In-House Counsel Day

11 November 2025

Wi-Fi

Wi-Fi: MDR-Guest
Password: Innovation25!

In-House Counsel Hub

Speakers

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A difference of opinion…

Mishcon de Reya

It's business. But it's personal.

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The big debate

Conflicting views

Everyone has the right to:

— freedom of belief / conscience / religion
— freedom of expression

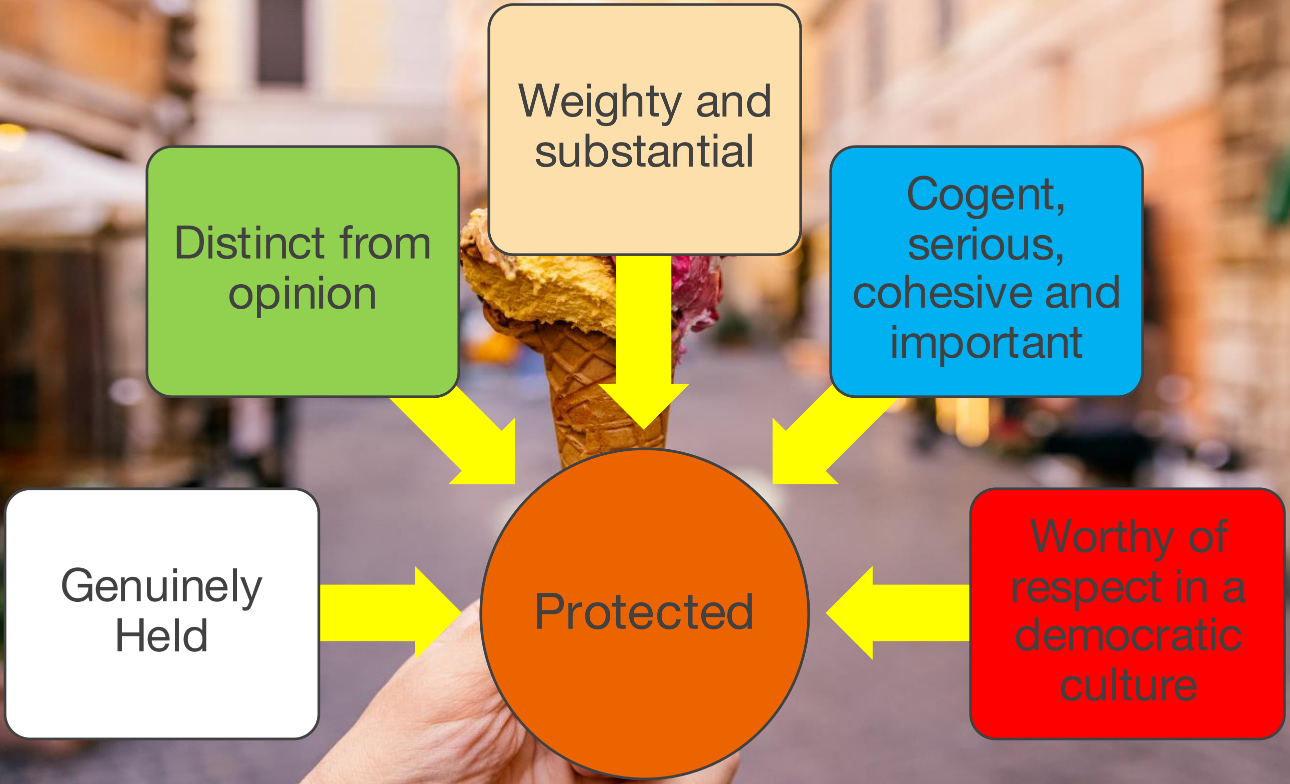
But both rights are qualified

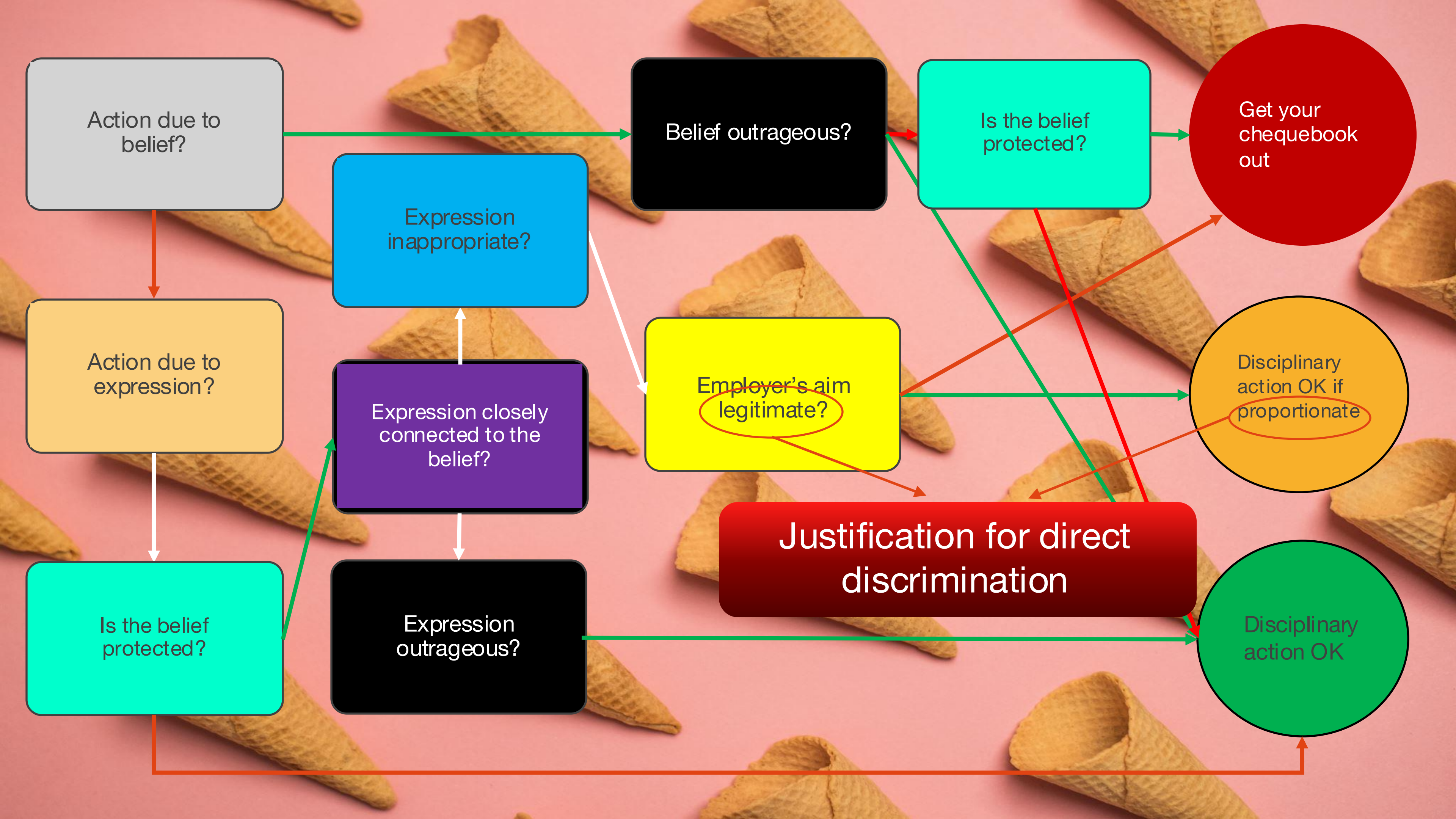
The right to freedom of belief in human rights law includes the right to manifest that belief

You bring claims under the Equality Act in the Employment Tribunal, not under human rights law

The Equality Act 2010 makes religion or belief a protected characteristic (but note it does not say that manifestation is also protected)

The Grainger Criteria





Action due to belief?
Belief outrageous?
Is the belief protected?
Get your chequebook out
Expression inappropriate?
Action due to expression?
Expression closely connected to the belief?
Employer's aim legitimate?
Disciplinary action OK if proportionate
Justification for direct discrimination
Is the belief protected?
Expression outrageous?
Disciplinary action OK

Speaker

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Thank you.

Fail to prepare, fail to prevent:

The new corporate criminal offence of failing to prevent fraud

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Thank you.

The scoop on greenwashing:

