

McCormicks Briefing

Spring 2018



**GDPR: What you
need to know**

**Meet our
new Partner**

Host of awards



McCormicks
SOLICITORS

With the General Data Protection Regulation just around the corner, our Head of Commercial Litigation, Philip Edmondson, takes a look at what businesses need to do to comply.

GDPR: are you ready?

The General Data Protection Regulation (GDPR) will come into force on 25 May, increasing the regulations surrounding the collection and processing of personal data. The GDPR will also very significantly increase the potential penalties for businesses found to be in breach of its requirements. Whilst this is a complicated area of law on which bespoke advice is what you need, here are a few guidelines as to what needs to be done and unfortunately if you are not already underway with it, there is likely to be a lot to do, even for small businesses, prior to 25 May.

Data and Information Audit

Personal data is what the GDP is all about. Personal data is any information relating to an identified (or identifiable) living person. There is a need to undertake an audit of what you hold both in hard copy and electronically and then document:

- ▶ The personal information that you hold (including that of customers, employees, suppliers or anyone else with whom your business deals);
- ▶ How that personal data was collected.

- ▶ Every single third party with whom you share any of that data.

When carrying out the audit it is important to involve all key employees in your business so as to try to ensure that no data is missed.

Processing Data – do you have a lawful basis for this?

The lawful bases for processing personal data are:

- ▶ Consent;
- ▶ Necessary for the performance of a contract;
- ▶ Processing because you have a legal obligation to do so;
- ▶ Vital Interests (i.e. necessary to protect the data subject's vital interests);
- ▶ Public Interest (i.e. under official authority from the state);
- ▶ Legitimate Interests (see below).

The last of these "legitimate interests" is likely to be a useful and important basis for many businesses but it should not be relied upon without careful thought and advice. Legitimate interests can include ordinary honest business practices and direct marketing but only if you have followed the other requirements of the

GDPR. For example, the new law will make it much more difficult to show that you were relying upon data subject's "consent" to processing. You should therefore obtain fresh consent from all those to whom you wish to market and get that consent BEFORE 25 May 2018 as to contact them after that date, asking for their consent may itself be a breach of the GDPR. This is what makes 25 May such an important date.

New Rights and Subject Access Requests

The GDPR enhances all of our rights as individuals. You must have a system which facilitates fast location of all personal data you hold. This is what the GDPR requires so that you can respond to a detailed subject access requests within a short timescale and if necessary to delete that data, if the person is asking for that to happen.

Write it all down

At all steps of compliance, we suggest that you document all that you are doing. When doing this show that you have had in mind that the New Data Protection Principles that you must comply with when processing ANY personal data are:

- ▶ Lawfulness and Transparency (i.e. that you have issued a privacy notice when collecting data);
- ▶ Purpose Limitation (you must not further process the data in any manner incompatible with the purpose for which you have the data);
- ▶ Minimisation (only keep what is relevant and necessary);
- ▶ Accuracy (up to date);
- ▶ Storage Limitation (only keep it for as long as truly needed);
- ▶ Integrity and confidentiality security is key.

It will be advisable to update and enhance your written privacy/ data protection policies and notices on your website, email footers and contracts. For example, you need to tell everyone for whom you control or process their data, the basis on which you process personal data and for how long you intend to retain it.

Show your workings

GDPR makes it clear that you must document the decision making, policies and procedures you adopt to ensure compliance. Documenting your reasoning and keeping it up to date will assist greatly if the Information

Commissioner Office (ICO) were ever to investigate your business.

Breaches

This brings me to the topic of breaches. In short – if you become aware of a data breach you are likely to have to tell the data subject(s) (people) concerned, and your supervisory data protection authority, within very short timescales. Policies and procedures will need to be in place to ensure you can do this. You need a data breach policy which sets out what your business will do in the event of a breach. Breaches can be major (releasing data or giving access to third parties without a lawful basis listed above) and obvious. Things like your internet going down meaning you cannot access a person's data (and so neither can they) are also breaches which might not look like a breach at first glance. If in doubt as to whether you have committed a breach and what to do about it, you will protect yourself by taking legal advice.

