In House Counsel Day



Mishcon de Reya

It's business. But it's personal.

Your hosts

MISHCON DE RAVER



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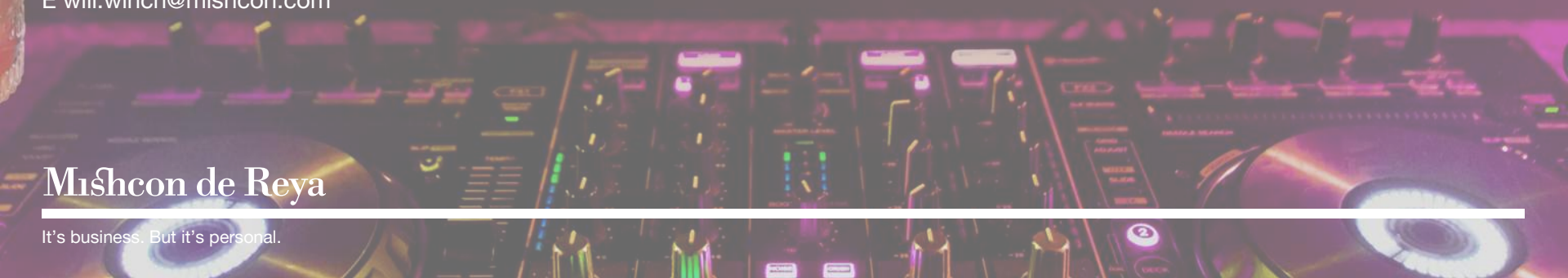
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The ERA Tour: The changing world of Employment law

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Agenda

— Unfair Dismissal
— Third Party Harassment
— The Unions Are Coming!

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Fair Enough?



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Unfair dismissal

Currently applies to any employee with more than one year and 51 weeks' service.
From 1 January 2027: 6 months' service

One year's money, currently capped at £123,543, plus a basic award.
From 1 January 2027: no cap.

6 months less one day to bring a claim
Heard in Employment Tribunal (expect delays…)

Unfair dismissal



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Remedy

Compensation may be reduced if:

— Contributory fault – can reduce entire award (basic and compensatory) to zero
— ‘Polkey’ reductions apply (where the failure in the process, if corrected, would have made little difference to the outcome) – but note that it’s still unfair
— Failure to mitigate



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Limiting the liability

Train managers and use probationary periods properly!

For senior employees:

— ‘pre-nup’ in employment contract
(not legally binding, expectation management only)

— settlement agreement on joining
(highly questionable as to enforceability; may struggle to get agreement)

— employee shareholder
(administrative burden; wait to see if it becomes ‘market’?)



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Mishcon Performance

— Supported Performance Review
  — Coaching solution
  — C-Suite and C-Suite-1
  — Automated documents
  — Comms support

— Active Performance Review
  — Facilitation of performance management
  — Automated documents
  — Grievance policy support
  — Training



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Third party harassment



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It’s business. But it’s personal.

Liability

First strike offence
Uncapped compensation
All reasonable steps
Consider:
— Risk assessment
— Surveys and audits
— Training
— Warranties and indemnities in contracts
— Notices to the public?



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Trade Unions

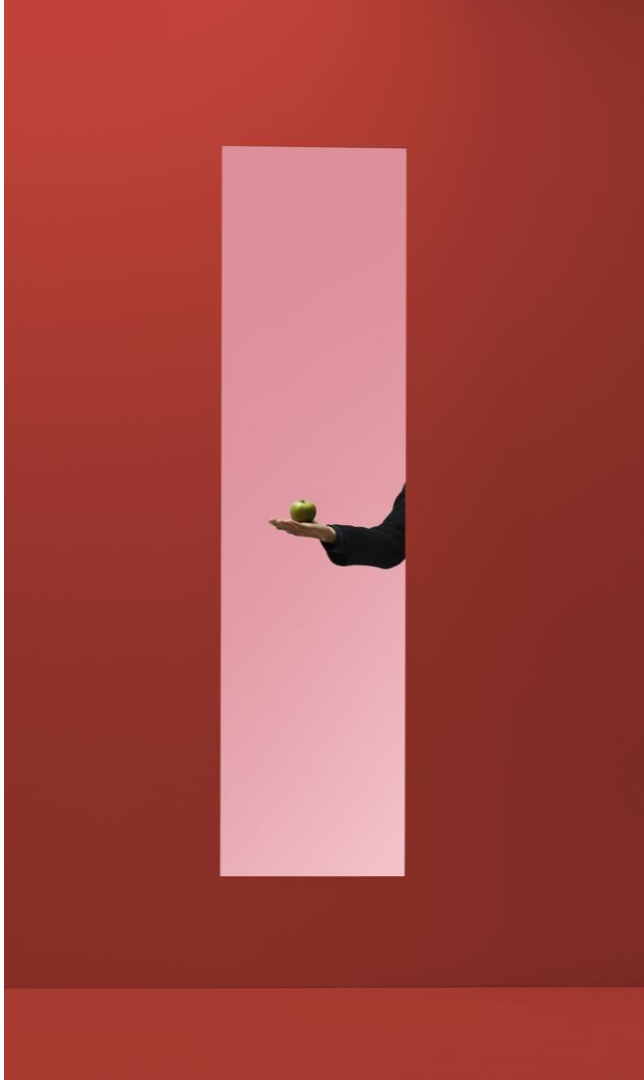


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It’s business. But it’s personal.

Rights of access

— Right for an independent trade union to physical **and** digital access (can be both)
— Model terms suggest weekly access
— Applies to all employers with 21 or more workers
— No need for recognition or minimum membership threshold



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What is the process?

Request to the CAC

— 15 working days for employer to respond using standard form
— 25 working day negotiation period
— Union then has 15 days in which to make an application to the CAC
— CAC will determine terms of access as well as simply the right to access
— If the proposed access arrangement mirrors the model terms, it will be fast tracked and heard by one judge. If more bespoke, will go to a panel of three



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Penalties

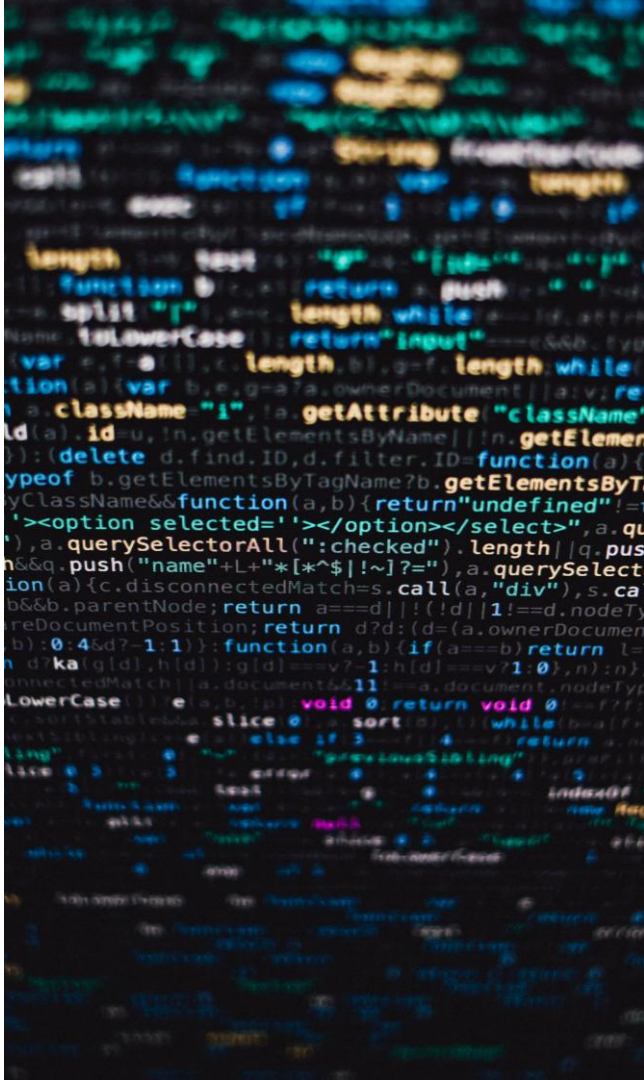
- Initial complaint may result in CAC:
  - altering the agreement
  - declaring if well founded or not
  - ordering specified compliance steps
- Second complaint on same issue or new breach within 12 months triggers financial penalty (paid to CAC, not the union):
  - Up to £75,000 for first penalty order
  - Up to £150,000 for second
  - Up to £500,000 for each order under same agreement (regardless of whether in same workplace)
- Will depend on gravity and duration of breach, number of people affected, size and resources of employer, whether deliberate or result of genuine error and the history of the employer's non compliance
- Appeals heard by EAT



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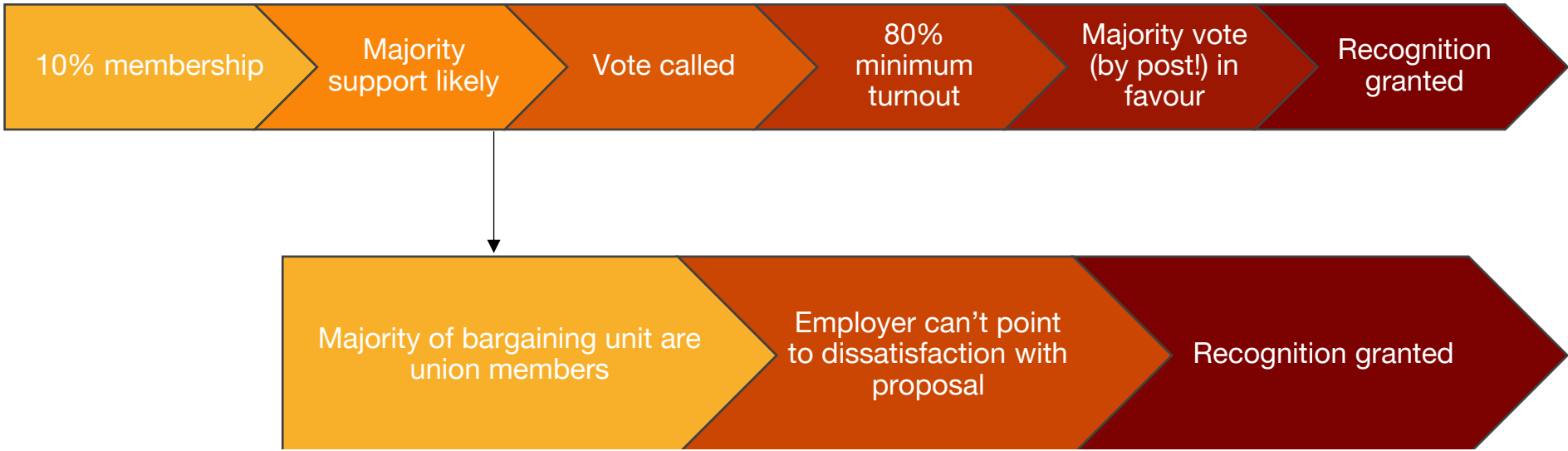
Notification

— From January 2027 and regularly thereafter, employers will also be required to notify workers of their right to join a union (and provide statutory information relating to the role of the union, etc)
— Direct or indirect notification allowed
— Standard form notification

