

## Public Matters - June 2023

30 June 2023

### Australia and New Zealand Free Trade Agreement drives changes to the Public Procurement rules

Following the signing of the Free Trade Agreement between the United Kingdom (UK) and Australia ("the UK-Australia FTA") and the Free Trade Agreement with New Zealand the Government has been prompted to modify the Public Procurement rules. The amendments made by these regulations have a broad scope and aim to implement the FTAs in general. Additionally, they include three sets of amendments of general application under section 1(2) of the Trade (Australia and New Zealand) Act 2023, which are necessary to ensure compliance with commitments made in the UK-Australia FTA.

[Read more](#) →

### Ali Round 2 - High Court gives further guidance on causation and quantum for data breaches

You may recall the High Court's decision last year in *Ali v Luton Borough Council* [2022] EWHC 132 (QB) ("Ali No 1"), concerning a claim brought against a local authority on the basis that one of its social workers had accessed a social care database to obtain and then disclose sensitive information about the claimant to the claimant's estranged husband, with whom the social worker had been in a relationship. The High Court found in that case that the local authority was not vicariously liable for the data breach.

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### Higher-risk buildings – are you ready for 30 September 2023?

With only three months to go until the deadline for registration of higher-risk buildings with the Building Safety Regulator set up under the Building Safety Act 2022, this article examines the key question building owners and developers should be asking themselves and the consequences of failure to register. Expected to affect around 13,000 existing buildings in England, registration is a significant undertaking that will affect many portfolios.

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### New guidance for employers on Subject Access Requests published by the ICO

On 24 May 2023, the Information Commissioner's Office (ICO) published new guidance for employers and businesses on responding to subject access requests (SARs). The guide is a helpful tool for organisations in ensuring they comply with their obligations under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA) when responding to requests for personal data.

In particular, the ICO has supplemented the document with a useful 'SARs Q&A for employers page' which signposts some of the commonly arising issues for organisations, including those which have recently been the subject of sanctions.

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## **Challenging procurement decisions by way of Judicial Review - the key principles**

Procurement for public sector bodies is (subject to some exceptions) normally governed by the Public Contracts Regulations. This means that any legal challenge to an award decision will usually come under the Public Contracts Regulations and needs to be brought by way of a Part 7 Claim in the Technology and Construction Court. However, it is important for public bodies to remember that any award decision is, like the vast majority of decisions made by public bodies, subject to the principles of judicial review. Here are some of the key considerations to keep in mind when considering the risk of a judicial review challenge and some of the points that can be taken if defending such a claim.

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## **Top tips on tackling air pollution risk in a changing climate**

With the Government's pledge to hit net zero in the UK by 2050 comes a need for an immediate reduction in greenhouse gas emissions. The policies that underpin the Government's strategy to cut emissions will influence how we all live our lives. This evolution is necessary if we are to achieve zero-carbon communities. Councils need to adapt to shifting risks as our climate continues to change and design new policies to mitigate the risk.

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## **New obligations for Welsh public bodies on social partnership and socially responsible procurement**

In addition to the UK Public Procurement Bill, the Welsh Government has been working on specific Welsh legislation focusing on social partnership and socially responsible procurement as set out in the Social Partnership and Public Procurement Act 2023.

This article explains exactly who the obligations apply to, the key obligations and requirements and next steps Welsh public authorities should take.

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## **Case summary: the importance of bringing a procurement claim within the appropriate time limits**

*Altiatech v Birmingham City Council* concerns a procurement challenge made by Altiatech against Birmingham City Council regarding the Authority's direct award of a contract to a supplier under a framework agreement that Altiatech was not a party to.

This judgement is a shift from some earlier cases and provides important procedural and legal guidance for contracting authorities and procurement practitioners.

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## **Guidance on contract changes: James Waste Management LLP v Essex County Council**

In James West Management LLP v Essex County Council, James Waste Management LLP alleged that the variation of the existing awarded contract was beyond the narrow boundaries permitted by the Public Contracts Regulations 2015 (PCR).

This case gives contracting authorities further guidance on the application of Regulation 72 and when an existing public contract variation is a 'substantial modification'.

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## What are we to do about self reporting in PFI contracts?

One problem with PFI contracts is monitoring and 'self-reporting', whereby the terms of the PFI contract require the private sector service provider to monitor its own performance and report back to the public authority on that performance and any service failures.

This presents a number of challenges that public authorities face everyday. We look at what parties can do moving forwards.

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## 'Getting ready to reform – preparing for the new Procurement Bill' webinar

In this on-demand webinar, Browne Jacobson's leading procurement lawyers:

- provide an overview of the current position of the Bill;
- be sharing their insights and experiences to help you navigate the impending changes and ensure that your procurement processes are compliant and effective; and
- provide tips on steps you can be taking now to ensure you are ready to implement changes.

[Watch on-demand](#) →

## Key contact

Peter Ware

Partner

[peter.ware@brownejacobson.com](mailto:peter.ware@brownejacobson.com)

+44 (0)115 976 6242

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