The more transparent and careful you are to document all of your processes, policies and procedures, the more lenient the ICO is likely to be in the event of an unfortunate breach.

Jon Healey is the new Head of our Corporate and Commercial team.

Meet our new Partner

Jon, who joins as a Partner, advises clients on a wide range of corporate and commercial matters, including acquisitions and disposals of companies and businesses, joint ventures, shareholders' agreements, group reorganisations, capital restructurings, share buybacks and a

variety of commercial contracts. He acts for a broad range of clients, including national and international corporates, SMEs, individuals, private equity funds, management teams, charities and the Premier League. His experience includes a significant period practising as a corporate

and commercial lawyer in New Zealand and he has undertaken secondments to the in-house legal teams of several large multinational corporates. Senior Partner Peter McCormick said: "Jon's straightforward style and commercial awareness is very much in line with the practice's

approach and is highly valued by his clients." McCormicks is recognised for its Corporate and Commercial work in the latest edition of the UK Legal 500 which describes the firm as providing "excellent" advice and specialising in advising on complex finance arrangements for a broad range of clients.



The new Head of our Corporate and Commercial team, Partner Jon Healey

The expertise of our Crime team has been further strengthened by two new qualifications.

Qualifications Strengthen Team

Brian Nuttney joined the practice in 2014 as a Legal Assistant, following a long and successful career in journalism, and has now qualified as a Solicitor.

He works in both the Crime and Private Client departments.

Brian was formerly Deputy Editor of the Yorkshire Evening Post and prior to that of the Telegraph & Argus in Bradford. He completed

a Graduate Diploma in Law and Legal Practice Course at the College of Law/University of Law, York, before joining McCormicks.

Brian's colleague in the Crime team, Sean Wilson, has qualified as a Duty Solicitor. Duty Solicitors represent people who do not have a solicitor but require legal representation, both at the police station and in court.



Brian Nuttney



Sean Wilson

Sean is a former Dental Surgeon, who retrained as a lawyer following a car crash in his late 20's. He started as a Trainee

Solicitor at McCormicks in 1998, qualifying as a solicitor in July 2002. He left the firm in 2003 to pursue other interests but

returned as a Consultant in late 2009.

He appears regularly in the Magistrates' Courts and police stations, to represent clients in the full range of criminal and motoring offences.

Head of Crime, Partner Geoff Rogers, said: "Brian and Sean's qualifications further strengthen our busy team and I congratulate them on their success."

Action required

If you would like to continue to receive The Briefing and occasionally other information about our activities (via post or email), please email Sonia Jones at s.jones@mccormicks-solicitors.com

Following the introduction of the new GDPR regulations, unless we hear from you before 25 May, we are obliged to remove your details from our database. You will no longer hear from us. You can opt back in at any time. If you decide to stay, you can opt out at any time too. We will never pass on your details to third parties.

Act now: let us know and stay in the loop!

McCormicks has seen an increase in the number of clients seeking advice on the law of forfeiture with regard to commercial leases, both as landlord and as tenants. The law of forfeiture contains many pitfalls for the unprepared - often operating in a counter-intuitive manner. Here Solicitor Will Bates explains some of the issues to look out for.

Forfeiture Facts

What is forfeiture?

Forfeiture is a method by which a landlord can reclaim possession of premises when a tenant is in breach of covenants contained in the lease. Forfeiture can be effected by peaceable entry or via court proceedings. It is vital to know which action is appropriate and that the relevant procedures are followed.

Where the tenant has fallen into arrears with the rent, it may be possible for the landlord to forfeit by peaceable re-entry. This is a cost-effective method of terminating a commercial lease.

Forfeiture by peaceable re-entry is a common law concept that allows the landlord to forfeit the lease (usually by employing bailiffs) without serving a Notice or any other warning. Usually, the lease will provide that the right to re-enter arises if rent is unpaid after a certain period of time (e.g. 21 days) after the rent fell due.

