

Corporate NEWSLETTER

Spring 2017

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EMPLOYMENT LAW

Discretion... Proportionality...

Subject Access Request for employees' personal data



Rachel Harrap, Head of Employment

The latest development in this important field of data protection was delivered by our Court of Appeal on 3 March 2017 in the case of *Deer v University of Oxford* when it gave Judgment on the scope of the rights of a data subject to make a Subject Access Request (SAR) of a data controller with a view to discovering what personal data the data controller has in its possession against the data subject.



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Editor's Note

Welcome to the Spring 2017 edition of our Corporate Newsletter. This latest edition contains a variety of useful articles covering corporate & commercial, employment, intellectual property and trade mark, property and property litigation law.

Following our Brexit Article 50 challenge in the Supreme Court, our Senior Partner, David Greene, has written an article for The Huffington Post entitled "A Victory For The Rule Of Law And Parliamentary Democracy" which is available to review [here](#). We will of course be monitoring the effects of Brexit now that Article 50 has been triggered and its likely implications for businesses.

We are members of the global legal network Ally Law and we will be attending and presenting at the Client Seminar in New York on Thursday, 25 May, which will feature an address by Antony "Tony" Blinken, former U.S. Deputy Secretary of State as a speaker. Further details about the seminar are available [here](#).

Please do not hesitate to contact me if you have any legal issues or concerns that you would like to discuss.



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The Judgment included rulings on:

- the scope of the definition of “personal data” in Section 1 of the Data Protection Act 1998 (DPA);
- the extent of the duty to comply with a SAR in respect of a reasonable and proportionate search;
- the extent of the Court’s discretion under Section 7(9) of the DPA to order or to decline to order a data controller to comply with a SAR.

Personal Data

The definition of “personal data” consists of two limbs:

- whether the data in question “related to” a living individual; and
- whether the individual was identifiable from those data.

Information was not disqualified from being “personal data” merely because it had been supplied to the data controller by the data subject.

SAR and Motive

The right of access under Section 7 was not subject to any express purpose or motive test. Nor was a data subject required to state any purpose when making an SAR. The requirements for a response to an SAR were laid out in Section 7(1)(b) and (c) of the DPA.

Proportionality

The EU legislature did not intend to impose excessive burdens on data controllers and the Court applied the principal proportionality. Section 8(2) DPA entitled a data controller not to supply a copy of the information in permanent form if to do so would involve disproportionate effort. However, there was no express provision relieving a data controller from the obligation to search for and supply the information required by Section 7(1) of the DPA on the same ground. While the principle of proportionality could not justify a blanket refusal to comply with an SAR, it did limit the scope of the efforts that a data controller had to take.

The implied obligation to search was limited to a reasonable and proportionate search, but the fact that a further more extensive search might reveal further personal data did not mean that the first search was inadequate.

Discretion

A discretion conferred upon the Court by legislation was conferred for a purpose. In exercising its discretion the Court had to have regard to the general principle of proportionality. In striking the balance between the prima facie right of the data subject to have access to his personal data on the one hand and the interests of the data controller on the other, the Court could take into account, amongst other things:

- whether there was a more appropriate route to obtain the requested information;
- the reason for making the SAR;
- whether the application was abuse of rights or procedurally abusive;
- whether the request was really for documents rather than personal data; and
- the potential benefit to the data subject.

In this case, the Court of Appeal refused to exercise its discretion to order the data controller to take further steps in subject access compliance confirming that a data controller’s implied obligation to search for documents on receipt of an SAR is limited to what is reasonably proportionate. The Judgment recognised that there can be no objection to an SAR being made in connection with actual or contemplated litigation, but will take into account “the absence of a legitimate reason” for an SAR being made.

And finally...

Brexit Bill

On 13 March 2017 the UK Parliament voted in favour of the Brexit Bill, which enabled the Government to trigger Article 50 on 29 March 2017 to start the UK’s exit negotiations with the EU.



Does this affect employees and workers today?

Whilst how the UK exits from the EU is critical, nothing will change overnight in terms of UK employment law. For businesses with operations in the UK employing EU or UK workers, the position will remain the same during the period of negotiations. The UK’s position in the EU, its ability to trade with the EU, the rights of EU workers in the UK and the UK’s immigration laws for EU workers will remain unchanged for the next two years or until an earlier deal with the EU is agreed. So for both EU and US businesses with UK operations, the decision of Parliament is unlikely to have any practical impact for quite some time to come.