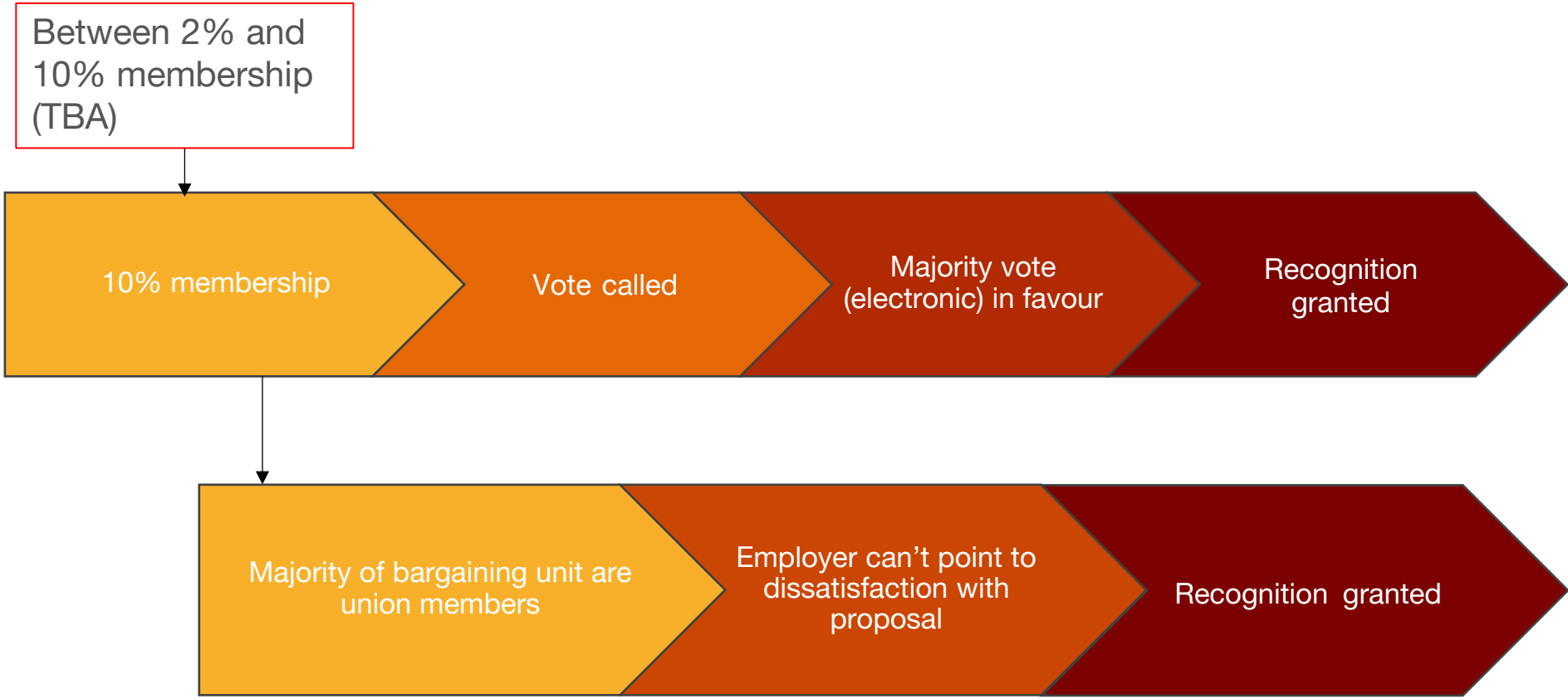


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Statutory Recognition (then)



Statutory Recognition (now)

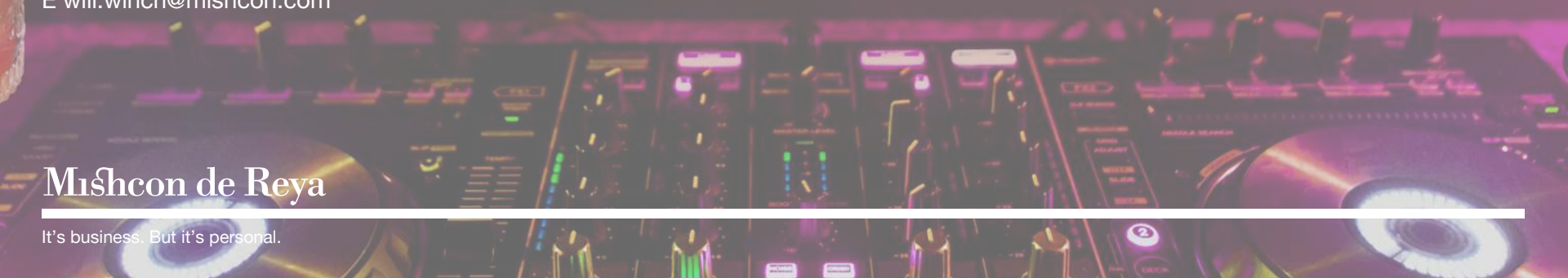


The ERA Tour: The changing world of Employment law

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Don't Drop the Beat: A brand protection set list

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The GC's brief

- Mishcon de Raver - a successful UK-based events business
- Flagship annual festival: **AFTERLAW**
- Hit podcasts: *Terms & Turntables*, *Off the Record*, *Without Prejudice*
- EU launch imminent - AFTERLAW Amsterdam lands next year, podcasts and merchandise going live for EU consumers
- Investment or acquisition interest expected to follow shortly after launch
- The commercial clock is running, and the same IP issues will resurface in due diligence
- Instructions: bring back a plan to get the IP in order

The setlist:

- Track 1: Gap analysis
- Track 2: Enforcement
- Track 3: Advertising & Marketing

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Track 1: gap analysis

We look at three key areas:

- Brands
  - Every business will have a number of trade marks: names, logos, straplines
- Territory
  - What markets are we interested in now, and in the future? Should we file now to lock in priority?
  - Filing route
- Coverage
  - Goods and services: do we have the core classes covered? What about ancillary products: podcasts, merchandise etc?

- Not just trade marks - design and other IP protection should also be considered. It may be a lower priority, but it should be included in the strategy.

- This isn't about filing for the sake of it, it's about having a clear strategy that informs new product launches and processes internally. This also feeds directly into the enforcement strategy. Major gaps in protection can signal red flags for investors or purchasers.



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Track 1: ownership of IP assets

— Starting point: paying for a logo/brand does not settle ownership

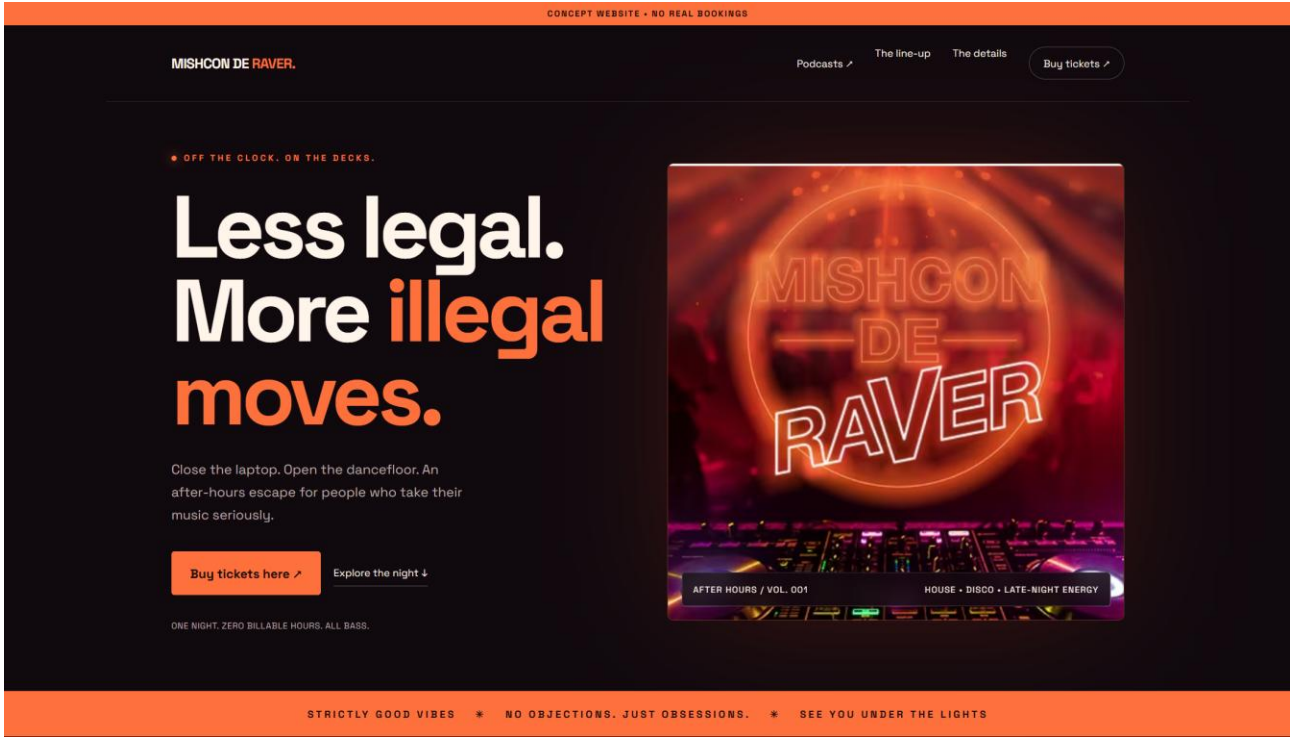
Creator: freelancer	Agency	Intended owner: the business
- generally owns initially	- check contract & subcontractor positions	- written, signed assignment



— Close the chain
  — Identify the works, missing links and correct entity(ies)
  — Keep the evidence: source files, assignments and third-party licences

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Track 2: enforcement



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Track 2: enforcement against copycats/fraudsters

— Keep a watch / utilise AI tools for early detection and takedowns

— Have a playbook for different likely scenarios

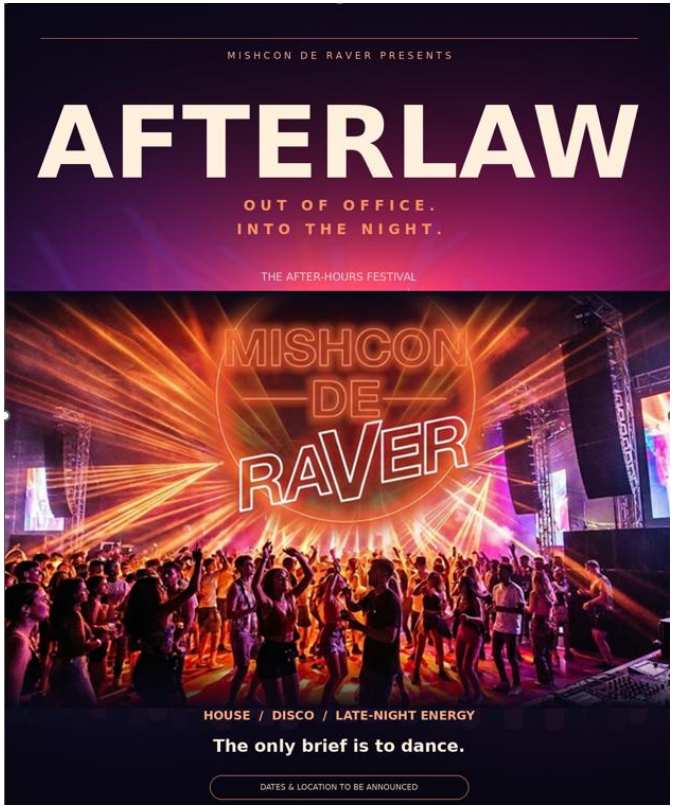
— Preserve & evidence the wrongdoing in serious cases

— Triage & prioritise

— Reputation considerations: communicate with your customers/clients

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Track 3: brand advertising



Dancers generated with AI

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Track 3: brand advertising

Getting your IP in order isn't just about IP.

It's about how IP touches every part of the business, including how you tell your story to the world and how you promote your brands.

What's the story you want to tell?

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The Set List to take back to the GC

- Three tracks, one plan: get the IP house in order.
  - Gap analysis: know what you own, where the gaps are, and what needs filing before launch. Ownership: make sure the rights in your brand, your content, and your marketing actually sits with the business.
  - Enforcement plan: be ready to act quickly and consistently once you're live and higher profile
  - Advertising alignment: make sure what goes out the door matches both the law and your brand strategy

- Deal with these points ahead of launch, as part of one consistent and aligned IP strategy, and you’re better equipped for what comes next: scrutiny from consumers, competitors, and investors alike.

That's the set list. Get it right, **and you're ready to go on tour…**

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The Rogue Shareholder: How to avoid dancing to the tune of activism

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Shareholder rebellion

rights • risks • board response



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What drives a rebellion?



01 **Disgruntled founders or investors**

02 **Concerns about management or direction**

03 **Breakdown in trust and confidence**

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Key shareholder rights under the CA 2006



01 **Section 303: requisition a general meeting**

02 **Section 168: resolution to remove a director**

03 **Section 116: right to inspect the register of members**

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S. 303: Validity and deadlines



01 **Check the 5% voting-capital threshold**

02 **Issue notice within 21 days**

03 **Hold meeting within 28 days of notice**

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Must the board call a meeting?