In other circumstances, it is necessary for the landlord to serve the tenant with a Notice and seek possession through court proceedings before regaining possession of the premises. However, this article focuses on the right to forfeit by peaceable re-entry for non-payment of rent.

Be aware of common pitfalls

The law of forfeiture is complex and can be confusing. If the landlord forfeits the lease after waiving their right to do so, the tenant may claim wrongful forfeiture. If the lease has been wrongfully forfeited, the court will grant relief (and the tenant will be allowed back into the premises) and damages for losses arising from the tenant's exclusion.

The most common pitfall for landlords is the requirement that they do not do or say anything to waive their right to forfeit the lease. Waiver is committed if the landlord (or its agents) do anything that acknowledges that the lease is continuing and this action is communicated to the tenant. If the landlord acknowledges that the lease is continuing it does not waive the breach itself, but does waive



If you, as a landlord, are considering whether to forfeit a lease you should seek legal advice as soon as you are aware of the breach.

Forfeiture is a method by which a landlord can reclaim possession of premises when a tenant is in breach of covenants contained in the lease.

the right to forfeit. Therefore, if a landlord wishes to regain possession of premises, they must be very careful in considering whether to issue rent demands or communicate to the tenant that rent arrears are owed. It may seem surprising that a landlord may waive rights simply for demanding a debt which is owed to them.

By way of an example, if a landlord makes a demand for the payment of an annual insurance premium (which is reserved as rent in the lease), they could be deemed to have waived their right to forfeit the lease for the entire period of that insurance, even if it is not actually paid. The reasoning is that the landlord's express recognition of the continuing lease is inconsistent with an intention to bring the lease to an end. In that example, it could be argued that the landlord has waived its right to forfeit the lease for a whole 12-month period. The landlord is still entitled to that rent payment as a matter of contract but the right to forfeit for those arrears is lost for good.

Decide whether to demand rent or reserve the right to forfeit the lease

This commonly leads to a situation where, if the tenant is in arrears, the landlord must consider whether it wants to reserve its right to forfeit the lease.

A properly drafted lease will (from the landlord's perspective) always state that rent is due whether formally demanded or not. However, how to deal with a tenant who is in arrears can be particularly

difficult if the tenant perhaps does not understand that the rent is due whether rent demands are issued or not.

Of course, a landlord should also always consider the state of the property market before forfeiting a lease. It has been well reported that a number of struggling retail chains have successfully negotiated reductions to rent as landlords try to avoid owning empty premises. A vacant property is more likely to fall into disrepair.

Seek advice early

A landlord should be aware that as soon as they become aware of a breach of covenant occurring, they must decide whether to determine the lease or allow it to continue; the landlord must ensure they do nothing to waive the breach on which they may want to rely. If you, as a landlord, are considering whether to forfeit a lease you should seek legal advice as soon as you are aware of the breach.

Conversely, if you are a tenant who has had your lease forfeited you should seek advice as soon as possible if you wish to remain in the premises. Forfeiture is a form of additional penalty (for a breach of contract) so the court often grants relief from forfeiture providing the breach is remedied. Where forfeiture is for non-payment of rent, relief is automatically granted if the tenant pays all arrears and the landlord's costs.

The consultation period on proposals to close Northallerton Magistrates' Court began in January and was due to finish as we went to press.

If the move goes ahead, North Yorkshire would be left with only four magistrates' courts – those at York, Harrogate, Skipton and Scarborough. Selby Magistrates' Court was the last in the county to be shut, back in 2013.

The Ministry of Justice considers that the work currently handled by Northallerton Magistrates' Court could be absorbed by the courts at York, Harrogate, Skipton and Teesside while the sale of the building could release funds to reinvest in the service.

During the 2016/17 financial year,

North Yorkshire could lose one of its five remaining magistrates' courts as part of Ministry of Justice cost-cutting.