What every in-house counsel needs to know

Dan Gray
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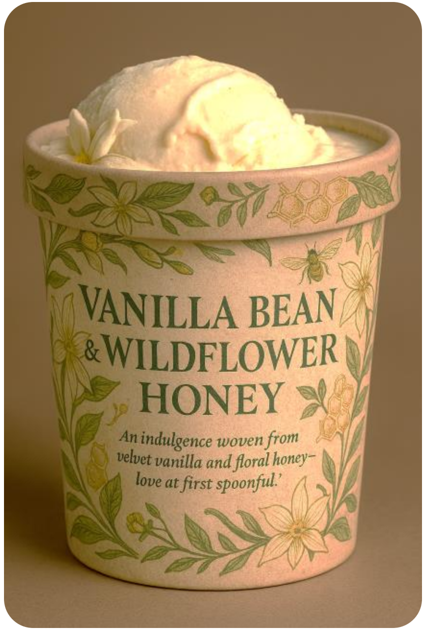
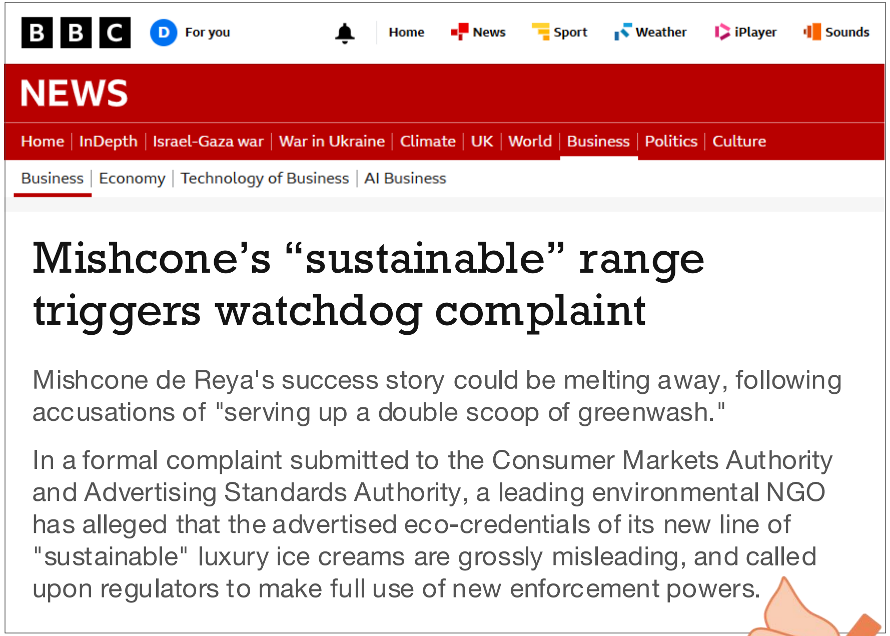
Agenda

— What has happened
— The evolving regulatory context
— Assessment of Green Claims Code compliance
— The essential problem
— How to fix it
— Three ways we can help

Then...



Now...



Mishcone's "sustainable" range triggers watchdog complaint

Mishcone de Reya's success story could be melting away, following accusations of "serving up a double scoop of greenwash."

In a formal complaint submitted to the Consumer Markets Authority and Advertising Standards Authority, a leading environmental NGO has alleged that the advertised eco-credentials of its new line of "sustainable" luxury ice creams are grossly misleading, and called upon regulators to make full use of new enforcement powers.

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The shifting calculus

CMA Green Claims Code

ASA BCAP and CAP Codes

Collectively establish the regulatory framework for ensuring that environmental claims are clear, truthful, fair and substantiated.

Digital Markets, Competition and Consumers Act (DMCCA)

Empowers the CMA to directly fine companies up to **10% of global turnover** for breaches of consumer law, including misleading environmental claims

Economic Crime and Corporate Transparency Act (ECCTA)

Introduces the possibility of companies and associated persons being held **criminally liable** for failure to prevent misleading or unsubstantiated claims

Our compliance review

Claims must be truthful and accurate
Claiming a product is 'organic', when only limited components are, is misleading

Claims must not omit or hide important information
- Prominently advertising locally sourced milk, while (for example) failing to disclose that vanilla is air-freighted from Madagascar, would be misleading
- If packaging requires industrial composting facilities, not specifying this would be considered misleading

Claims must consider the full life-cycle
Misleading if negative impacts of other aspects of the product life-cycle are ignored (e.g., cold chain transportation)

Claims must be clear and unambiguous
Without clear explanation of what they mean, vague terms like 'eco-friendly' are likely to be misleading

Claims must be fair and reasonable
Claims like 'greener' are unlikely to be fair and meaningful, unless they make clear the basis for comparison

Comparisons must be substantiated
Claims must be supported by robust, credible, relevant and up-to-date evidence (e.g., comparative analysis of environmental impacts of material inputs, production processes and disposal)

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The essential problem

Heightened scrutiny

\+ Sharper regulatory focus

\+ New enforcement powers

\+ Possible criminal prosecution

= **Businesses can't afford to be checking claims after the fact**

How to fix it

Process stage	Objective	Key output(s)
1. Campaign ideation	Integrate compliance awareness from the get-go	Early risk register for claims requiring substantiation
2. Discovery	Define and scope each claim	Detailed ‘claim map’ showing each proposed statement, its scope and applicable standards
3. Evidence gathering	Collect, review and validate supporting data	Evidence pack linking each claim to relevant evidence and applicable Code principles
4. Gap analysis	Identify where claims fail to meet substantiation thresholds	Gap analysis with RAG status (green = substantiated; amber = needs work; red = high risk)
5. Recommendations	Provide clear, actionable guidance for compliant publication	Report with recommended corrective steps
6. Monitoring and review	Keep claims accurate over time and prepare for potential scrutiny	Ongoing compliance log; updated internal guidance and training

Three ways we can help you

1

Staying abreast of regulatory updates and developing best practices

2

Establishing robust governance and internal controls to minimise greenwashing risk

3

Preparing and submitting complaints to address the misleading claims of competitors

Speaker

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Thank you.