01 **Usually, if the request is valid**

02 **Calling is not endorsing**

03 **Explain the board's recommendation**

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Limited grounds for refusal



01 **Ineffective resolution**

02 **Defamatory request**

03 **Frivolous or vexatious request**

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Risks of blocking the process



01 **Appearance of entrenchment**

02 **Unfair prejudice risk**

03 **Scrutiny of company spending**

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Practical board response



01 **Take advice and record decisions**

02 **Act for the company, not a faction**

03 **Engage early where appropriate**

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Reputation: Off the record

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What We Will Cover

In-house lawyers play a crucial role in businesses' reputational resilience and crisis response.

1. Identifying and addressing vulnerabilities.
2. Active crisis response, clear thinking, working with comms and other advisers.
3. Managing crisis staples – investigations and privilege.



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Reputation Protection: An Overview



Before	During	After
Reputational resilience: • Horizon scanning – identify and address risks ahead of time • Advise on changes to practices and policies • Crisis protocols • Work with strategic comms and other advisers to strengthen brands	**Active crisis management:** • Investigations/fact-finding – extent of damage, where information is held, mitigating harm • Deal with blackmail attempts, threatened disclosures of confidential/private information, abuses of power and injunctions • Interventions to shape or contain a media story	**The aftermath:** • Legal complaints/claims seeking corrections, apologies, damages • Regulatory complaints to e.g. Ofcom, IPSO, ICO • Orders to help identify defendants • Work with comms, lobbyists, investigators and other advisers to control the narrative – no hostages to fortune!

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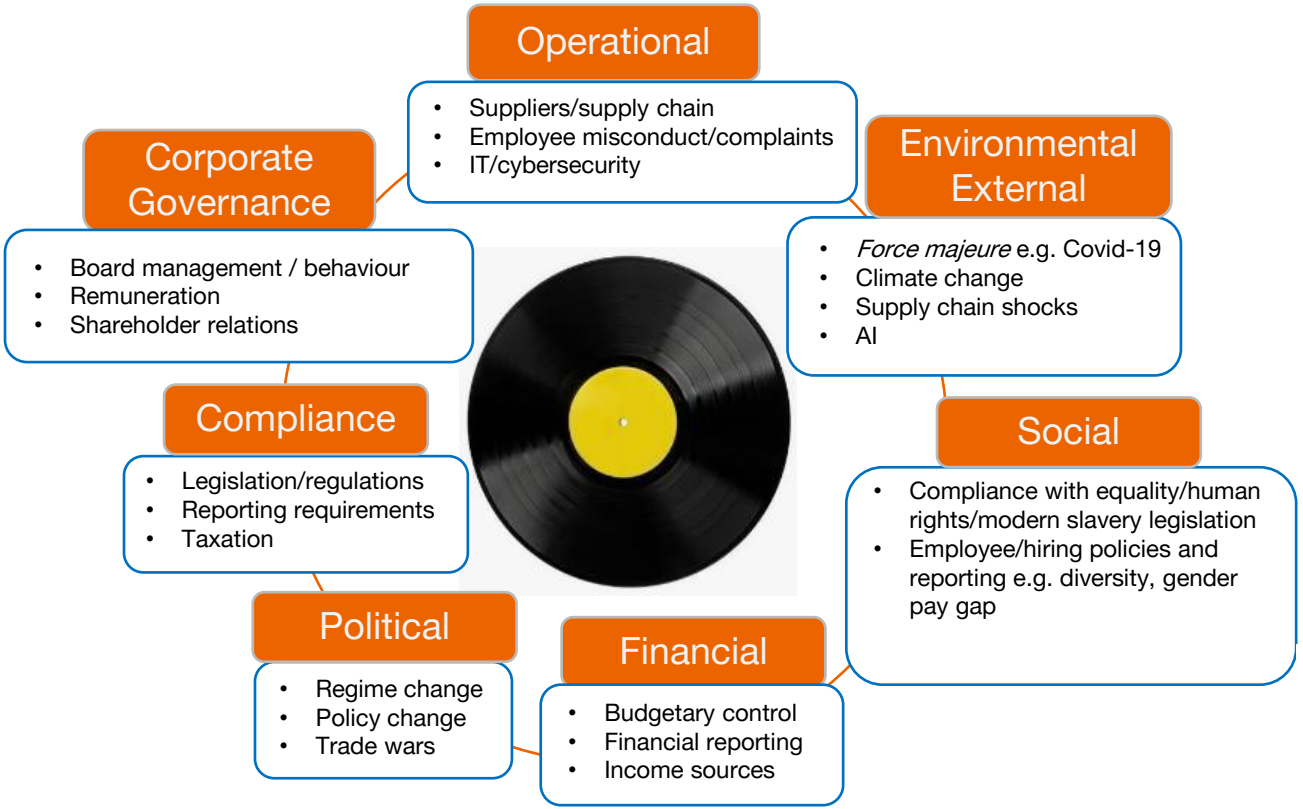
Why In-house Lawyers Play a Critical Role

— Trained to assess and mitigate **risk.**
— Can advise on preserving **confidentiality.**
— Can advise on **legal duties in a crisis** e.g. directors' duties, fiduciary obligations and compulsory disclosure to shareholders or markets.
— Managing **stakeholder communications** to prevent additional exposure e.g. via admissions of liability, misleading disclosure, inaccurate statements.
— Lawyers are a **natural lynchpin**, coordinating the overall strategy.



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Resilience: The Wheel of Risk



Convening and Working With Others

— Crisis teams generally require executives/decision-makers + lawyers + comms + forensics + HR + data?

— Divide and conquer, don't duplicate resources.

— But don't be unnecessarily territorial – work together. Mark each other's homework.

— Share knowledge and explore/leverage existing relationships e.g. publisher contacts.

— Bring in and brief external experts as early as possible.



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Investigations

— Independent vs internal investigation? Or both?

— Who is available to investigate? Who has industry credibility?

— Scope and timings? A quick response/hasty audit can compound reputational damage.

— Manage internal & external comms, pre-empt queries about the investigation and findings (which may be negative).

— Control the narrative as much as possible and stay ahead of the media/wider reaction.



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Legal Professional Privilege

- Managing a reputational crisis means thinking carefully about what you don't want to disclose and what *may be disclosable*.
- Practical steps:
  - Be careful about any new documents you create;
  - Involve lawyers as early as possible where legal advice is sought;
  - Mark all communications re legal advice "*privileged and confidential*" and circulate on a strictly "*need to know*" basis; and
  - Ensure witnesses interviewed by lawyers do not waive privilege.



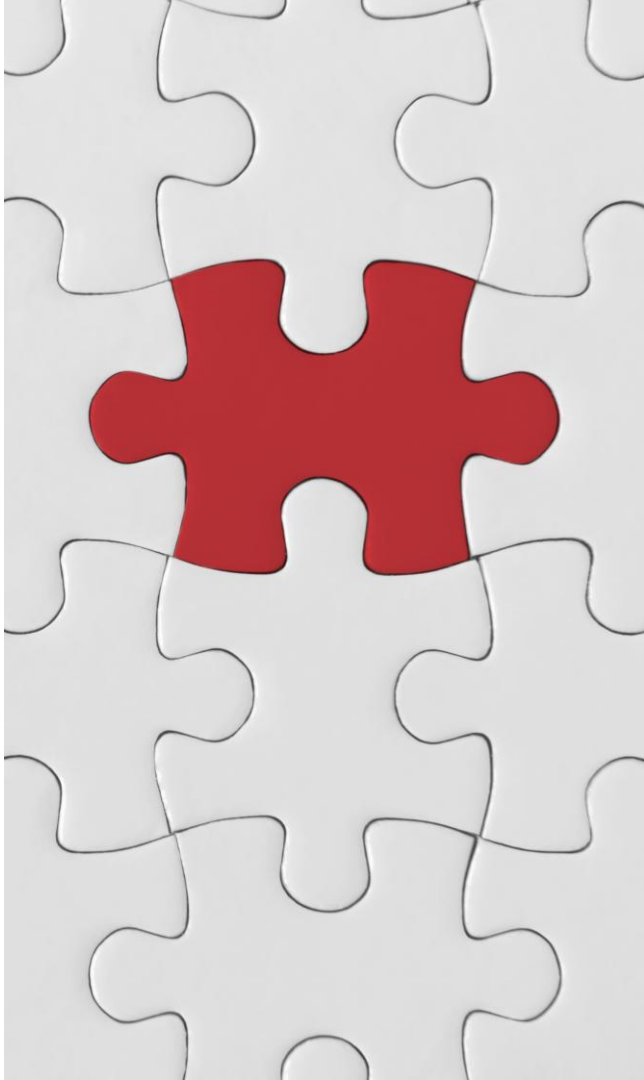
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Proactive Reputation Protection

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

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

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



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Questions?





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Guarding the VIP lounge: Protecting legal professional privilege in the AI age



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Legal advice privilege

Confidential communications passing between the client and the client's lawyer which came into existence for the dominant purpose of giving or receiving legal advice about what should prudently and sensibly be done in the relevant legal context.

Litigation privilege

Confidential communications between the lawyer and the client, or either of them and a third party, or documents created by the lawyer, client or third party, which are made for the dominant purpose of conducting litigation which is pending, reasonably contemplated or existing.

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Who's on the guest list?



Identifying your "client"

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Who gets past the rope?



Sharing advice without losing it

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The new bouncer problem



AI and privilege

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The VIP lounge



Know who is on your guest [client] list before you advise

Think carefully before you waive anyone past the privilege rope

AI tools potentially open doors to the VIP lounge, so secure them carefully

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Guarding the VIP lounge: Protecting legal professional privilege in the AI age



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Top of the Pops: Chart-topping contract updates

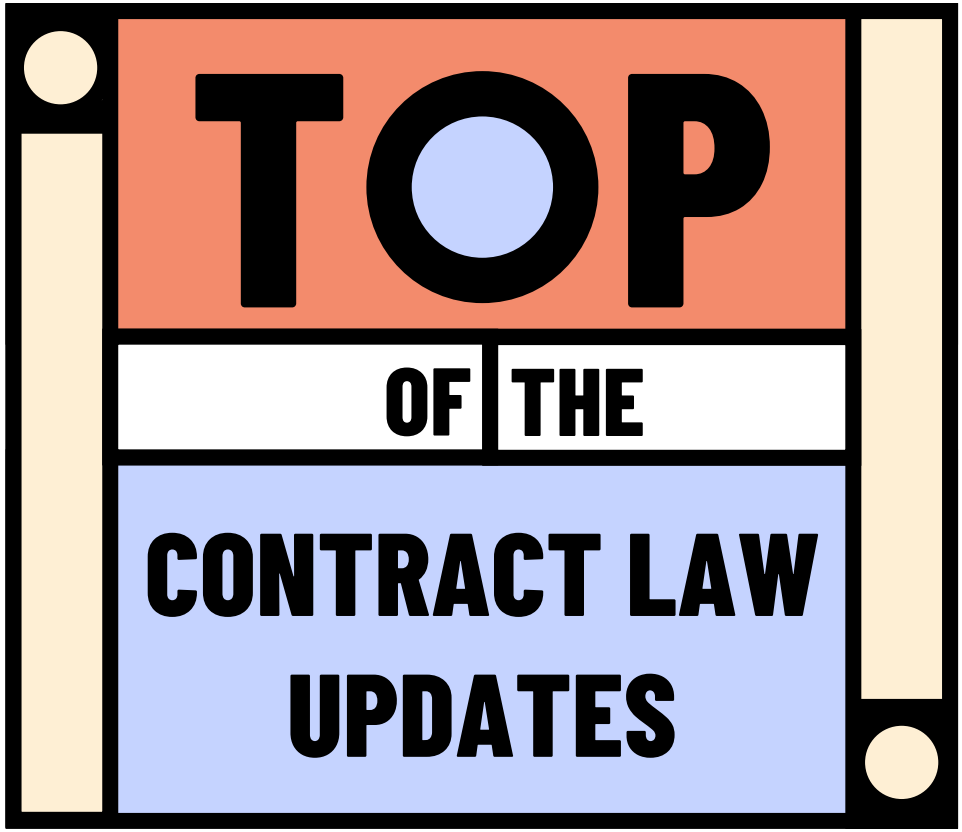
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TOP
OF THE
CONTRACT LAW
UPDATES