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"It goes without saying that trade mark owners need to carefully evaluate their existing trade mark portfolios, compared to marks they wish to use and retain, in the UK, and develop strategies to ensure seamless and continuing UK trade mark protection with legal certainty."

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INTELLECTUAL PROPERTY LAW

EU trade mark protection and the UK following Brexit



Maggie Ramage, Partner

At present, EU trade mark protection covers all 28 member states. Once the UK exits the EU existing, EU rights will still cover 27 member states, with the exception of the UK, and it is generally thought that the UK portion of these EU rights will be extended to cover the UK, the question is how will this happen?

If entities currently own UK national trade mark registrations, that UK protection remains unaffected. However, many trade mark owners do not have UK national trade mark registrations, having elected instead to go for pan-EU registration. At present, the UK is automatically covered in an EU application, but what happens when the UK leaves the EU?

At present, the UK IPO is discussing with the UK Government and the UK IP Minister what the options may be. The Chartered Institute of Trade Mark Attorneys and the Chartered Institute of Patent Attorneys are currently consulting with the UK IPO and the IP Government Minister on the various possibilities.

A number of possibilities have been suggested to ensure that existing EU trade mark rights have effect in the UK following Brexit.

It is likely that there will be some kind of transitional arrangements put in place to allow for retention of existing EU rights in the UK. After all, the Community Trade Mark Act dates back to 1996, and so many trade mark proprietors have enjoyed up to 20 years protection of their rights in the UK but via the EU filing system.

Similar principles should also apply to registered community designs, but for the purposes of this article, I refer only to trade mark rights.

My own professional institute, the Chartered Institute of Trade Mark Attorneys (CITMA), favours a system which would be low on cost and necessary procedures to make the change, but maximising legal certainty. The possible options under discussion are as follows:

EU Plus

The EU trade mark system would not be confined to the EU, but would cover all EU countries plus the UK and possibly Norway, Switzerland and even other EU candidate countries. Under this provision, all existing EU trade mark registrations would cover the UK and potentially other countries following Brexit.

Jersey Model

The UK would deem EU trade marks existing as at Brexit to have effect in the UK. The UK IPO and UK Courts would treat EU trade marks as being in force in the UK for the purposes of examination. A new UK law would be required to deem rights as being in place in the EU before the date of Brexit as covering the UK, with no need for recordal on the UK Trade Mark Register.





Montenegro Model

All existing EU trade mark registrations would automatically be entered onto the UK Register as UK trade mark registrations, with the same scope of protection, registration date and where appropriate claim to priority and seniority.

The Tuvalu Model

Existing EU trade mark registrations would enter onto the UK Register, **but** only if the owner makes a positive decision to extend them to the UK. This could be done by submitting a form within a defined time period or even perhaps submitting a fee.

Veto

The UK IPO would consider applications to remain on the UK Register, but may refuse them. This would ensure that marks which were not considered inherently distinctive enough for registration under UK Law and Practice would not be allowed, or this may refer to marks which had been accepted in the EU, but previously applied for and refused in the UK.

Republic of Ireland Model

Owners of EU trade mark registrations would be able to create a corresponding UK trade mark registration upon renewal of an EU registration. There may be a time limit to do this, perhaps five years following Brexit, when it would no longer be allowed for a proprietor to opt into this system. The registration would be enforceable in the UK and EU until renewal.

Conversion

The newly created UK applications would retain the application date of the EU trade mark registration, but would undergo full examination by the UK IPO. The remainder of the existing EU trade mark registration would exist as before.

Senior personnel at the UK IPO at present favour some kind of automatic extension of EU rights to the UK. The last option of fully examining existing EU rights for moving to the UK Register could put a heavy burden of workload onto the UK IPO. There are after all 20 years' worth of rights to consider here.

Clearly trade mark proprietors require certainty concerning their trade mark rights within the UK. One important point to remember about UK trade mark protection

is that for example, if an EU trade mark has been used within the EU but not in the UK, the UK portion of those rights could then become vulnerable to a challenge of non-use after a five year period. For this reason, proprietors of existing EU trade mark rights who had an on-going or potential interest in the UK market, but who were not yet using their trade marks in the UK, would well be served in considering an application to cover the UK only by way of a national UK application, to allow them to bring the mark into use here and avoid losing rights if challenged, and if unable to defend themselves by showing UK use of their mark.

It goes without saying that trade mark owners need to carefully evaluate their existing trade mark portfolios, compared to marks they wish to use and retain, in the UK, and develop strategies to ensure seamless and continuing UK trade mark protection with legal certainty.