Speaker

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Value Added Tax Act 1994

Zero Rating – Schedule 8 – Group 1 - Food

Food is zero-rated if:

It is food of a kind used for human consumption

0%

Except:

1. *Where it is supplied in the course of catering; or*
2. *Where it is food in any of the listed excepted items*

20 %

Unless:

It is also comprised in any of the items overriding the exceptions

0%

Except:

Where a <u>note</u> applies confirming different treatment

20%

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Value Added Tax Act 1994

Zero Rating – Schedule 8 – Group 1 - Food

Other considerations outside the legislation:

- HMRC guidance
- Case law
- Mitigation and optimal tax position

Component parts

+

+

=

0% 0% 0% 20%

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Ice cream

- Food of a kind for human consumption = 0%
- If to be eaten on premises = 20% VAT always
- But - Ice Cream is an *excepted item:*

  Item No 1*: Ice cream, ice lollies, frozen yogurt, water ices and similar frozen products and prepared mixes and powders for making such products.*

- And not subject to an override

So ALWAYS = 20% VAT

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Proposed New Product Lines for Christmas

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Candy Canes

- Food of a kind for human consumption = 0%
- If to be eaten on premises = 20% VAT always
- But – Candy canes almost certainly an *excepted item:*

    Item No 2: *Confectionery*

- And not subject to an override

So ALWAYS = 20% VAT

Gingerbread Man (or woman)

Is it "confectionery" under excepted item no. 2?

Full definition:

"Confectionery", <u>not including:</u>

- *<u>cakes or biscuits</u> other than biscuits wholly or partly covered with chocolate; or*
- *some product similar in taste and appearance*

But, although no override, the notes effectively extend the exception and confuse the issue with biscuits:

<u>Note 5:</u>

> *For the purposes of item 2 of the excepted items "<u>confectionery</u>" <u>includes</u> chocolates, sweets and <u>biscuits</u> […] and any item of sweetened prepared food which is normally eaten with the fingers"*

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HMRC Guidance?

A

B

C

D

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MEGA
marshmallows
Deliciously huge and fluffy marshmallows, perfect for

Frozen Yoghurt

- Frozen yoghurt also listed as an *excepted item:*

  ***Item No 1**: Ice Cream, Ice Lollies, Frozen Yoghurt etc…..*

- But – possibly subject to an override

- Overriding exception 1 – "*Yoghurt unsuitable for immediate consumption when frozen*"
- What exactly is meant by "frozen"?

So ALWAYS = 20% VAT?

Or potentially = 0% VAT?

How is this relevant to me?

Wider application:

- Any element of business where there is a difference in VAT rate
- Mixed v Composite Supplies
- Industries with perceived tax avoidance:
    - Labour Supplies
    - Construction industry
    - Carpet fitters
- Property and construction legislation generally
- Medical and optical supplies
- Credit facilities
- Insurance industry and add-ons
- Other indirect taxes

Risks / Rewards:

- Disputes with HMRC
- Penalties
- Interest
- Directors' liabilities
- "*Freezing*" injunctions
- Winding up petitions
- Challenges to HMRC's published guidance.

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Speaker

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Thank you.

From panic to plan: what to do when hackers strike

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Joe Hancock
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Monday Morning

From: Barney James <Barney.James@icecreamsupplier.com>
Sent: Monday, March 24, 2025 03:15 PM
To: Patrick Wood <Patrick.Wood@MishCone.org.uk>
Subject: Accounts Payable shared the file "INUK00024325 " with you
Importance: High

CAUTION: This email originated from an external source. Think before you Click!

Hi Patrick

I received the email below from Accounts Payable that feels like a phishing email. I have flagged this internally to the cybersecurity team but wanted to let you know as well.

Thank you

Kind regards

Barney

BARNEY JAMES
Credit Controller
T +44 (0) 235 511429
W www.icecreamsupplier.com

Options

The IT team report there has potentially been a data breach involving an employee inbox.

A) Review the mailbox and ascertain whether an ICO report is needed.
B) Trigger your Cyber Incident Response plan.
C) Wait and see if anything else occurs.

Ransom or hoax?

From: Evilpr0ton@protonmailcom
Sent: 25 March 2025 12:53
To: media@MishCone.org.uk
Subject: Attention - We have your financial documents

Hello,

Your financial documents are in our possession. We've infiltrated your systems and extracted everything we need. The data is locked down on our end.