TOP OF THE CONTRACT LAW UPDATES

Case law on definitions



5

Case Law on Definitions

Zaha Hadid v The Zaha Hadid Foundation [2026] EWCA Civ 192

↓

Perpetual

↓

Indefinite

Illiquidx v Atlanta Wealth

↓

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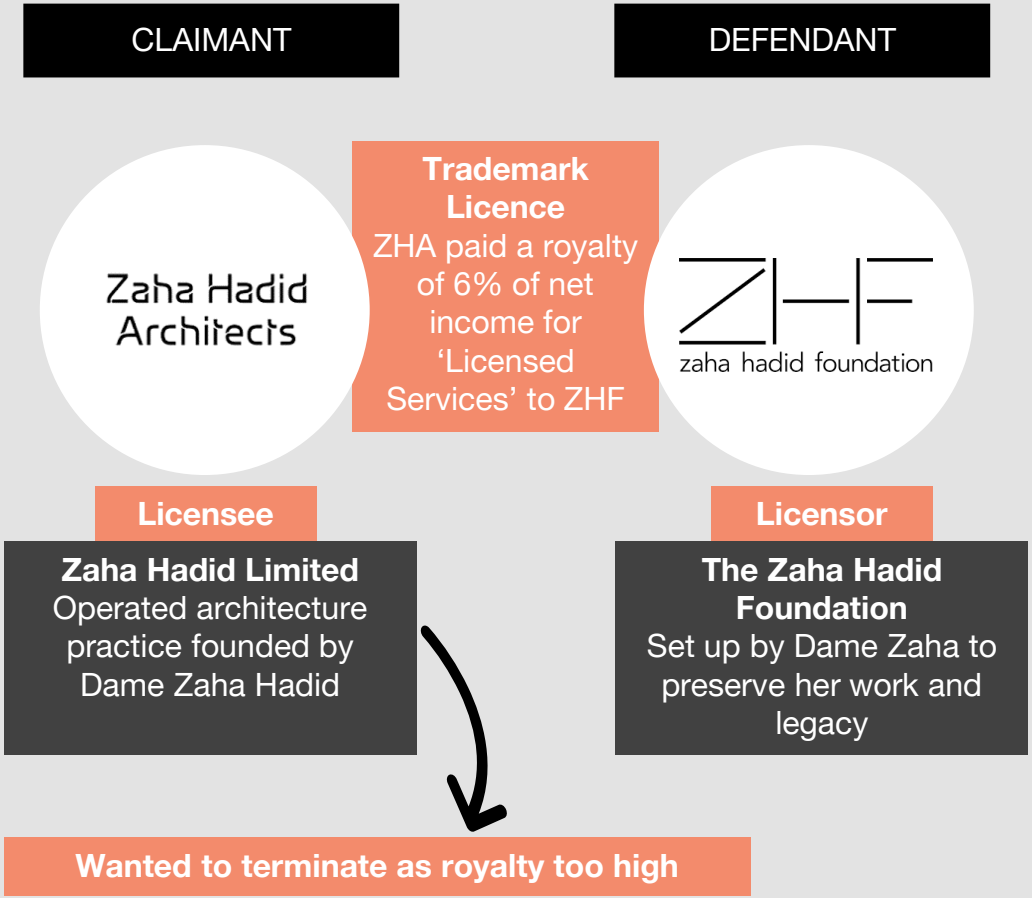
2013:
Zaha licensed the Zaha Hadid TM to ZHA

CLAIMANT	DEFENDANT
Zaha Hadid Architects	zaha hadid foundation
Zaha Hadid Limited Operated architecture practice founded by Dame Zaha Hadid	**The Zaha Hadid Foundation** Set up by Dame Zaha to preserve her work and legacy

ZHF inherited the TM from Zaha after her death in 2016

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Zaha Hadid Limited v The Zaha Hadid Foundation [2026] EWCA Civ 192



The contract

Clause 12.1

"This agreement shall commence on the Effective Date and shall continue indefinitely, unless terminated earlier in accordance with this clause 12."

Clause 12.2: The foundation can terminate for convenience on 3 months' notice

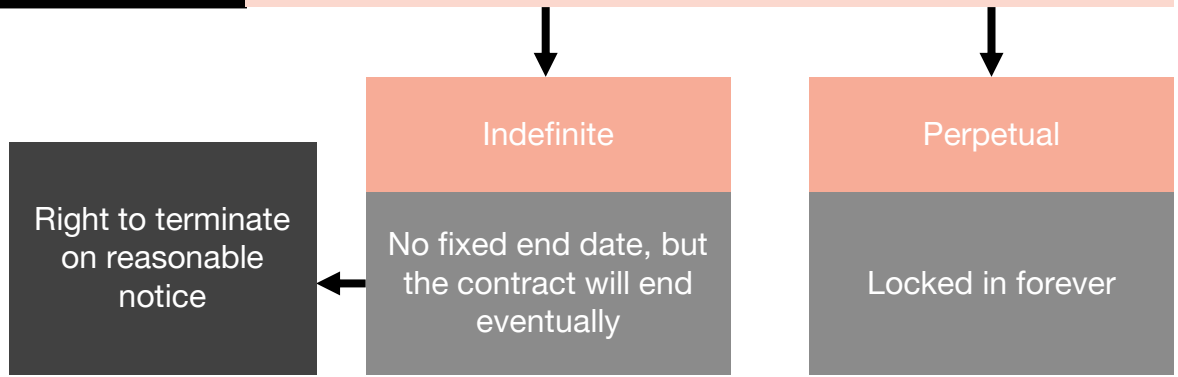
Clause 12.3: The foundation can terminate on certain grounds including breach / insolvency

No mention of the architecture firm's termination rights in contract – but can they terminate on reasonable notice as a matter of construction?

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"Indefinite" ≠ "Perpetual"

High Court	The contract contained no term giving the company a right to terminate. The company was locked into the contract
Court of Appeal	To describe the duration of a contract as *indefinite* is a fundamentally different thing from describing it as *perpetual*. They are not synonyms.



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Case Law on Definitions

Zaha Hadid v The Zaha Hadid Foundation [2026] EWCA Civ 192

Perpetual

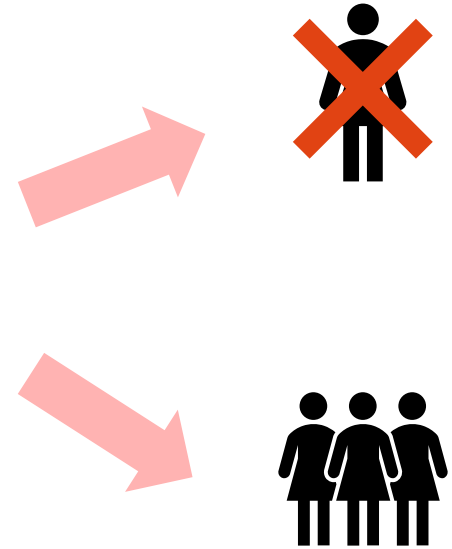
Indefinite

Illiquidx v Atlanta Wealth [2026] EWCA Civ 874

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Public Domain?



So generally accessible that, in all the circumstances, it cannot be regarded as confidential

Illiquidx v Altana Wealth [2026] EWCA Civ 874

TOP OF THE CONTRACT LAW UPDATES

Product liability digital update



4

Consumers have **strict liability** for defective products

Strict liability means there is no need to prove "*fault*". The claimant just needs to prove the product was defective, damage was suffered and there was a causal link between the two

Physical Products

8 Oct 2026
Law Commission Consultation

Include digital products?



Software

AI systems

Design features of online platforms

Consumers have **strict liability** for defective products

Strict liability means there is no need to prove "*fault*". The claimant just needs to prove the product was defective, damage was suffered and there was a causal link between the two

Physical Products

8 Oct 2026
Law Commission Consultation

Include digital products?

Expand who can be liable?



Who could be liable?

Online marketplaces

If they meet "*core participant criteria*" e.g. play a significant role in making a product available. But only where a UK producer, own-brander, importer, or UK authorised representative of any of those persons, cannot be identified

Fulfilment Service Providers

But only where a UK producer, own-brander, importer, or UK authorised representative of any of those persons, cannot be identified

UK Authorised Representative

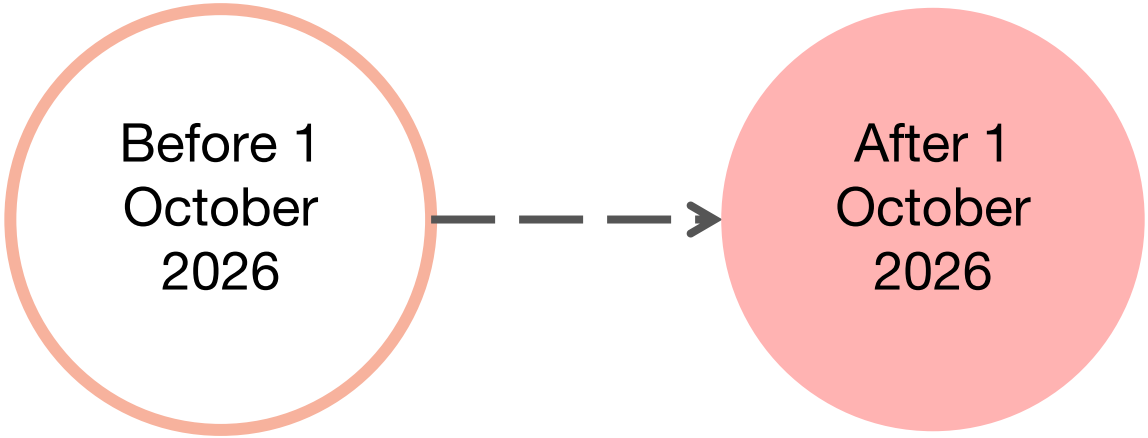
UK authorised representative of a producer, own-brander, importer, fulfilment service provider, or core participant where such persons are established outside the UK

TOP OF THE CONTRACT LAW UPDATES

Liability: illegal workers & harassment



3



Liability for illegal workers sat with the direct employer

Border Security, Asylum and Immigration Act 2025: Liability can travel up the supply chain to others

Arrangements where work is passed down the contractual chain

- Supplier that subcontracts to another supplier for your customer
- Online matching platforms that connect a customer with a service provider
- Contracts that allow someone to send a substitute to carry out the services

These arrangements now need a clause imposing right to work compliance obligations on suppliers

It does not apply to the self-employed providing services direct or customer buying services outright

Before 30 October 2026

After 30 October 2026

Employment Rights Act 2025

Organisations will become directly liable if their employees are harassed at work by third parties and they failed to take all reasonable steps to prevent it

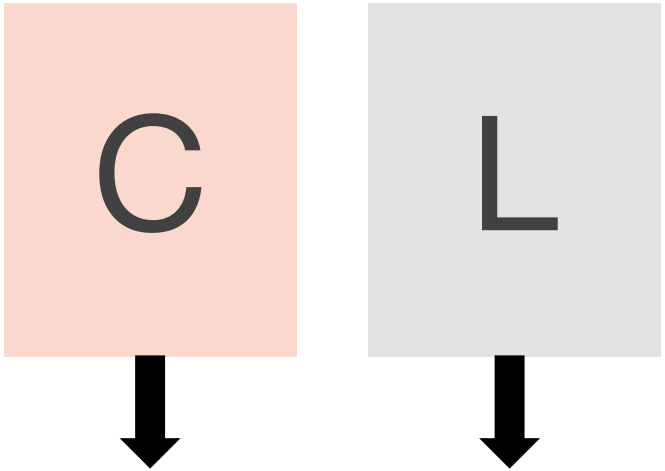
Dependent on risk, one reasonable step could be adding obligations in a contract about complying with anti-harassment laws, maintaining policy, providing training and complaints handling?