At present, there are no changes to existing procedures for filing and enforcing EU rights, and having those rights enforced for the UK. However, things will change following Brexit, so I would suggest that to be forewarned is to be forearmed.



Brexit Implications

To view our response to the outcome of Brexit and the Article 50 Challenge, please visit our [website - Brexit Implications](#)

We will be publishing legal commentary as our journey evolves.





PROPERTY LITIGATION LAW

Break clauses – key points to consider



Joanna Osborne, Head of Property Litigation

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Break clauses are very valuable tools for tenants, but longer leases are more valuable to landlords. Landlords recognise this by demanding a higher rent for a lease with a break clause, due to the shorter potential length of the lease.

In practice, landlords will go to great lengths to prevent the exercise of a break clause. Great care therefore needs to be taken both in negotiating these clauses and in considering the extent to which they are actually capable of being exercised, because break clauses often contain

pre-conditions which render them virtually inoperable. I explain the most common pre-conditions and the position on claiming rent back after the break date if that falls between rent quarter payment dates.



International Capabilities

An international member of

Ally Law

Increasingly we find that clients' needs have an international dimension and we are able to offer access to Ally Law, of which we are a member. Ally Law is a group of independent law firms that provide comprehensive legal services worldwide.

We also have strong links in Russia, the Far East, the Middle East, and Sub-Saharan Africa, and regularly assist clients with global or pan-national businesses.

We are able to provide legal services to an equal or higher standard than firms much larger than ourselves. This is demonstrated by the fact that we have won (and retained) tenders for the legal services of sizeable global companies in the face of competition from larger international firms.

We will be attending and presenting at the Client Seminar in New York on Thursday, 25 May, with speaker Antony "Tony" Blinken, the former U.S. Deputy Secretary of State.

If you have questions about how Edwin Coe and Ally Law can address your global business and legal needs, please contact [Russel Shear](#), Head of Corporate & Commercial at Edwin Coe. Alternatively, please email team@ally-law.com.

Common break clause pre-conditions

1. Service of written notice by a given date or with a minimum notice period.
2. Payment of a "break premium".
3. Vacant possession.
4. Compliance with all covenants in the lease, both at the time the notice is given and also on the break date.
5. Payment of the rent or all other payments due under the lease.

The last three types of pre-condition usually present the most problems.

3. **Vacant possession** – Landlords will often try and argue that chattels left in a property have prevented the tenant from providing vacant possession. Sometimes landlords even argue that fixtures are chattels in order to avoid the exercise of a break.
4. **Covenant compliance** – Difficulties encountered with the requirement for compliance with all of the covenants in the lease often trip tenants up both in relation to repairing obligations and also payments of small sums, which may not even have been demanded by the landlord as explained below.
5. **Rent and other payments** – Where the break date does not fall on a quarter date and where rent is payable quarterly in advance, payment of the full quarter's rent must be made on the quarter date prior to the break date to ensure compliance with the break clause. This is also the same for other payments such as service charges and buildings insurance premiums. Great care must be taken to ensure that all possible payments have been made prior to the break date.

In the case of *Avocet Industrial Estates Limited v Merol Limited* [2011] EWHC 3422 the Court held that the break was invalid, because although the tenant had taken great care to make sure all sums demanded had been paid, £130 of default interest on late payments under the lease had not been paid, even though this had not been demanded. Much therefore turns on the wording of other provisions in the lease when considering whether the tenant has complied with the covenants.

Claiming payments back after the break date

In the case of *Marks and Spencer plc v BNP Paribas* [2016] AC 742, the Supreme Court has clarified the law of break notices in two important respects.

1. The law of implied terms.
2. Apportionment of rent payable in advance.

1. The law of implied terms

The starting point is that the absence of an express term means that nothing has been agreed. The Court has no power to improve the lease. The test is not one of "absolute necessity", but one of strict necessity, being necessity for business efficacy. In the M&S case, the Supreme Court suggested that a helpful way to consider this is to say that a term can only be implied if, without the term, the contract would lack commercial or practical coherence. Also a term will only be implied where it is a reasonable term, can be clearly formulated to fit in with the express terms, or fill a lacuna between them, and where it is not inconsistent with the express terms.

2. Apportionment of rent payable in advance

The Supreme Court in the M&S case also confirmed that rent payable in advance:

- is not apportionable under the Apportionment Act 1870; and
- could only ever be apportionable as a result of a clear and unambiguous clause in the contract.