To contact us, you need to will need to use TOR browser and use this link - https://xir242nunyist4d7ksfnfmhnjx4gvqbuzo7eax4o3abqjesbxjshh4qd.onion/

We demand a payment of 7 Bitcoin to the wallet address within 5 days. If you fail to comply, we will release this compromising information on our leak site , which can be accessed through the following link - http://incblog7vmuq7rktic73r4ha4j757m3ptym37tyvifzp2roedyyzzxid.onion/

Once the payment is confirmed, we will delete the data and ensure your privacy is restored.

Attempting to involve law enforcement or ignore this message will only lead to the immediate distribution of the data.

Bitcoin Wallet Address: 507f1f77bcf86cd799439011

This is your only chance to prevent the humiliation and damage to your company's reputation. Make the payment promptly to avoid irreversible consequences.

Sincerely

Evilpr0ton Team

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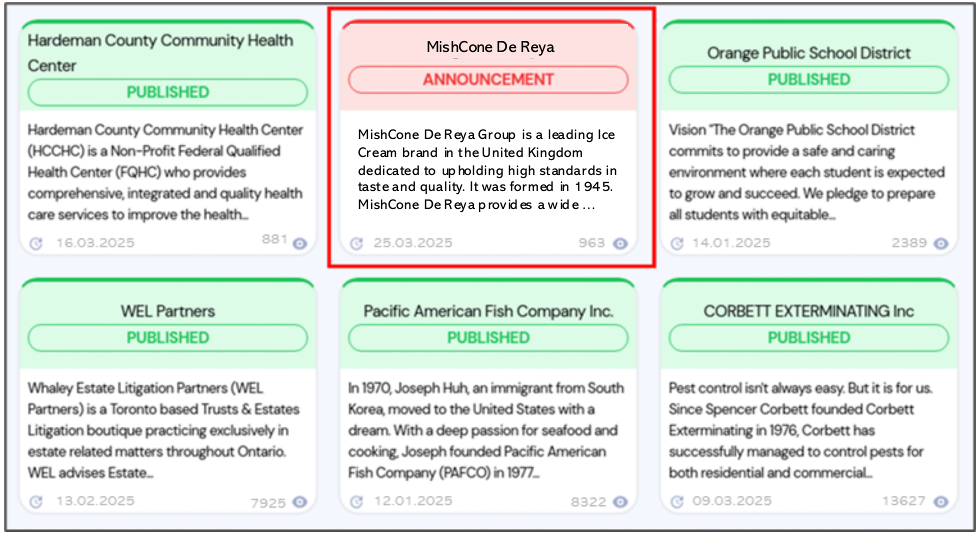
Options

The group is real and has a history of publishing breaches.

A) Consider mitigating actions such as an injunction.
B) Contact the attacker.
C) Make arrangements to pay the ransom.

Semi-public Issue



Options

MishCone is on the darkweb, and the attacker claims to have a large amount of data with no specifics.

A) Notify suppliers and customers.
B) Notify staff.
C) Notify the Information Commissioners Office.
D) Notify Insurers.

About to be cut-off?

The supplier gets back in touch and is getting concerned. You also now understand the data was uploaded to a filesharing site.

From: Barney James <Barney.James@icecreamsupplier.com>
Sent: Monday, March 24, 2025 03:15 PM
To: Patrick Wood <Patrick.Wood@MishCone.org.uk>
Subject: Accounts Payable shared the file "INUK00024325 " with you
Importance: High

CAUTION: This email originated from an external source. Think before you Click!

Hi Patrick

Our cybersecurity team has asked me to follow-up on this, any news?

Thank you

Thank you

Kind regards

Barney

BARNEY JAMES
Credit Controller
T +44 (0) 235 511429
W www.icecreamsupplier.com

Options

A) Brief the supplier in confidence.
B) Ignore it.
C) Contact the filesharing site to discover what was uploaded.

Debrief

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Thank you.

Change management - the (raspberry) ripple effect

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Thank you.