TOP OF THE CONTRACT LAW UPDATES

New subscriptions regime



2



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Payment amounts and frequency as well as trader's rights to change payments

Any concessionary period and price after it ends

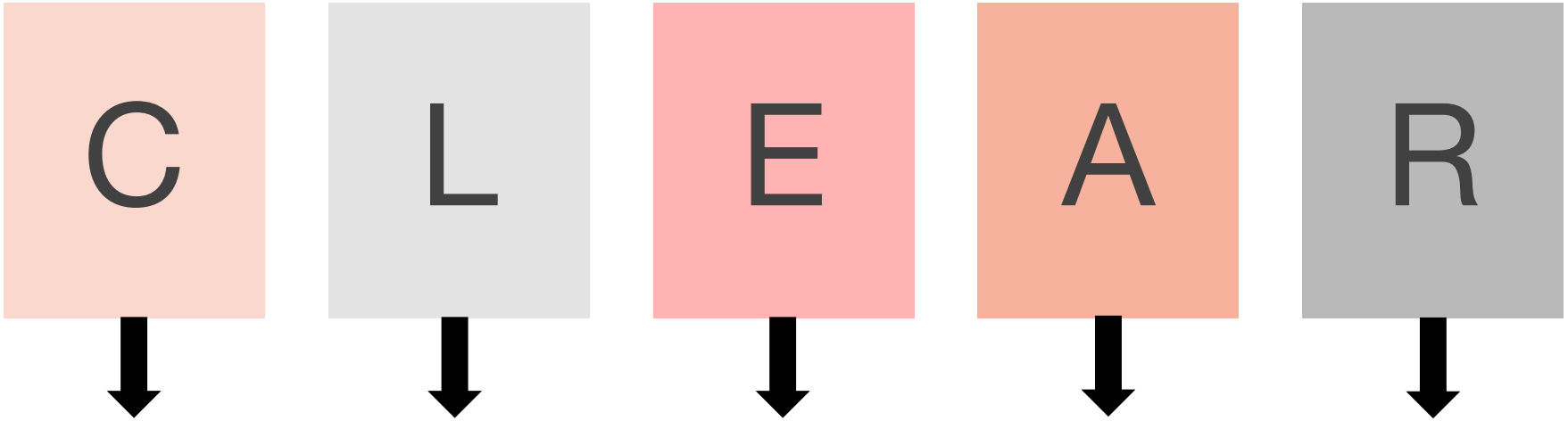
Any minimum commitment period and the total minimum amount liable

Automatic continuation

Key information: examples of what must be there (see Annex A of guidance for full list)

Exit method, reminder notice timeframe and cooling-off rights

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TOP OF THE CONTRACT LAW UPDATES

Commercial Payments Bill



1

Commercial Payments Bill



Introduced to Parliament in May – largest crackdown on late payments in 25 years

Aim is to support small business suppliers to be paid on time

The reforms set out here on late payments have no retrospective effect

Late Payment of Commercial Debts (Interest) Act 1998

Implied right to interest at 8% above Bank of England base rate on late B2B payments

Interest rate: parties can agree a different rate in the contract

1.3 If the Purchaser fails to pay any amount due under this agreement by the due date, simple interest shall accrue on the unpaid amount from the due date until actual payment at the annual rate of 6% above the Bank of England base rate prevailing from time to time, or at such alternative rate as the parties may agree in writing.

Late Payment of Commercial Debts (Interest) Act 1998

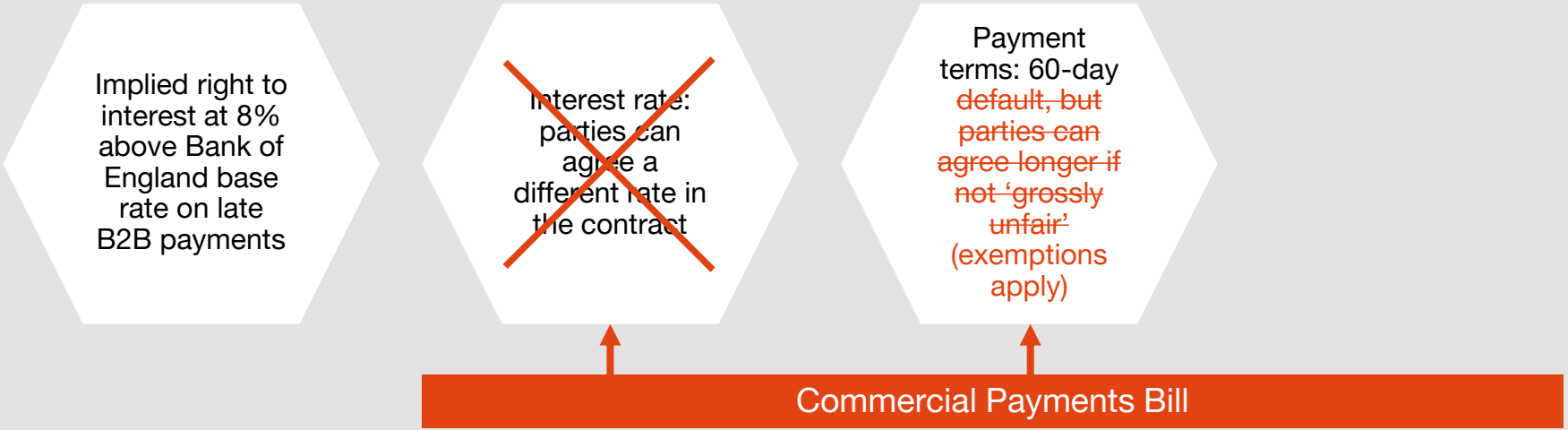


Implied right to interest at 8% above Bank of England base rate on late B2B payments

Interest rate: parties can agree a different rate in the contract

Payment terms: 60-day limit, but parties can agree longer if not ‘grossly unfair’

Late Payment of Commercial Debts (Interest) Act 1998



Exemptions

Exemptions from the 60 day cap

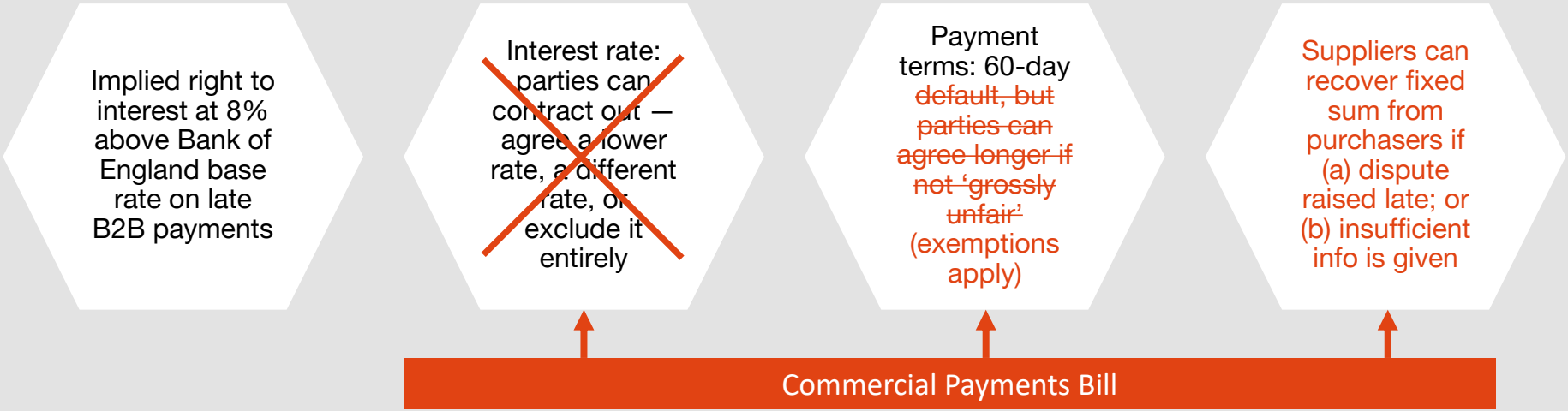
Exemption 1: Both parties are ‘large undertakings’ (definitions TBC)

Exemption 2: A small business is buying from a larger one (definitions TBC)

Exemption 3: Contracts specified in secondary legislation

Not automatic – contract must be in writing and expressly say which exemption it is relying on – otherwise, cap will apply

Late Payment of Commercial Debts (Interest) Act 1998



Top of the Pops: Chart-topping contract updates

MISHCON DE RAVER



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Drop the Bass, not the Deadline: Mastering DSARs

MISHCON DE RAVER



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WHAT MIGHT A DSAR LOOK LIKE?

- No formal requirements for DSARs
- It must be clear that they are asking for their personal data





WHAT WE EXPECT TO DISCLOSE

- A single, ordered, bundle of all disclosable material
- Contains only the requester's personal data
- A copy of the organisation’s relevant Privacy Policy or an explanation that provides the same information

DSAR Trends

1. **Massive increase in requests**
2. **AI Generated correspondence**
3. **Searches returning millions of records**
4. **Complaints following disclosure**
5. **Litigation following disclosure**

The Halloween Warehouse Rave

A company-sponsored staff social



What happened on the day…

- All staff are dressed up in Halloween costumes
- Venue CCTV records the floor.
- Staff create an event WhatsApp group on personal phones
- Several employees ridicule Jamie's dancing and costume
- CCTV captures an altercation involving Jamie
- HR investigates; Jamie receives a formal written warning

The complaint lands…

“Let me be completely clear from the outset.

This is a serious request. I want every single piece of personal data you hold about me, in whatever form it exists, without exception. Including but absolutely not limited to CCTV footage from the event and any WhatsApp messages or chats that mention me.”

I expect a litigation hold to be placed on all records” – Jamie Smith

The clock starts now

1 Month

Receipt

Day received — including non-business days.

Pause

While required ID verification or scope clarification is outstanding.

Extension

Up to 2 further months for complexity or multiple requests. Notify with reasons; consent is not needed.

Miss

ICO complaint and potential enforcement action.

Preserve. Tell employees that workplace messages and opinions may be disclosable. Deliberately altering, blocking, erasing or destroying information to prevent disclosure can be a criminal offence; normal retention must not become a pretext once the request is in play.

The Search

CCTV

Visual personal data

How do you approach CCTV?

What issues do you have when everyone was in Costume?

WhatsApp

Personal-device messaging

Whose personal devices do you search? Do you have to search them at all?

HR file

Disciplinary records

How do you approach sensitive files?

Search Secrets 1/3

- Extracting data from systems is a common pain point.
- Millions of records, TBs of data.
- The ICO's guidance is to complete a **reasonable and proportionate search.**
- IT teams often receive a DSAR, search for the individuals' name and return millions of records.
- How to do this efficiently on the Microsoft stack?
- The right keyword searches reduce the dataset by 75 – 95%, before manual review.
- What does this look like in practice?
- For those of you that like photographing slides… get your phones out now.

Search Secrets 2/3

SEARCH 1: REFERENCES TO JAMIE

(((“JAMIE SMITH" OR JAMIE OR JS) ONEAR(N=0) (IS OR WAS OR "HAS BEEN" OR SEEM* OR APPEAR* OR SAID OR SAY* OR TOLD OR THINK* OR THOUGHT OR FEEL* OR FELT OR BELIEV* OR CONSIDER* OR AGREE* OR DISAGRE* OR EXPRESS* OR COMPLAIN* OR PREFER* OR WANT* OR NEED*)) OR (("I THINK" OR "WE THINK" OR "I THOUGHT" OR "WE THOUGHT" OR "I BELIEVE" OR "WE BELIEVE" OR "I FEEL" OR "WE FEEL" OR "I CONSIDER" OR "WE CONSIDER") ONEAR(N=0) (“JAMIE SMITH" OR JAMIE OR JS)) OR (("CONCERNS ABOUT" OR "CONCERNED ABOUT" OR "FEEDBACK ON" OR "FEEDBACK ABOUT" OR "OPINION OF" OR "VIEW OF" OR "ASSESSMENT OF" OR "IMPRESSION OF" OR "ATTITUDE OF" OR "BEHAVIOUR OF" OR "PERFORMANCE OF") ONEAR(N=0) (“JAMIE SMITH" OR JAMIE OR JS)))

Search Secrets 3/3

SEARCH 2: EMPLOYMENT MATTERS

(“JAMIE SMITH" OR JAMIE OR JS) NEAR(N=10) (ALLEGATION* OR APPRAISAL* OR ASSESS* OR ASSIST* OR "AT RISK" OR BEHAVIOUR* OR CAPABILITY OR COMPLAINT* OR CONDUCT OR CONSULTATION* OR DISCIPLINARY OR DISCIPLINE OR DISMISS* OR EVIDENCE OR GRIEVANCE* OR HEARING* OR HOLIDAY* OR ILL OR INVESTIGAT* OR MYSELF OR OUTCOME* OR PERFORMANCE OR POOL OR PROCESSES OR REQUEST* OR REVIEW* OR SALARY OR "SELECTION CRITERIA" OR SICK* OR SUPPORT* OR SUSPEND* OR TERMINATION OR TIMESHEET* OR WAGES)

The review begins…

- Use software that can **thread emails**
- Allow **extra time** for slack messages
- Average review rate: **1,000 records per day**
- Average bundle size: **50-300 pages.**
- Largest bundle we've issued this year: **3,500 pages**
- We use **Relativity** and **Adobe Pro**. Lets chat if you need recommendations.

