

LEGAL TRENDS FOR SMEs IN 2023

TLD



Legal Trends

A new year brings new impetus: not least for strategic planning, goal setting and budgeting.

So, what legal issues should small businesses (SMEs) be considering in 2023, and where are the danger zones?

The ‘gaps’ in support you may not even realise exist?

To improve our understanding, and contribute to our research, we reached out to a group of SMEs, taking a temperature check on how – and when – legal services are being used.

Here are our findings, complete with some words of wisdom from the TLD team.

People remain the no.1 priority

Investing in your recruitment process is key

With over half our study group planning to increase their workforce in the next 12 months (rising to 80% of businesses in our £5-£25m group) – recruitment remains the greatest challenge to meeting business goals.

This is an issue which has been impacting businesses since the early days of the pandemic and one which continues to affect SMEs. The costs of recruitment, training, and of factoring in the diminished productivity of a new employee is estimated at as much as £25,000 for each worker!

So, retaining your best staff and recruiting employees who are likely to commit to your business is of vital importance to SMEs. We addressed this issue in our [blog](#) of January of last year and the advice remains pertinent.

As an SME, there often isn't the time or resource to implement everything you may want to. Our research

suggests most small businesses rely on HR practitioners to manage any legal work relating to their employees and 37% could not recall when they last had a lawyer look at their contracts of employment and policies. This could be exposing your business to risk.

Overlooking important details in the areas of contracts, remuneration, benefits, discipline and grievances could have serious ramifications and involving a lawyer at the outset could save you time and money in the long run.

And it's not just about contracts and processes. The employment “life cycle” between an employer and its employees will include a number of stages that each require a strategic approach and organisational and team design which should reflect the particular vision and culture of the leaders in the business. In an SME, there often isn't the time or resource to put that into place and make it work.



“Recruit with clarity: invest in your recruitment process to minimise churn and ensure candidates understand the purpose of your company and how they contribute to its operations and aims.”

Client Legal Director and Employment law specialist, Kate Palka, says:

“A pragmatic and experienced employment lawyer, working alongside business owners to help shape strategy and to put in place tailored best practice at every stage of the employment relationship, adds commercial value that is risk sensitive but supports change and growth.”



Andrew Magowan, Client Legal Director says:

“The bad news: this change is coming - whether that’s driven by the planet itself fighting back, governments and regulators finally waking up, or customers demanding that things are ‘done right’. And it is essential and urgent, for all our futures.

The good news: there’s genuine opportunity in being ‘a better business’, it’s much easier to grab those opportunities and overcome these challenges the smaller and more nimble you are, and (most importantly) this is absolutely do-able if you think hard, stay focussed and committed and are open & honest in what and how you’re doing.”



Employment Law is changing

Be clear on what this means for your business with our guide.

2023 brings a raft of changes to employment law, including Retained EU Law (Revocation and Reform) Bill, employment status guidance, IR35, fire and rehire, family and carers’ rights, menopause rights, carers’ unpaid leave, fit notes, reporting thresholds, pay gap reporting, modern slavery, immigration, tipping, long Covid, holiday pay and other upcoming government initiatives including the new Employment Bill.

Use our latest [Employment Law Insight](#) to review your responsibilities and employee handbook and seek support to plug the gaps.

SMEs are key to Environmental and Social Governance (ESG)

And good governance is crucial for success

SMEs account for 99.9% of the business population in the UK. While they are not legally obliged to measure, report on, or reduce emissions, we believe it is only a matter of time before legislation comes into play. They will be critical to the UK achieving Net Zero by 2050, delivering on social value commitments in their communities and ensuring the wellbeing of employees.

So, even without legal enforcement, there is increasing pressure on SMEs to consider their own environmental impact and significant risk for those who don’t.

Larger businesses, who are required to adhere to stricter reporting requirements, are scrutinising their own supply chains and demanding to know the emissions of the businesses who deliver to them. Likewise, UK lenders, investors and insurers are increasingly assessing companies on these grounds.