Closure "Blow to local justice"

operating costs of Northallerton Magistrates' Court were approximately £140,000.

Partner Geoffrey Rogers, Head of Criminal Law, said: "Closure of the court would be a blow to local justice: defendants and witnesses would have to



Geoff Rogers

travel further, meaning local justice would be diminished further.

"However, the strength of the McCormicks team means that we are in a good position to continue to provide an excellent service to our clients, no matter what the outcome of the consultation."

"...defendants and witnesses would have to travel further, meaning local justice would be diminished further."

McCormicks has got off to a flying start in 2018 with a host of awards from industry publications.

Host of awards

Senior Partner Peter McCormick has been named UK Gamechanger of the Year by ACQ5, a corporate news magazine with more than 159,000 subscribers, and the whole firm has been recognised with a further five awards by the same magazine, namely UK Regional Sport, Media and Entertainment Law Firm of the Year; UK

Regional Corporate and Commercial Law Firm of the Year; UK Regional Civil and Commercial Mediation Law Firm of the Year; UK Regional Commercial Litigation Law Firm of the Year; and UK Regional Private Client Law Firm of the Year.

The firm has been chosen as Corporate and Commercial Law Firm of the Year in England by Corporate Intl Magazine which is

received monthly by 70,000 recipients.

The practice's expertise in Agriculture has been recognised in the Finance Monthly Law Awards 2018 which has named McCormicks Agriculture Law Firm of the Year – UK. The magazine's 200,000 subscribers are invited to vote for the winners.

Peter McCormick said: "It is gratifying that our expertise across

a number of different disciplines has been recognised in these awards and it has been a great start to the year!"



"Gamechanger" Peter McCormick

The Yorkshire Young Achievers Foundation is set to benefit once more from another epic cycle ride by Premier League referee Martin Atkinson.

WhistleStop rides again

Martin is swapping his whistle for wheels this summer as he embarks on a 1,700-mile cycle from England to Russia for the World Cup.

McCormicks is the main shirt sponsor for the whole team, in which Martin will be flanked by fellow riders Mike Tomlinson and Darren Clark for the duration of the ride and, as in 2016, the riders will again be supported by Chris Sanders from 1st Class Events and Barry Phillipson from Smart Therapy Studios. The trio will be joined by other riders throughout their journey, including Atkinson's fellow professional referee Jon Moss, Jim Butters, who led the 2016 challenge and Mick McGuire from James Grant Sports.

Senior Partner Peter McCormick said: "We are delighted they have chosen to support the Yorkshire Young Achievers Foundation again, and in light of the fact that McCormicks is the principal sponsor of the Foundation, the firm is reciprocating their support by sponsoring the shirts."

The #WhistleStopTour 2018 starts at St. George's Park on Monday 11 June and the team will travel through France, Belgium, Holland, Germany and

Poland before reaching their destination in Kaliningrad 18 days later to watch England face Belgium in their World Cup clash on Thursday 28 June.

The money raised will be split between the St David's Hospice Care Newport, University Hospitals - Coventry &

but it's one I think we're all relishing. In 2016 we cycled to all 20 Premier League grounds, which totalled around 1,000 miles, so we're really upping the ante for this one. We've been saying it'll be 18 days of hurt, but it's all for some brilliant charities, so we're ready



Warwickshire Charity, the Yorkshire Young Achievers Foundation and The Jane Tomlinson Appeal.

Martin said: "It's going to be a huge challenge,

to go through that pain barrier! We want to raise as much money as we possibly can, so any donation, large or small would be gratefully received."



The riders will be marking their progress on **Twitter @WhistleStopTour2018** and anyone who would like to donate towards their marathon effort can visit <https://uk.virginmoneygiving.com/Team/WhistleStopTour2018>

We will be marking the 26th anniversary of the Yorkshire Young Achievers Awards slightly earlier in November than usual so please make sure the date is in your diary!

Save the date

This year's awards take place on Thursday 8 November at the Leeds United Centenary Pavilion and, as always, we can promise you a fantastic evening!