In the M&S case, the rent in the lease was required to be "paid yearly and proportionately for any part of a year by equal quarterly instalments in advance". Although the Court commented that it was therefore unlikely that it was the intention of the parties for the tenant, M&S, not to be refunded the apportioned rent, the Court declined to imply such a term into the contract.

Under the lease in this case, the tenant was required to comply with a pre-condition for the payment of a premium before the break date, which was 24 January 2012. The premium was paid on 18 January 2012,

therefore after the December quarter date on 25 December 2011. The Court held that because the tenant would not have known at the date that the December quarter rent was payable whether the lease would come to an end before the next quarter date on 25 March 2012, the tenant was required to pay the rent for the whole of the next quarter. This was because it only became clear that the lease would determine on 18 January 2012, when all of the conditions of the break clause were satisfied by the payment of the premium.

However it should be noted that the Court did comment in this case that if M&S had paid the premium before 25 December 2011, it would have been known at that date whether the lease would come to an end before 25 March 2012 and so on 25 December 2011 the tenant would only have had to pay the proportion of the rent to the 24 January 2012 break date.

Therefore it appears that where the tenant also has to pay a premium in order to exercise the right to break and the lease contains an apportionment of rent provision, then, depending on any other pre-conditions in the break clause, a tenant may not have to pay the full quarter's rent.

It is now imperative when negotiating a lease to make clear what is intended. A Court will only respect the bargain struck by the parties, as recorded in the lease. Resolving conflicts between landlords and tenants will depend upon the construction of the terms of the break clause by reference to the other lease terms. If a tenant requires apportionment of rent when exercising a break right, then express apportionment and repayment clauses should be included in the lease and also in the break clause itself.

Also great care should be taken by a tenant when deciding whether to exercise a break, to ensure absolute compliance with the break clause by reference to the other lease terms.

I have seen a number of break clause cases recently and in uncertain economic times more cases are likely to follow.





“We are suggesting that all businesses that process the personal data of data subjects in the EU carry out an audit of the personal data that they hold to identify areas of non-compliance with the GDPR.”

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INTELLECTUAL PROPERTY LAW

Data Protection Officers: loose cannons or an aid to compliance?



Nick Phillips, Partner

Charlie White, Senior Associate

The General Data Protection Regulation (GDPR) will come into force and will apply in all EU countries including the UK from 25 May 2018.

One of the main changes that the GDPR introduces is the need for businesses to appoint Data Protection Officers (DPOs). This is a mandatory requirement for some businesses and all businesses are encouraged to review whether the appointment of a DPO would be desirable. Where a business is required to, or decides to voluntarily, appoint that person has a very specific and defined role to play and considerable thought should be given to who that person should be.

Territorial scope

As a reminder the GDPR will apply to businesses (whether acting as data controllers or data processors) not established in the EU (e.g. businesses in the USA), where they are processing personal data of data subjects who are in the EU and such processing is related to:

- offering goods or services to such data subjects; or
- monitoring such data subjects behaviour as far as their behaviour takes place in the EU.

The new regime is therefore likely to catch a lot of businesses outside of the EU who are not currently caught by the existing EU data protection regime.

Do we need to appoint a DPO?

Businesses (including US or other non-EU businesses falling within the criteria above) will

need to appoint a DPO where the core activities of that business consist of:

- processing operations, which require regular and systematic monitoring of data subjects on a large scale; or
- processing on a large scale of special categories of data (e.g. data concerning health, personal data revealing racial or ethnic origin, or trade union membership etc.) or personal data relating to criminal convictions and offences.

The guidance provided thus far suggests that the above criteria will be interpreted quite broadly and this is likely to therefore apply to quite a lot of businesses.

Where a business voluntarily decides to appoint a DPO, the provisions of the GDPR regarding DPOs will apply as if the appointment had been mandatory.

What are the tasks of the DPO?