ESG has been climbing the agenda for years and those SMEs that prioritise it will reap the rewards.

Our team has considerable experience with this and has seen first-hand the benefits that come when ESG is put at the centre of a business’s operations.

Client Legal Director, David Bray, comments:

“Implementing an effective and proportionate ESG programme can offer significant business advantages for SME’s even when they are not under a specific legal obligation to do so. It is a self-evident truth that good governance is good business, and robust, proportionate governance arrangements, can improve accountability and efficiency across a business of any size. Effective governance is also a key pillar in helping a business deal with challenges that may arise in the future, such as staff turnover, regulatory changes or even litigation.”

ESG touches every part of a business and good governance is essential. Yet, only just over a quarter of the businesses we spoke with had engaged a lawyer to help them with ESG or social value.

An effective and proportionate ESG programme is also a powerful tool to support business growth, as large customers seek to ensure their smaller vendors can facilitate the customer’s compliance with their own ESG obligations.

As Client Legal Directors, we often help prepare responses to requests from large customers or potential customers (including public sector entities) on how a client’s offering will comply with the customer’s ESG obligations. An established ESG programme not only simplifies the responses to these queries but can also be used proactively in the sales or business development process to demonstrate an understanding of, and an ability to, support a potential customer’s ESG commitments.



Protect your Intellectual Property Rights (IPR) from Day 1

You’ll be surprised how much there is
to protect

Our study revealed a stark contrast between the attitude business owners take with intellectual property compared to physical property and assets.

100% of businesses in our research group with a turnover of £0-5m did not think Intellectual Property applied to their business and 85% had never conducted a review to assess how well it is protected. By contrast, only 7% of those businesses owning or leasing property did not know the dates for renewal or their key terms.

This could be an opportunity missed.

Client Legal Director and IPR expert, Sophie Freeman, says:

“Protecting your IPR generates new value for your business and shows that you recognise the value of your intellectual assets.

For any business with a “good idea”, being first to market with a good, registered brand can be one of the most valuable assets of any business. For smaller business, it gives undeniable power within its business area, thus securing and maintaining a share in niche markets. This in turn gives SMEs power within contract negotiations against much larger business. It will give you confidence when agreeing to the inevitable IPR warranties that are endemic in business contracts.

On the other side of the coin, reviewing your IP early in your business life cycle reduces the risk of stepping on the toes of someone else’s IPR – resulting in expensive re-branding or re-engineering in an established market.

Do an IPR audit early and support your IPR as your business grows – a sensible IP policy should be part of any business plan and, if you wait, you risk not realising the true IPR potential of your business.”

Though the figures improved slightly as businesses got bigger, it was still evident that businesses tend to under-exploit their Intellectual Property assets.

Consider the comparison with real property. Firstly, assume that your business does own and use some IPR. Imagine your IP rights are a set of open fields. As with physical land, boundaries need to be established, be clear to the public, formally registered where possible and maintained.



Your “intellectual” field boundaries are your registrations, contracts, and on-going business processes. If you fail to put up and maintain the boundaries, others may establish right of way or claim to your field or even build on it; or when you try to register your property down the line you find someone else owns part of your field.

We know that SMEs who leverage their IPR increase their opportunities for growth, their ability to license technology, establish partnership agreements and attract investment. Moreover, protecting your IP smooths the passage of any future sale of the business and could protect your interests on exit.

We predict that more and more businesses will begin to recognise the value of identifying and protecting IPR, and there is always more than you think to protect.

Here to help

All our Client Legal Directors are senior in-house lawyers who are adept at supporting businesses to implement their strategic goals.

Speaking with other businesses has given us the opportunity to examine whether there is a disconnect between our understanding of what is important and what businesses themselves consider important.

It has been an illuminating exercise which will not only help us meet our clients’ expectations more effectively, but which has also highlighted areas where we can educate businesses and support them to fully exploit their potential for growth.