WHAT GOES OUT / WHAT STAYS IN

DISCLOSABLE

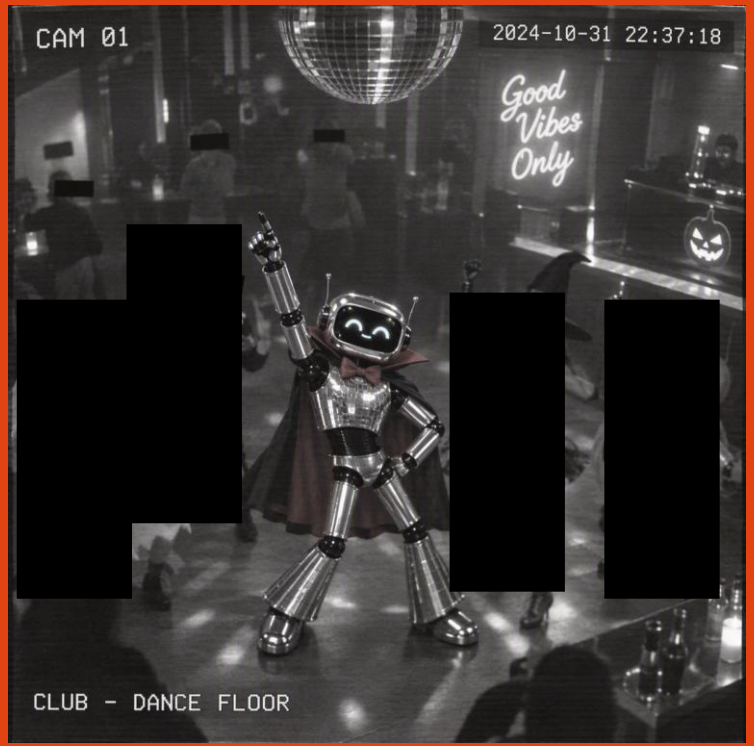
- CCTV footage or stills showing Jamie, obscuring others where feasible
- WhatsApp content about or mentioning Jamie, with third-party identities considered/redacted
- HR investigation and disciplinary records about Jamie's case
- AI prompts about Jamie

PROTECTED / REDACTED

- Other employees' unrelated data and identities
- Qualifying legal advice sought by HR / Legal
- Wider confidential workforce planning unconnected to Jamie's case

Note on AI: Redactions must be **Permanent.** Ensure the redactions are burnt in.

The Redactions





The disclosure bundle

1 · Package
Secure digital format; password-protected. Hard copy if specifically requested.

2 · Send
Use a separate channel for the password and record dispatch.

3 · Preserve the master
Retain one identical copy of exactly what was sent.

4 · Clean up
Delete unnecessary working copies under the approved process.

Post-disclosure trends

We will advise on 150 – 200 DSARs by the end of this year, with ~75 of them having been completely outsourced to us.

<u>What's happening after disclosure?</u>

- **40 – 50%: never hear back following disclosure.**
- **20 – 30%: send a complaint within 48 hours, with no follow up.**
- **25%: complain, and then complain to the ICO.**
- **5%: send a letter before action.**
- **1%: issue proceedings.**

Post-disclosure trends

DSARs and legal claims

- Universally AI generated claims, via moneyclaimonline
- Not the appropriate route
- £3,500 seems to be the amount claimed & a non-compliance order
- Apply to transfer to a more appropriate track – small claims track can't make non-compliance orders
- Costs are not available in the small claims track.

Questions?



Backstage Pass: Getting AI Governance right before you hit the main stage

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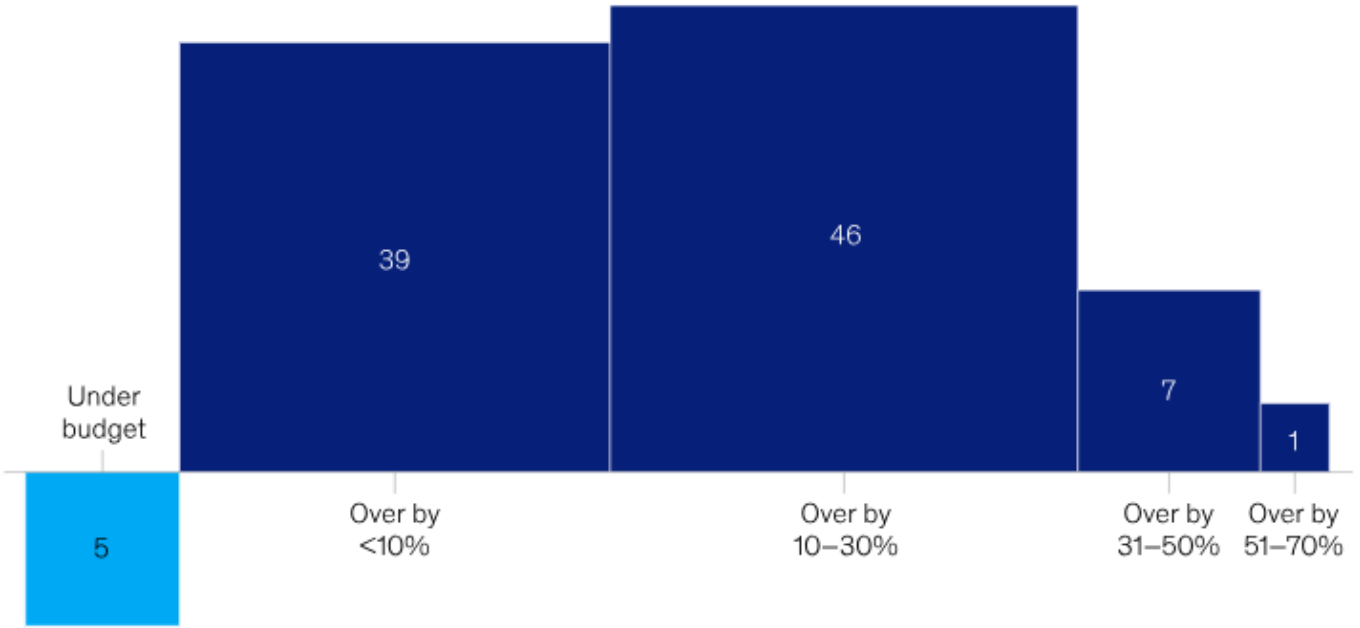
Dan Sinclair
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WHY
HOW
WHAT


AI
IT'S SO HOT RIGHT NOW

Most companies are exceeding their AI budgets.

AI budget adherence, % of respondents



Note: Figures do not sum to 100%, because of rounding.
Source: McKinsey Enterprise AI FinOps survey, May 2026

GenAI / LLM in Legal Tech




MIND THE GAP

Four signals



1	2	3	4
Permission	Ownership	Liability	Reliability


With a lot of Data
Comes great responsibility



2/3

of legal teams run general-purpose AI in its default, unconfigured state.

The three most-used AI tools in legal were ChatGPT, Microsoft Copilot and Google Gemini.

Which of you in the room are in that two-thirds today?

Source: Axiom, “How the Top Seven Percent of Legal Teams Prove AI ROI,” August 2026

Unsanctioned use of AI without formal approval

Shadow AI is not a hypothetical



57%

of workers use personal GenAI accounts

33%

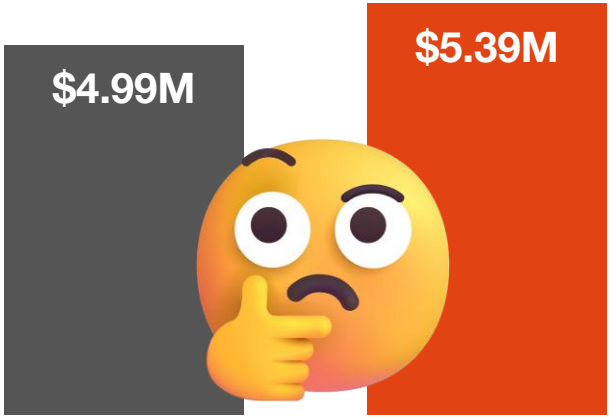
of workers entered sensitive data into unapproved tools

Source: Gartner, Top Cybersecurity Trends 2026, 5 February 2026

It shows up on the balance sheet.

2x

Security incidents involving an organization's shadow AI



Global average data breach

Average breach cost involving AI

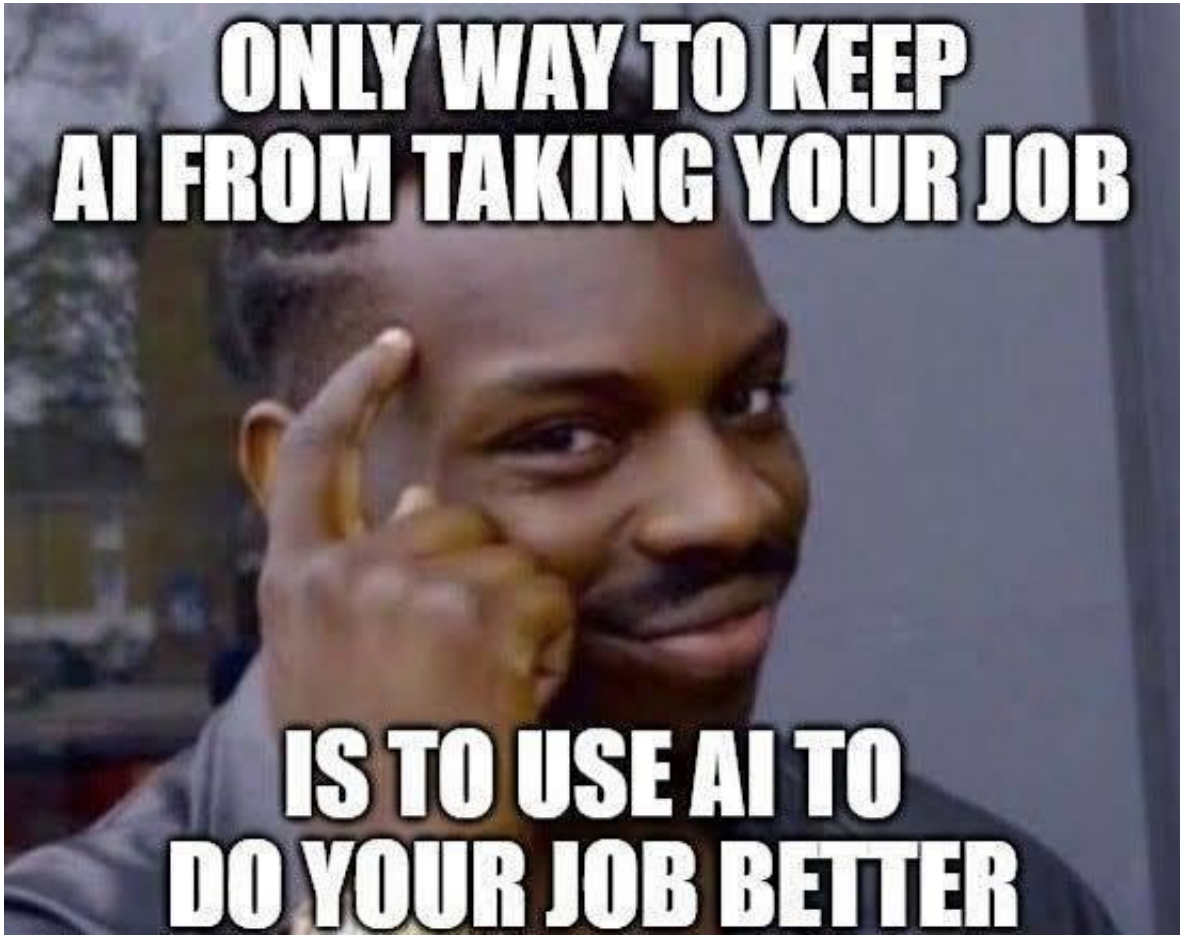
Serious consequences

49%
Involved data breach

42%
Disrupted Operations

92%
Share of organizations that reported an AI-related breach and lacked proper AI access controls

Source: IBM Cost of a Data Breach Report 2026.