Reputation Response: an interactive crisis scenario

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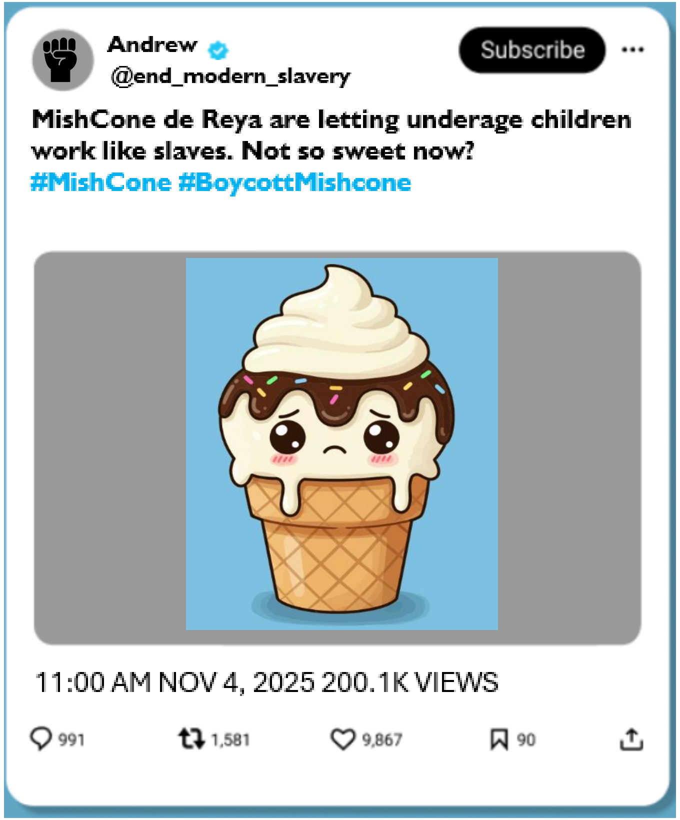
Crisis



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Immediate Response: The First 24 Hours

— **Activate your crisis team** – Opps/Distributions Manager, Executive leadership, Legal, Comms.

— **Fact-finding** - Contact the factory immediately. Basis of the allegation?

— **Cyber intelligence** – Who/what is the source? What audience do they have?

— **Social media monitoring** – How fast is it spreading, where?

— **Internal comms** – Who needs to know what, when?

— **Holding statement?** When/how to react publicly?

— **Legal assessment** – Defamatory? Defensible? Confidential information leaked?

Investigation

- MishCone commissions an **Independent investigation.**
- **Scope?** Conditions, hiring, wages, hours, health and safety.
- **Timing?** Estimated 7-10 days.
- **Legal privilege** – to protect confidentiality, need to keep circle small.
- Parallel **internal review** of supply chain due diligence.
- **Communicate with key stakeholders**: Customers, media, employees, investors, suppliers.

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Legal Risks and Levers

- **Defamation** analysis (where investigation ongoing)
- **Modern Slavery Act** – compliant?
- **Contractual breach(es)**? Check **supplier agreement terms.**
- Court order to **unmask poster**?
- **Direct engagement** with primary publishers and/or social media platforms?

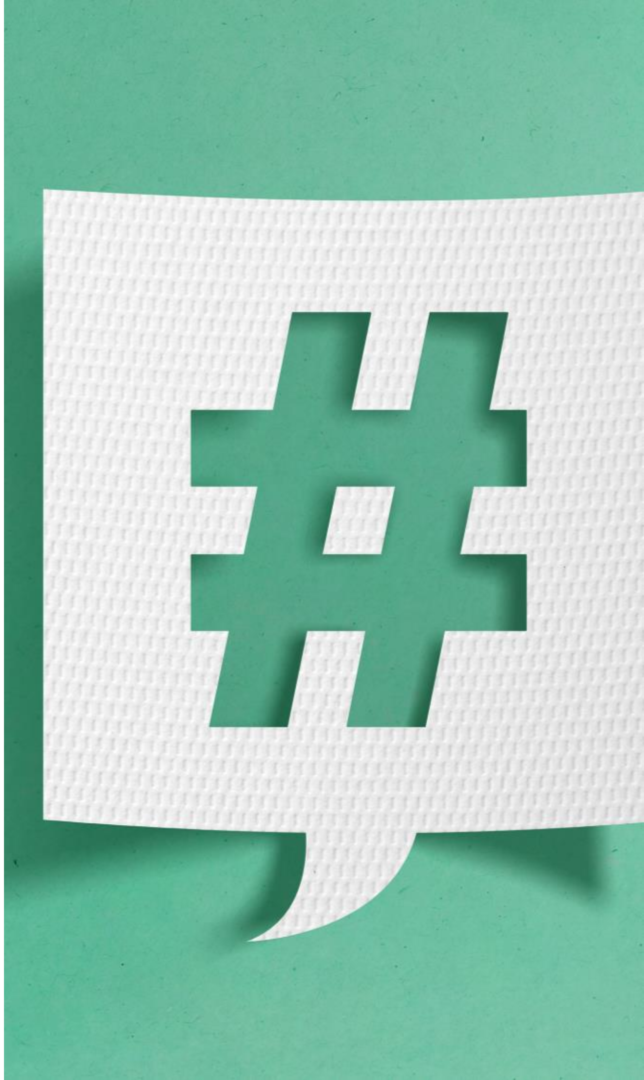
Ongoing Measures

- **Control the narrative** – MishCone has a strong track record and core values; this appears to be an isolated incident – we have been let down.