There are various specific tasks that a DPO will have under the GDPR including:

- Monitoring compliance with the GDPR:
 - as part of these duties, the DPO may:
 - collect information to identify processing activities of the business;





- analyse and check the compliance of processing activities;
 - inform, advise and issue recommendations to the business.
 - the current guidance makes it clear that the DPO is not personally responsible for instances of non-compliance by the business.
 - Assistance with regard to data protection impact assessments:
 - the controller shall seek advice from the DPO when carrying out a Data Protection Impact Assessment (DPIA) including on the following issues:
 - whether or not to carry out a DPIA;
 - the methodology of the DPIA;
 - the safeguards for data subjects;
 - the DPO will provide advice where requested as regards the DPIA;
 - it is primarily the task of the controller, not the DPO, to carry out a DPIA.
- The DPO needs to take a risk-based approach to their activities. The current guidance states that the DPO should prioritise their activities and focus their efforts on issues that present higher data protection risks (although they should neglect the monitoring of processing operations that have a comparatively lower level of risk).
- Although it is the responsibility of the business to maintain relevant records under the GDPR, it may be appropriate for the business to assign the DPO with the task of maintaining such records.
- What is the position of the DPO?**
- In relation to the role and position of the DPO, they should:
- Be involved in all issues relating to the protection of personal data:
 - the DPO should be involved in such issues at the earliest stage possible;
 - the DPO should be invited to participate regularly in meetings of senior and middle management;
 - the opinion of the DPO should be given due weight and, it is suggested that, where the DPO's advice is not followed the reasons for doing so should be documented;
 - the DPO must be promptly consulted once a data breach has occurred;
 - Be provided with the necessary resources to carry out their tasks:
 - the DPO's functions should have the active support of senior management;
 - the DPO should have sufficient time to fulfil their duties;
 - the DPO should have adequate support (e.g. financial, infrastructure, staff and other services);
 - the more complex and/or sensitive the processing operations, the more resources must be given to the DPO;
 - Be able to act in an independent manner:
 - the DPO should not be given instructions regarding the exercise of their tasks including that, in relation to a data protection matter, the DPO must not be instructed:
 - as to what result should be achieved;
 - how to investigate the matter;
 - whether to consult the supervisory authority;
 - to take a certain view on the interpretation of the law;
 - Not be dismissed or penalised for performing their tasks:
 - the DPO cannot be dismissed or penalised if the business disagrees with the DPO's assessment of a data protection matter;
 - a penalty could be direct or indirect (including a delay in promotion or a denial of employee benefits) and can merely be the threat of a penalty;
 - the DPO can still be dismissed for reasons other than performing their tasks as a DPO;
 - Not have a conflict of interest:
 - DPOs are allowed to have other functions but such other functions should not give rise to a conflict of interest;
 - the DPO cannot hold a position within the organisation that leads the DPO to determine the purposes and the means of the processing of personal data;
 - as a rule of thumb the following positions should not also be a DPO: chief executive, chief operating officer, head of marketing, head of HR and head of IT;
 - it may be good practice to draw up internal rules to avoid conflicts of interest.
- Concluding remarks**
- The GDPR is a big change to the data protection landscape. We are suggesting that all businesses that process the personal data of data subjects in the EU carry out an audit of the personal data that they hold to identify areas of non-compliance with the GDPR. Additionally, to ensure that compliant procedures can be put in place in good time before the GDPR comes into force after May 2018, part of that audit should include a consideration of whether it is necessary and/or desirable to appoint a DPO. That decision can however only be made against a background of the nature of the business and the personal data it processes.
- Once a decision has been made to appoint a DPO, then appropriate candidates need to be reviewed carefully. Clearly, this person cannot be a member of the existing senior management team nor can he or she be responsible for deciding how data is processed. This person will however have to be sufficiently senior to fulfil his or her duties and to be able to advise the business on its data protection obligations. In larger organisations, this may lend itself to being a full time or dedicated position particularly where the DPO is asked to act across a group of companies. Other organisations may choose to utilise existing people but they will need to ensure that this person has sufficient time and resource to be able to fulfil the role.





"Since the Court of Appeal judgment in *Brown & Root*, many leases now include and obligation on the tenant to register the lease, and any registrable assignment of it, at the Land Registry within a stated time."

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PROPERTY LAW

Mind the Gap



Susan Johnson, Senior Associate

When registered land is transferred, the legal estate is only vested in the transferee when the transferee is registered at the Land Registry. Until such registration, the transferee merely has an equitable interest. It is only when the registration is finally completed that the legal estate vests in the transferee, and that will then be backdated to the date of the application for registration. This means that there will be a gap between the date of the transfer and the date when the legal estate actually vests in the transferee, namely, the "registration gap".

In most cases, the registration gap does not create problems for the buyer, and the Land Registration Act 2002 gives the buyer the power to deal with the property during the registration gap. However, there are certain things that can only be done by the legal owner of the property, and this is where the problems arise. Some examples of practical difficulties are as follows:

■ Notices

In *Pye v Stodday* (2016), a buyer of a property served a notice to quit on an agricultural tenant, but at the time the notice was served, the buyer was not the registered owner of the property. The court held that the notice to quit was invalid as the buyer was not the legal owner of the land when it served the notice.