ONLY WAY TO KEEP
AI FROM TAKING YOUR JOB
IS TO USE AI TO
DO YOUR JOB BETTER

Ambition outpacing control



42%

expect AI agents to operate autonomously by 2030

vs.

5%

currently have the relevant controls in place

Source: BCG Applied AI Index 2026.

Usage and accountability have separated



87%

of GCs report AI use in their teams – nearly double 2025 levels

~ 9%

of GCs own AI governance, despite being responsible for enterprise risk and compliance.

Sources: General Counsel Report, FTI Consulting and Relativity 2026. Plexus, Future-Ready General Counsel 2026.


LAWS DISCOVERING
AI AGENTS THAT MAKE
AUTONOMOUS DECISIONS

Who is liable?



Provider Shmarvey



Deployer Mishcon de Raver



End user DGC

97%
formally assigned AI risk responsibility to the board

20%
CIO or CTO, the most cited accountable role

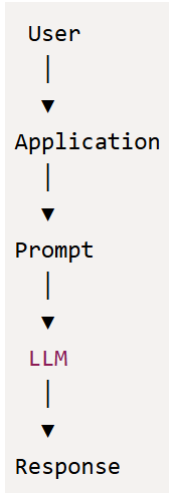
20%
say liability should be shared by deployer and vendor

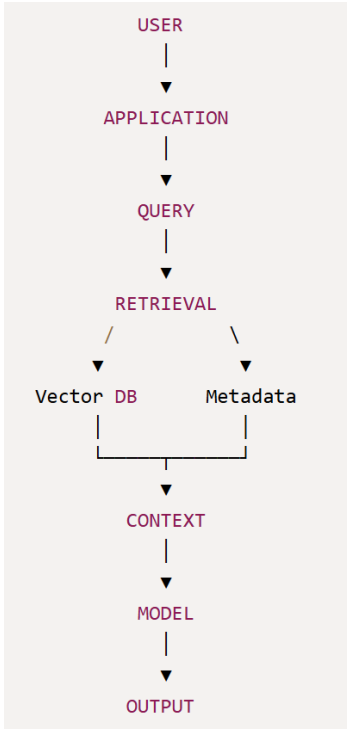
16%
say no adequate framework exists

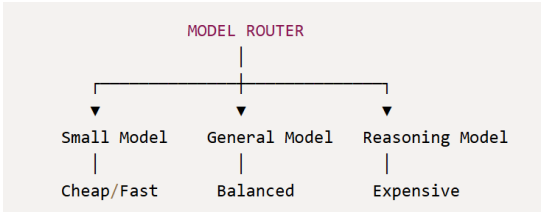
15%
say liability should sit with the provider

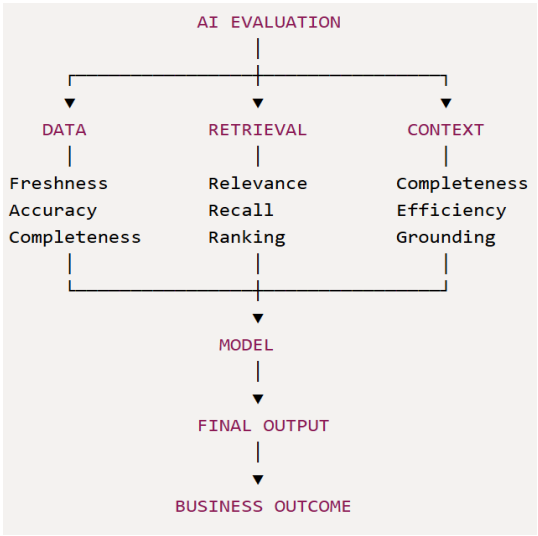
Source: Eight in Ten UK Businesses Struggle to Keep Pace with AI Governance, IBM Study Finds

Stack creep



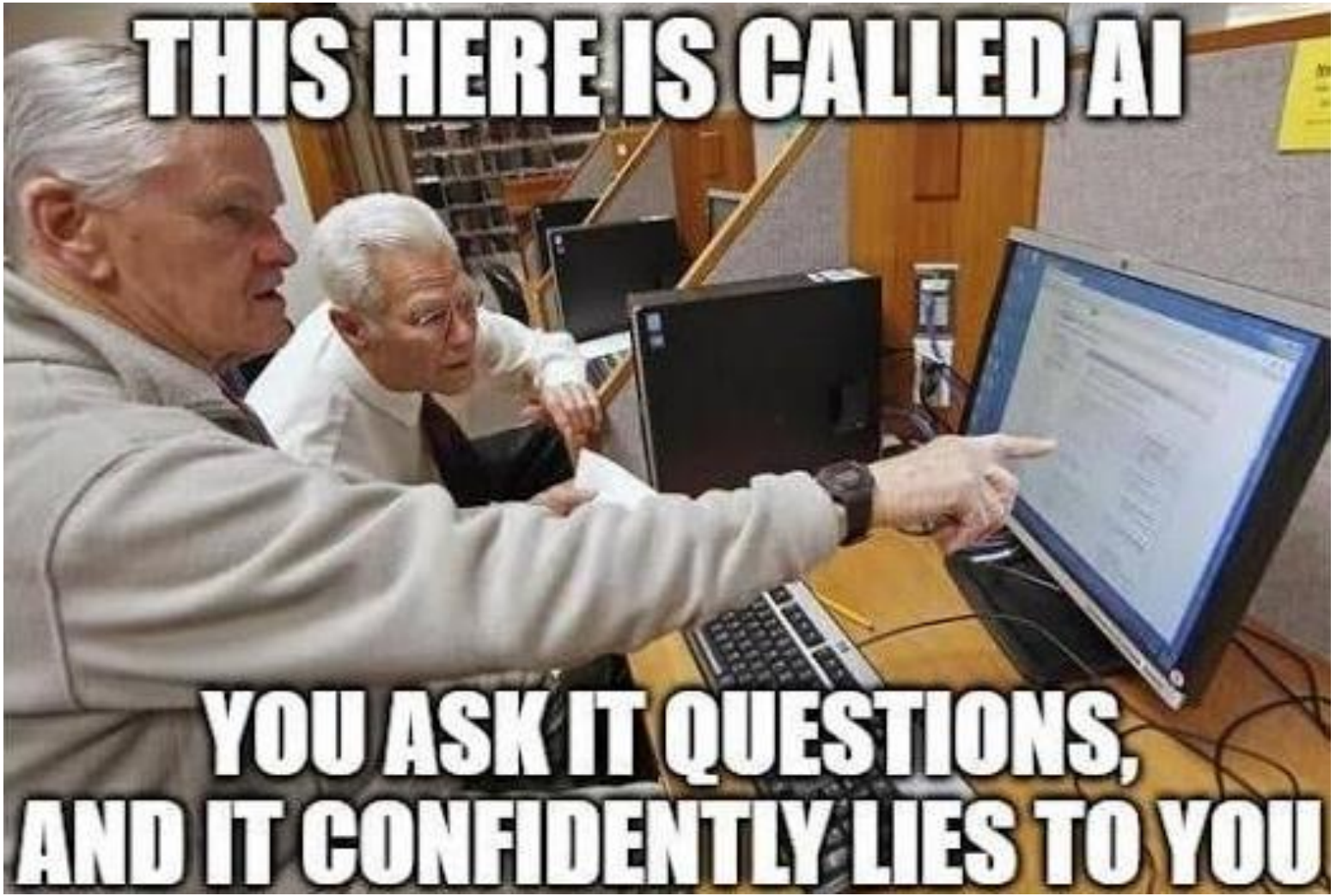








Source: https://hackernoon.com/the-ai-stack-is-becoming-more-complicated-than-the-model


THIS HERE IS CALLED AI
YOU ASK IT QUESTIONS,
AND IT CONFIDENTLY LIES TO YOU

AI is advancing. Or is it?

2,180+

hallucination cases worldwide
as at 10th October 2026

58% to 88%

hallucination rate on specific, verifiable legal questions from general purpose models

ChatGPT most named tool.

👀 *Nobody knows what has yet to be challenged...* 👀

Sources: AI Hallucination Cases Database – Damien Charlotin 2026. Stanford researchers, "Large Legal Fictions," 2024. "Hallucination Free? Assessing the Reliability of Leading AI Legal Research Tools," Journal of Empirical Legal Studies, 2025. Stanford RegLab, Journal of Empirical Legal Studies, 2025.

Responsibility can’t be outsourced

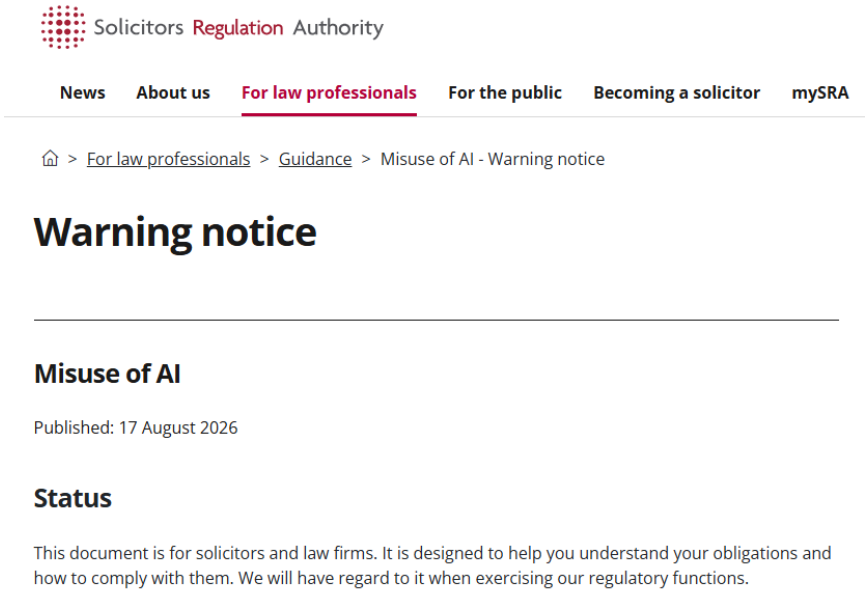
*“This warning notice is relevant to **all firms and individuals** we regulate….”*

“We are concerned about two areas in particular.

*The first relates to court, or other, documents containing **false or incorrect information, including citations, as a result of the misuse of AI**. AI tools can produce 'hallucinations', generating fictitious cases, references or seemingly factual assertions that may appear convincing despite having no basis in fact.*

*We are also concerned that those we regulate are not fully considering and appropriately mitigating risks to client confidentiality when using AI systems, **particularly in relation to clients' personal data or other confidential information.***

Both paid for and free-to-use AI tools may not provide the contractual, and technical safeguards needed to maintain client confidentiality.”



Solicitors Regulation Authority

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> For law professionals > Guidance > Misuse of AI - Warning notice

Warning notice

Misuse of AI

Published: 17 August 2026

Status

This document is for solicitors and law firms. It is designed to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

Four signals

1

Shadow AI is real

2

Who owns the risk?