If you would like to find out more about how we can support your business in the coming year, please contact us on 020 3053 8613 or info@thelegaldirector.co.uk.

Appendix

CATEGORY	STUDY GROUP	Study Group size: 19
Business Confidence	ALL GROUPS	58% of respondents are more confident about the prospects for their business than they were 12 months ago. 58% of respondents experienced growth, with 21% of businesses staying the same and just under 16% experiencing shrinkage. Nearly 53% of respondents are anticipating growth in the next year. Biggest challenges: Recruitment, Sales, Supply Chain and Wage Inflation.
Intellectual Property (IPR)	ALL GROUPS	79% of respondents have never conducted an audit of their IP to assess how well it is protected. 74% have no interest, or don't think it applies to them.
HR	ALL GROUPS	58% of respondents employ 10 people or less. 63% of respondents have experienced static employee numbers post pandemic, but 53% of respondents expect their workforce to increase in the next 12 months. 37% of respondents can't recall when they last had a lawyer look at their contracts of employment and policies.
Property	ALL GROUPS	74% of respondents own or lease property Of those who do, 7% (1 respondent) did not know all the dates upon which they renew and what their key terms are.
Governance	ALL GROUPS	26% of respondents have never sought legal advice on any of the Governance issues identified. 32% of respondents had an in-house lawyer.
CATEGORY	STUDY GROUP: UNDER £5MILLION T/OVER	Study Group size: 13
Business Confidence		54% of businesses in this category were feeling more confident about the prospects for their business than they were 12 months ago.
Intellectual Property (IPR)		85% of respondents have never conducted a review of their IP 100% of respondents in this category think it does not apply to them. 85% of respondents had under 10 employees.
HR		46% of respondents in this category can't remember when they last had a lawyer look at their contracts of employment and policies. NOTE: 92% of respondents in this category were NOT TLD Clients
CATEGORY	STUDY GROUP: BETWEEN £5M - £25 MILLION T/OVER	Study Group size: 5
Business Confidence		60% of respondents in this category were feeling more confident about the prospects for their business than they were 12 months ago. 60% of businesses had grown by 0-20% since the Covid-19 pandemic 20% of businesses in this category had grown by over 20% 20% of businesses in this category had shrunk by 0-20% Recruitment, Wage Inflation, and rising Energy Costs are playing most on this audiences' mind.
Intellectual Property		60% of respondents have never conducted a review of their IP 80% of respondents would consider talking to someone about it within 6 months – 2 years.
HR		80% of respondents have seen an increase in their workforce and expect it to further increase in the next 12 months.
Property		100% of respondents own or lease property and know their renewal terms and dates.
Governance		80% of businesses in this category have sought advice on: GDPR + Data Protection, Modern Slavery, ESG / Social Value, Corporate Governance, while 20% have yet to seek external legal advice on Modern Slavery and ESG. 60% of businesses in this category have in-house lawyers, while the other 40% seek advice from a specialist practitioner.
CATEGORY	STUDY GROUP: £25 - £100 MILLION T/OVER	Study Group Size: 1
Business Confidence		This respondent has an in-house lawyer and would like to opt into our marketing. This respondent was feeling more confident about the prospects for their business than they were 12 months ago. This respondent grew 0-20% since the Covid-19 pandemic and is expecting their business to increase in the next 12 months. Wage inflation, Recruitment, Sales are playing most on this audiences' mind.
HR		This respondent has seen an increase in their workforce and expect it to further increase in the next 12 months. This respondent can't recall when a lawyer last looked at their contracts, but contracts are reviewed by an HR Manager, External HR service, and In house legal team. Contracts are reviewed by an in-house lawyer.
Property		This respondent owns or lease property and knows their renewal terms and dates.
Governance		This respondent has taken legal advice on Corporate Governance and reviews and updates policies and procedures every 2 years.



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