- **Direct engagement with key communities** – work with PR to craft a consistent message.

- **Amplify positive content** – new initiatives re ethical sourcing? Too soon?

- **Brand/sentiment monitoring** – adjust response as needed.



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Resolution

— The investigation highlights supplier and MishCone (DD, monitoring) failings. An unhappy worker leaked photos and supply chain agreements.

— How does that affect the legal analysis?

— Decide immediate action/remedial steps.

— Agree longer term changes/commitments.

— **COMMUNICATION**. How transparent should MishCone be? Key messages? Apology?

Proactive Reputation Protection

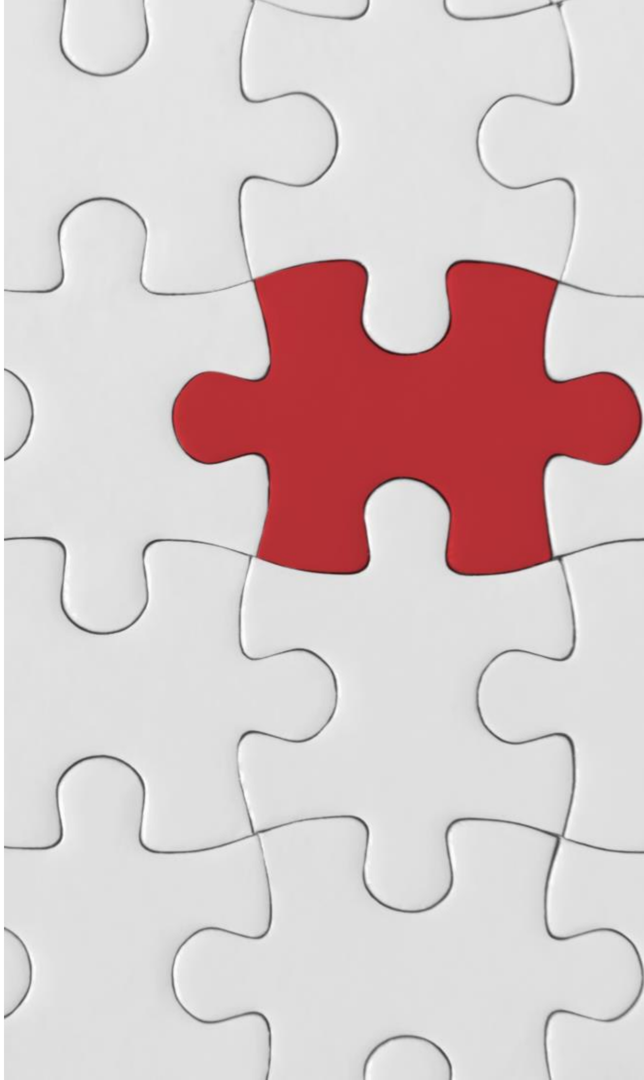
— **Lessons learned from *this* crisis** – make the changes.

— **Rebuild trust** through comms and transparency.

— **Get ready for the *next* crisis** – crisis protocols and playbooks.

— Ensure **robust governance** incl. whistleblower policies.

— **Reputational resilience** – audit your vulnerabilities, test your responses and scan the horizon, regularly.



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Questions?

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Thank you.

A Tub of Trouble: The Early Resolution of Commercial Disputes

Radford Goodman
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Thank you.

DRAMA, but not a crisis

Adam Rose
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Case study

The next 5-year contract for the provision of ice creams (including sorbets, frozen yoghurts and gelatos) has recently been put out to tender by Cowes Town Council, and the industry has been gripped by an increasing number of scoops in The Sundae Times.

MishCone de Reya's main competitor, Subpoena Colada, has made a Freedom of Information request to DRAMA, the Dairy Regulation and Milk Authority.

Case study

From: Information Rights Officer, Dairy Regulation and Milk Authority (DRAMA)
Sent: 04 November 2025 09:08
To: The Directors, MishCone de Reya
Subject: FOIA Request – MishCone De Reya, Isle of Wight Land Use

Dear Directors,

We have received a request under the Freedom of Information Act 2000 for all records held by DRAMA concerning MishCone De Reya's land use activities on the Isle of Wight, including:

- Land use permits, licences, and applications
- Inspection reports and compliance records
- Enforcement actions, violations, and notices
- Environmental assessments and monitoring data
- All correspondence (internal, external, and third-party)
- Site plans and geographical data

We propose to provide everything to the requester. If you wish to make observations on this proposal, please let us know by 16:00 today.