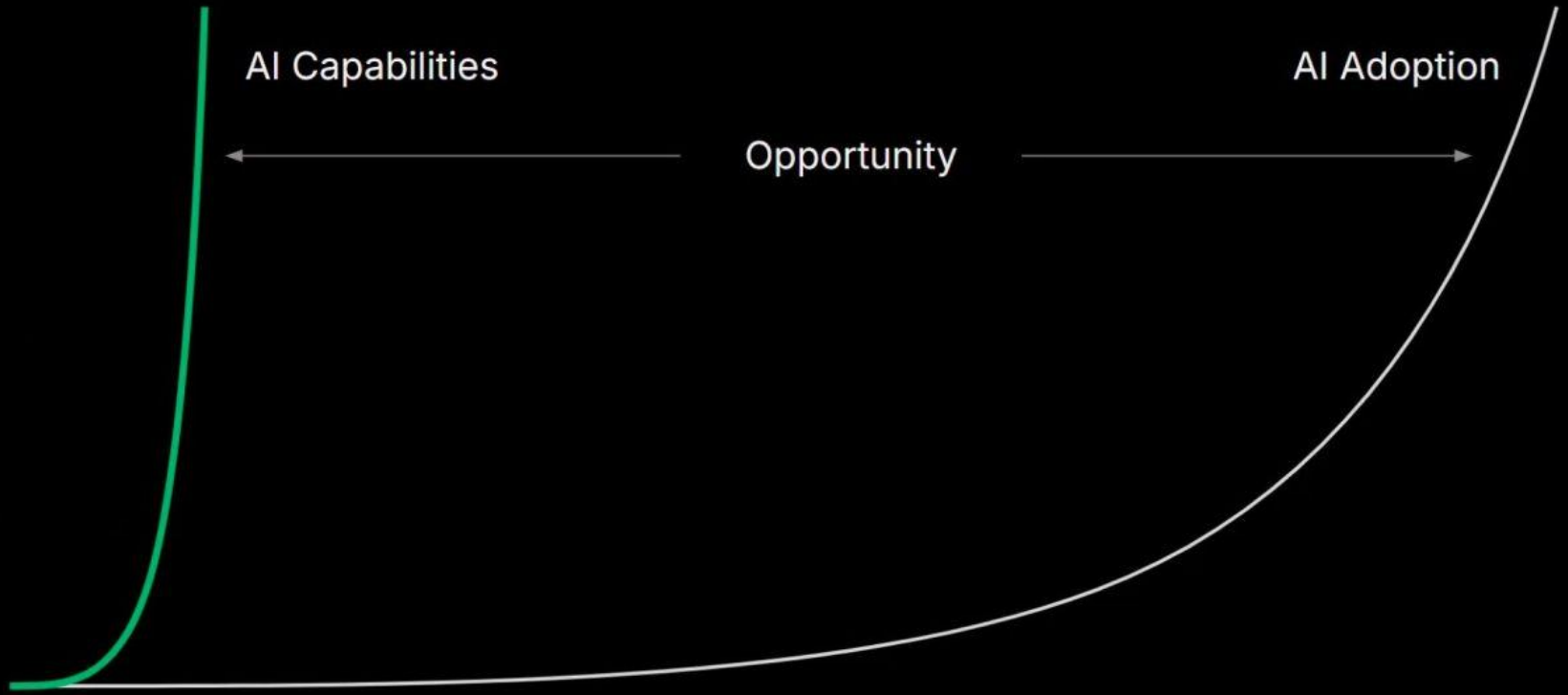
3

Where does liability sit?

4

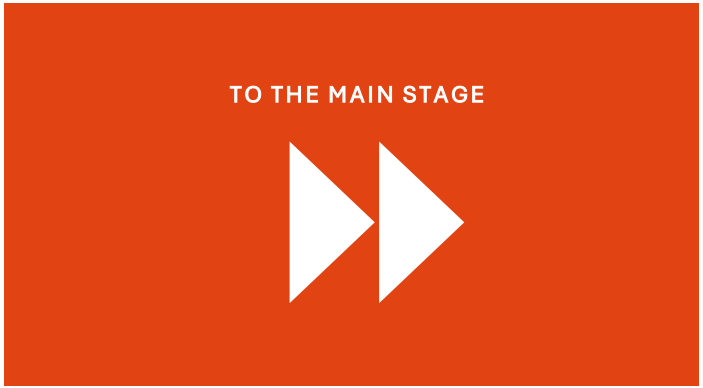
Why verification is (still) not optional

The Diffusion Gap

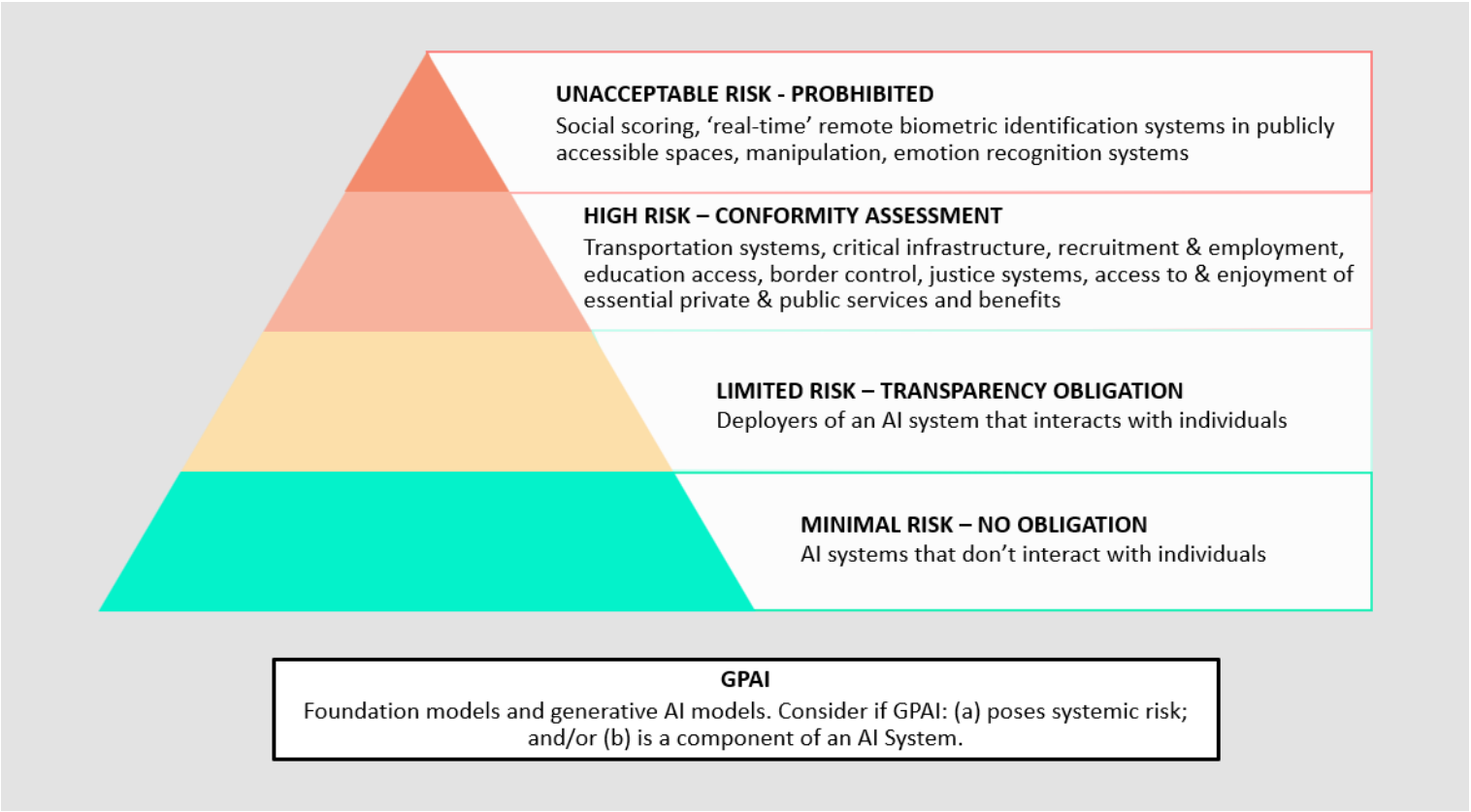




Governance cannot be an afterthought.



The danger is not AI use. It is ungoverned use.



Stairway to heaven



1. **Regulatory:** how is the use case classified from a regulatory risk perspective?
2. **Data and Outputs:** what goes in and where does it go? What is the output and who "owns" it?
3. **Risk/liability:** what is the worst-case scenario and where should liability fall?
4. **Technical and operational readiness:** Is the internal team ready to use this safely?
5. **Contractual protections:** What does/should the contract say?

Scenario 1: MoodBoost

Your Head of Communications approaches the legal team to request sign-off on **MoodBoost**, an AI tool that generates draft internal communications, motivational messages and team celebration announcements to help maintain staff morale.

- Inputs are limited to generic, non-sensitive prompts (e.g. "write a Friday morale message").
- No personal data, third party data, or commercially sensitive information is ever entered into the tool.
- All outputs are reviewed and edited by a member of the communications team before publication. Only the communications team has access and are all trained, AI super users.
- The vendor (BrightComms Ltd) is ISO 27001 certified, a DPA and MSA have been reviewed by legal and the solution is deployed into your own secure environment. No company data or prompts are used for model training.



Turn up the heat
Scenario 2: Contract Reviewer



Scenario 2 – The Smarter Contract Review

Framework Item	Position/Issue	Assessment
Regulatory	The AI contract review tool can be used both for sales contract review and CV analysis/filtering.	Sales contract review = limited risk CV analysis/filtering = high risk
Data and Outputs	**Input**: Sensitive commercial data. Could be limited personal data (sales tool) or extensive personal data processing (CV analysis). **Output**: Contract review redlines (sales tool) and CV analyses/filter (CV analysis)	**Personal data**: DPIA for CV analysis + international transfers (US cloud-based offering) **Output:** No major red flags from ownership perspective.
Risk/Liability	Sensitive customer contracts (and CV data) could be leaked if security breach. Sales team plan to use to remove need for legal review. HR team could use to filter applicants.	Confidentiality / Security risk. Technical and organisational measures to be assessed. Private deployment to reduce risk. Legal to be involved in playbooks / criteria of what contracts can be assessed. Training + clear process for sales team. HR risk is high. Remove filter concept.

Scenario 2 – The Smarter Contract Review

Framework Item	Position/Issue	Assessment
Technical and Operational Readiness	Testing internally has been limited (10 contracts) Sales team not involved in pilots to date. No training to main users.	PoC could be a good next step to trial on the company's contracts and involve members of Sales team (and HR team). Mandatory training for all of users (both technical and operational) Process for reporting errors/incidents
Contractual Protections	Market standard position. MSA and DPA and reasonable starting point. Supplier willing to entertain some changes.	Super cap for confidentiality / DP breaches / wilful breaches (potential for uncapped to address using data for training models). Clear data / output licensing and ownership provisions. For HR add on - additional information required to satisfy high-risk requirements under EU AI Act.


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Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Regulatory	A social scoring AI tool rating people on their behaviour (like a Black Mirror-style citizen score)	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Regulatory	A social scoring AI tool rating people on their behaviour (like a Black Mirror-style citizen score)	RED

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Regulatory	An AI tool to evaluate a borrower's creditworthiness for a loan application	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Regulatory	An AI tool to evaluate a borrower's creditworthiness for a loan application	AMBER

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Regulatory	Emotion recognition AI tool which assesses how frustrated, happy or engaged workers are through their webcams	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Regulatory	Emotion recognition AI tool which assesses how frustrated, happy or engaged workers are through their webcams	RED

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Regulatory	Chatbot on a company's website to help customers navigate the content of the website quicker	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Regulatory	Chatbot on a company's website to help customers navigate the content of the website quicker	GREEN

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Data	Cloud-based Copilot AI tool which reads emails and suggests responses. All data processed can be used to improve the AI tool.	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Data	Cloud-based Copilot AI tool which reads emails and suggests responses. All data processed can be used to improve the AI tool.	RED

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Risk/Liability/Contract	The contract for the MoodBost AI tool for internal mood boosting internal messages has a liability cap of 6 month of fees which supplier will not change (equates to £7,500)	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment	
Risk/Liability/Contract	The contract for the MoodBost AI tool for internal mood boosting internal messages has a liability cap of 6 month of fees which supplier will not change (equates to £7,500)	GREEN	AMBER

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Technical and Operational Readiness	The customer success team wants to use a new AI tool to help track customer contract key terms – this would be their first experience using AI tools.	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Technical and Operational Readiness	The customer success team wants to use a new AI tool to help track customer contract key terms – this would be their first experience using AI tools.	AMBER

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Outputs	AI tool to support global software engineering team on developing code for new customer solutions. Contract states all output is owned by the customer.	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment	
Outputs	AI tool to support global software engineering team on developing code for new customer solutions. Contract states all output is owned by the customer.	AMBER	RED

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Outputs	Same AI tool used solely by the internal people's team to create internal only webpages and content to make the people's page more accessible/fun (does not amend any policies)	

Drop the Beat: Quick-Fire Round



Framework Item	Position/Issue	Assessment
Outputs	Same AI tool used solely by the internal people's team to create internal only webpages and content to make the people's page more accessible/fun (does not amend any policies)	GREEN


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Thank you!



Mishcon de Reya

It's business. But it's personal.