Bookings are already being taken and tickets are priced at £65 per person or £600 for a table of ten. Simply visit the website at www.yorkshireyoungachievers.co.uk for all the details or call Sonia Jones on 01423 530630.

If you would like to receive information about sponsorship opportunities at this year's event or to advertise in this programme, please email info@yorkshireyoungachievers.co.uk.

An after-school club for young carers in the Harrogate district has been given a boost with a grant from the Yorkshire Young Achievers Foundation.

Boost for Young Carers

The UTime club is run by the Harrogate Young Carers for 11 to 18-year-olds whose lives are affected by having a parent or sibling with a physical or mental illness, a disability or an addiction to drugs or alcohol. UTime offers activities and sports and a meal to the youngsters while its staff are experienced in mentoring vulnerable young people, supporting them with their studies.

The grant will help the charity to fund the club which provides a safe, relaxing and fun environment for the youngsters after school, while giving staff an opportunity to offer additional support where needed.

The Carers' Resource Events and Fundraising Co-ordinator Anne Wells said: "Sometimes we are the only people that these teenagers can turn to for advice and support.

When their young lives are very hard, coming to one of our clubs, which are held fortnightly in term time, is one of the very few constant and reliable routines in their lives. It is a joy to see these children carefree for a couple of hours when we know what they face at home."



The Carers' Resource Events and Fundraising Co-ordinator Anne Wells and Yorkshire Young Achievers Foundation Trustee Sonia Jones spread the message that young carers need support.

McCormicks client and sponsor of the **Unsung Hero** category in the Yorkshire Young Achievers Awards has a new venture this summer with a pop-up Shakespearean theatre appearing in York city centre.

Sponsor's "Pop-Up" Shakespearean Theatre

Lunchbox Theatrical Productions is presenting Shakespeare's Rose Theatre in York's Castle car park next to Clifford's Tower, with a ten-week summer season featuring *Macbeth*, *A Midsummer Night's Dream*, *Romeo and Juliet* and *Richard III*.

The replica 16th century theatre has already had a trial build in the city and preparations are in full flow.

The theatre is offering special £10 tickets for schools, with schools from across the north already booking.

For more details, visit www.shakespearesrosetheatre.com.

Friends of the practice may be in for a shock if they open the latest paperback from leading crime writer Val McDermid, *Insidious Intent*.

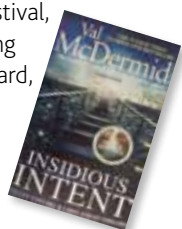
There's been a murder!

For the opening sentence reads: "If Kathryn McCormick had known she had less than three weeks to live, she might have made more of an effort to enjoy Suzanne's wedding."

It is indeed, our Partnership Executive, Kathryn McCormick, although there all similarities end.

Val McDermid has long been a stalwart of the Theakston Old Peculier Crime Writing Festival in Harrogate, of which McCormicks is also a long-term supporter.

All is revealed in the Acknowledgements section at the end of the book where Val thanks her various "murder victims" for charitable donations. The deal was actually done at the 2016 Festival, which saw Val win the Outstanding Contribution to Crime Fiction Award, and she revealed Kathryn's fate at the 2017 event, greeting her with the words: "You're not looking bad for a corpse!"



Will Bates qualified as a solicitor and joined McCormicks last autumn and assists Philip Edmondson in providing Commercial Litigation and Sports Disputes services to clients.

Out of Hours

Will graduated from Durham University and then obtained a distinction - and the top overall mark in his intake - in the Legal Practice Course at Hertfordshire University. As well as Commercial Litigation, he has experience in Corporate and Commercial, Commercial Property and Employment matters. Here he tells us about his love of cricket.

If you weren't in the legal profession what would you be doing?

I honestly have no idea. I actually started a maths and physics degree before changing to law. I never really knew what I wanted to do but a few of my friends were doing law and it looked interesting so I changed subjects. Thankfully, I enjoy working in the legal profession!

What is your favourite sport and why?