■ Break notices

The first case that really highlighted the potential problems caused by the registration gap was the case of *Brown & Root v Sun Alliance and London Assurance Co* (1997), when an unregistered assignment of a

registered lease allowed the assignor, rather than the assignee, to terminate the lease by exercising a personal break clause in the lease, even though the assignment of the lease had taken place. The Court of Appeal held that as the assignment of the lease had never been registered, it did not constitute a legal assignment and the break notice served by the assignor was valid.

■ Landlord and Tenant Act 1954

References in the Act to the "landlord" and the "tenant" are generally to the person in whom the legal estate is vested.

Accordingly, the notices that have to be served under the Act, either by the landlord or by the tenant, have to be served by the person in whom the relevant legal estate is vested.

Similarly, persons on whom notices are to be served under the Act are the landlord/tenant in whom the legal estate is vested.





■ Forfeiture proceedings

If a landlord wishes to forfeit a lease by court action, it must issue and serve a claim on the tenant. If there has been a recent assignment of the lease and the Land Registry records show that the assignor remains the registered proprietor, the safe course is to serve on both the assignor and on the assignee.

Where a landlord has recently acquired a reversionary interest and wishes to forfeit the lease, if the transfer to the landlord has not been registered at the Land Registry the landlord may have an equitable right to forfeit, even though the transferor retains the legal estate until the transfer of the reversionary interest to the landlord has been registered.

Since the Court of Appeal judgment in *Brown & Root*, many leases now include an obligation on the tenant to register the lease, and any registrable assignment of it, at the Land Registry within a stated time. This obligation is usually coupled with an obligation to produce official copies of the tenant's/transferee's title to the landlord once registration is completed, and an obligation to deal with all requisitions raised by the Land Registry. Although these obligations on the tenant will help in minimising the registration gap, it will not eliminate it.

Also, a buyer of property who wants to deal with the property during the registration gap can include a provision in the contract to allow the buyer, as the seller's agent, to serve notices and take any other steps reasonably required by it during the registration gap, or require the seller to do so at the direction of the buyer.

With the current delays at the Land Registry in dealing with applications for registrations, and with less straightforward applications taking many months, the registration gap continues to remain an issue.

CORPORATE & COMMERCIAL LAW

Corporate Governance review and reform



Eoin Broderick, Associate

Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies.

The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. This classic definition of corporate governance was included in the introduction to the UK's first code on corporate governance published in 1992. The most recent iteration, called the UK Corporate Governance Code (the "Code") was published in April 2016 and applies to all companies with a premium listing, whether they are incorporated in the UK or elsewhere.

The Code is a guide to a number of key components of effective board practice and includes sections on **Leadership** (the role of the board, division of responsibilities and the role of the chairperson and non-executive directors); **Effectiveness** (composition of the board, appointments, evaluation and re-election); **Accountability** (financial and business reporting, risk management

and internal control and audit committee and auditors); **Remuneration** (level and components of remuneration and developing remuneration policy); and **Relations with shareholders** (dialogue with shareholders and use of the general meeting and AGM).

In November 2016, the Department for Business, Energy and Industrial Strategy launched a green paper which included a consultation exercise on the reform of corporate governance.

The Green Paper sets out proposals concerning shareholder influence on executive pay including increased shareholder engagement and voting on executive pay and the increase in transparency on the amounts paid to executives. It also suggests the use of employee representatives on company boards and the use of stakeholder advisory panels in order to strengthen employee and customer voice at board level.

Finally and perhaps most radically, the Green Paper suggests that corporate governance should be extended to larger private companies as well. This could potentially be done by applying the current code more



widely (perhaps based on a size threshold rather than based on the legal form of a business) or the imposition of an alternative code for these large private businesses. It notes that

"The plan is to consult on any potential changes to the Code during 2017..."

the consequences when things go wrong with these large private businesses can be equally disastrous for shareholders.

The deadline for responding to the Green Paper was **17 February 2017** and organisations like ICSA, Financial Reporting Council and the Quoted Companies Alliance have published their responses. In February 2017, the Financial Reporting Council announced that it also intends on carrying out a fundamental review of the Code which, amongst other things, will take into account the issues raised in the Green Paper and the Government's response to them. The plan is to consult on any potential changes to the Code during 2017 following which we may well see some of the proposed changes implemented into the Code.

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