Yours faithfully,

DRAMA

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Case study

From: Charlotte Wilson <Charlotte.Wilson@Mishcone.com>
Sent: 04 November 2025 09:15
To: Adam.Rose@Mishcon.com
Subject: RE: FOIA Request – MishCone De Reya, Isle of Wight Land Use

Hi Adam,

We've just received the attached notification from the Information Rights Officer at the Dairy Regulation and Milk Authority (DRAMA). They've had a Freedom of Information Act 2000 request for all records they hold about Mishcone de Reya's land use activities on the Isle of Wight.

Are there any concerns or points you think we should raise? Please let me know as soon as possible.

Best,
Charlotte

Charlotte Wilson
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MishCone de Reya

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The basics

1. Anyone can ask any public authority for any information it holds.
2. The public authority must provide the information held within 20 working days

UNLESS

3. (a) There are any applicable exemptions

   AND

   (b) The public authority decides to use the exemption

ALSO: FOIA doesn't apply to "environmental information"
BUT: The Environmental Information Regulations do apply.

So:

It's really EIR (rather than FOIA) – but essentially the same rules apply

— Land use permits, licences, and applications
— Inspection reports and compliance records
— Enforcement actions, violations, and notices
— Environmental assessments and monitoring data
— All correspondence (internal, external, and third-party)
— Site plans and geographical data

What should we do?

— Do we care?

— Ask for more time?

— Argue exemptions and try to convince DRAMA?

Focus on what matters: Concentrate objections on information that would cause genuine, demonstrable harm if disclosed, rather than information that is merely embarrassing or inconvenient.

The key message is: **be specific, be evidenced, engage with the public interest test, and be realistic about the strong presumption in favour of disclosure under the EIR.**

We need to know what information DRAMA holds that it thinks relates to us!

EIR Exceptions (FOIA "exemptions") Overview

Key Principles

- Exceptions found primarily in **Regulation 12**
- The EIR contains an **express statutory presumption in favour of disclosure** (Regulation 12(2)), whereas FOIA does not have an equivalent express statutory provision, although a general presumption towards transparency exists under FOIA through its purpose and structure. The EIR's explicit presumption is generally considered stronger and more clearly defined than under FOIA.
- Most exceptions subject to public interest test
- Higher threshold: must show disclosure "**would**" cause adverse effect (>50% probability) ("would or would be likely to" in FOIA)

Class-Based Exceptions (Reg 12(4))

- Information not held
- Manifestly unreasonable requests
- Request too general
- Material still in course of completion
- **Internal communications**

EIR Exceptions (cont.)

Adverse Effect Exceptions (Reg 12(5))

Disclosure would adversely affect:

— International relations, defence, national security or public safety
— Course of justice or fair trial
— Intellectual property rights
— Confidentiality of proceedings
— **Commercial/industrial confidentiality**
— **Voluntary information from third parties**
— Protection of the environment

Critical Limitations

— **Regulation 13**: Personal data protection
— **Emissions information**: Must be disclosed regardless of exceptions 12(5)(d)-(g)
— **Public interest test applies**: Even if exception engaged, must disclose if public interest favours it

- **Land use permits, licences, and applications:** Exceptions 12(5)(e) (commercial confidentiality) and 12(5)(f) (voluntary information) may apply, but note the strong presumption favouring disclosure for permit applications.

- **Inspection reports and compliance records:** Exception 12(5)(b) (course of justice) may apply if related to ongoing enforcement, but likely must be disclosed once matters are concluded.

- **Enforcement actions, violations, and notices:** Exception 12(5)(b) is most relevant, particularly for ongoing investigations.

- **Environmental assessments and monitoring data:** Exception 12(5)(g) (environmental protection) may apply in limited circumstances, but remember emissions data must be disclosed.

- **Correspondence:** Exceptions 12(4)(e) (internal communications), 12(5)(f) (voluntary information), and Regulation 13 (personal data) might apply.

- **Site plans and geographical data:** Exceptions 12(5)(e) (commercial confidentiality) and 12(5)(g) (environmental protection) may apply in specific circumstances.

As I've said:

- **Focus on what matters**: Concentrate objections on information that would cause genuine, demonstrable harm if disclosed, rather than information that is merely embarrassing or inconvenient.
- The key message is: **be specific, be evidenced, engage with the public interest test, and be realistic about the strong presumption in favour of disclosure under the EIR**.

BUT ALSO

Planning ahead: anything you send to a public authority is susceptible to FOIA or EIR

— Be mindful of what you send
— Is it confidential/do you expect it to be treated in confidence
— Can you avoid dealing with a public authority

AND ALSO

— Could you use FOIA/EIR aggressively to get info on your competitors?
— Make carefully worded requests
— See what the authority has published on its website/disclosure file

Speaker

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Thank you.

Your hosts

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