I play football too but would have to say cricket. I only moved to the area when I joined McCormicks six months ago and I am looking forward to playing for Harrogate Cricket Club this summer. One of the many reasons I love cricket is the social side - I had a ready-made friendship group when I moved here. I have also just become a playing member of the MCC, so I am looking forward to making the most of that and going to Lords.

Where is your favourite place in Yorkshire and why?

That is a tough question; there are so many nice places in Yorkshire. Quite soon you could say it will be Harrogate Cricket Club, since I am likely to be there every Saturday!



Will is ready for a summer of cricket

If you could have dinner with five individuals, dead or alive, who would they be and why?

Arsene Wenger, Ed Smith, CLR James, Haruki Murakami (author) and Marco Pantani (cyclist and childhood hero). They would all have a view about the role of sport in life. I would invite some more conventional guests like Shakespeare but I am not sure they would enjoy the conversation constantly reverting to sport.

What do you like most about life at McCormicks?

The working environment is really friendly. The work I do (Commercial Litigation) is also extremely diverse, which is part of what attracted me to this area of law in the first place.

What is the best piece of advice you have ever been given?

Do something as a

career that you find interesting and enjoy. After that, it is that lawyers are not brain surgeons and our work is not a matter of life and death. As a litigator I often have to work to deadlines or under pressure. That can be stressful at times but it is now actually something I really enjoy.

What do you do to wind down after a busy day in the office?

I am not too keen on gyms but love running. I am looking forward to the summer because I can explore a bit further afield when I run, rather than being constrained to lit areas. When I have time, I also love reading.



Best Again!

Our congratulations once more to our friends and clients at Rudding Park, which has been voted the best hotel in England outside London in the TripAdvisor Travellers' Choice Awards.

The Travellers' Choice winners are chosen based on millions of reviews collected by TripAdvisor in a single year.



Yorkshire Business On Show

McCormicks is once again supporting the Yorkshire Business Market with a stand at the event.

The 14th Market takes place at the Pavilions of Harrogate on Monday 30 April and showcases businesses from across the region. It attracted more than 1,000 visitors to see 100 exhibitors in 2017.

This year's theme is "Growing and Financing Your Business" and the event features seminars as well as an opportunity to network. Visitor registration is free by visiting www.yorkshirebusinessmarket.co.uk/visitor-registration/

We hope to see you at stand W43 on the day.



OUR EXPERTISE

McCormicks offers the full portfolio of legal services to all forms of organisation including businesses, charities and sporting bodies, together with private individuals. The firm offers expertise in all areas of corporate and commercial work whilst maintaining a commitment to the personal client in areas such as rural property, tax, trusts, probate, family matters and crime.

Charities & Community

- Charities
- Not For Profit

Corporate & Commercial

- Acquisitions and Disposals
- Banking and Finance
- Commercial Agreements
- Competition and EU Law
- Corporate Crime, Fraud and Risk
- IT and Data Protection
- Insolvency and Bankruptcy
- Intellectual Property
- Partnership and Company Law

- Regulatory and Disciplinary

Crime

- General Crime
- Corporate Crime, Fraud and Risk
- Dispute Resolution & Litigation
- Commercial Disputes
- Mediation and Arbitration
- Partner/Shareholder Disputes
- Property and Construction
- Reputation Management

Employment

Family & Matrimonial

- Children
- Matrimonial

Insolvency & Bankruptcy

Mediation & Arbitration

Property

- Agriculture and Estates
- Commercial Property
- Development and Regeneration
- Residential Property

Sport, Media & Entertainment

- Employment
- IT and Data Protection
- Insolvency and Bankruptcy
- Intellectual Property
- Media and Entertainment

- Mediation and Arbitration

- Regulatory and Disciplinary

- Reputation Management

- Sponsorship
- Sport

Tax, Trusts, Wills & Estates

- Agriculture & Estates
- Care of the Elderly
- Tax and Trusts Disputes
- Trust and Tax Planning
- Wills and Probate



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