended redundancy protection rights.

Neonatal care pay

Employees become eligible to receive statutory neonatal care pay on completion of 26 weeks of service (ending the 15th week before the week in which the baby is due), provided they have average earnings of at least £123 a week. This mirrors the entitlement to maternity and shared parental leave pay.

The rate of neonatal pay is yet to be confirmed.

How employers can prepare for this change

Employers should prepare for the introduction of neonatal care leave and neonatal care pay, by:

- Ensuring they are familiar with the new rights.
- Implementing a clear policy that sets out the statutory rights, as well as any enhanced rights you may offer which should also explain the notice requirements and any further assistance the company shall provide.
- Reviewing current existing policies and consider how the new rights interacts with other parental leave entitlement.
- Providing training to HR staff on family leave, to ensure that they understand how to best provide and implement the right in company policies and practices.
- Being observant of their data protection obligations by adhering to the employee's wishes regarding the communication requested around the leave.
- Liaising with payroll providers to ensure they can accommodate neonatal payments.

Corporate and Commercial updates

Please consider how the changes below may affect your business. If you have any questions or require further guidance or assistance from our experts, please let us know.

January 2025

As of January, individuals can now apply to supress personal information from historical documents on Companies House such as their home address, day of birth, signatures and business occupation.

March 2025

Individuals may voluntarily verify their identity directly with Companies House or via an Authorised Corporate Service Provider (ACSP). Identity verification will become compulsory for all new and existing directors, shareholders and members of LLPs and so it is advisable to do this as soon as possible to avoid missing the compulsory deadline.

Spring 2026

From Spring next year, Limited Partnerships must file the following information through an ACSP:

- partners' names, date of birth and usual residential address;
- identity of general partners;
- a registered office address in the UK;
- a standard industrial classification (SIC) code; and
- an annual confirmation statement.

Please see our initial report on the objectives of ECCTA in our December issue on our website. We will continue to provide updates as they come into effect. Now it is time to start taking action to verify the identity of the individuals behind your organisation.

Employment Updates

Please consider how the changes below may affect your business. If you have any questions or require further guidance or assistance from our experts, please let us know.

1 April 2025

New National Minimum Wage (NMW) rates will take effect which take account of the ongoing cost of living crisis and inflation trends projected up to March 2026.

The National Living Wage, for those aged 21 and over, is set to rise to £12.21 p/h. The NMW will rise to £10 p/h for those aged 18-20 and to £7.55 for those under 18 or carrying out an apprenticeship.

6 April 2025

Employers National Insurance contributions will increase from 13.8% to 15%.

The threshold, which is the level at which employers start paying contributions, will decrease from £9,100 to £5,000 per year.

For employees who qualify for statutory sick pay, this will increase from £116.75 to £118.75 per week.

The prescribed statutory rates for those who qualify for maternity pay will increase from £184.03 to £187.18 per week.

Other family-related statutory pay will rise in line with this, including paternity pay, adoption pay, shared parental leave and parental bereavement pay.

Corporate, Commercial and Employment team Highlights from Q1

1. Advising a client in relation to an employee's threat to seek significant compensation via a meritless tribunal claim by sending a strongly worded response which resulted in a swift low value, commercial agreement, including a waiver of employment-related claims.
2. The completion of several acquisitions for an existing client in the healthcare space with a total deal value of over £3.5m.
3. James Lyons, Corporate and Commercial Director appeared on the panel at the Legal 500 Corporate M&A Conference.
4. Completion for individual investor clients of an investment by subscription for alphabet shares into a publication business.
5. Advising clients on a commercial contract for a proposed research and development project.
6. Successfully securing undertakings from an ex-employee and shareholder in relation to breaches of restrictive covenants and obligations under their employment contract, a Share Purchase Agreement and Shareholders' Agreement.
7. Advising a client on the dismissal of a senior executive on the grounds of fraud, gross misconduct, harassment.
8. Preparing sale documentation relation to the sale of a tenanted commercial building and the transfer of employment of its premises manager by operation of law as a consequence of the operation of the TUPE regulations.
9. Guiding restructuring strategy and implementing redundancy consultation and termination of employment for an innovation consultancy business.
10. Drafting commission plans and a comprehensive staff handbook containing 57 employment policies for a group of marketing companies.

Contributors

Charlotte Hamilton, Associate

Charlotte undertakes a range of transactional and non-transactional corporate work including mergers and acquisitions (including for those employing buy-and build strategies), joint ventures, corporate reorganisations, commercial agreements and general company law matters. Through her earlier banking experience, she also has a deep understanding of debt and structured finance and is well-placed to advise on company and business acquisitions funded by debt.

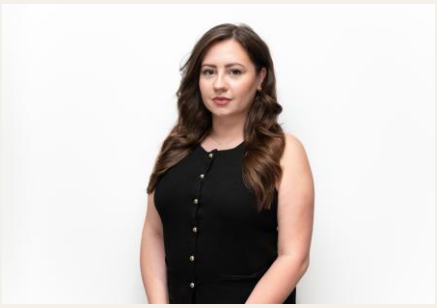
Ewan Ooi, Trainee Solicitor

Ewan joined Lawrence Stephens' Dispute Resolution team as a paralegal in October 2022. He is now a trainee solicitor in the firm's Banking team, having completed seats in the Dispute Resolution and Corporate and Commercial teams.

Ewan graduated with a law degree from the University of Bristol in September 2020, before going on to complete the Bar Practice Course with LLM in 2021.

Samantha Aldridge, Paralegal

Samantha has experience of advising clients on a wide range of employment law issues throughout the life cycle of the employment relationship and particular experience working with SRA regulated firms and employees. Her practical experience of working in human resources has provided her with valuable insight of the challenges faced by directors and HR managers as well as the rights of individuals.



Becci Collins, Solicitor

Becci joined Lawrence Stephens in September 2024, having previously worked at employment boutique firms in the city. She represents businesses and individuals on contentious and non-contentious matters spanning the breadth of employment law, including (automatic) unfair dismissal, discrimination, and whistleblowing.

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