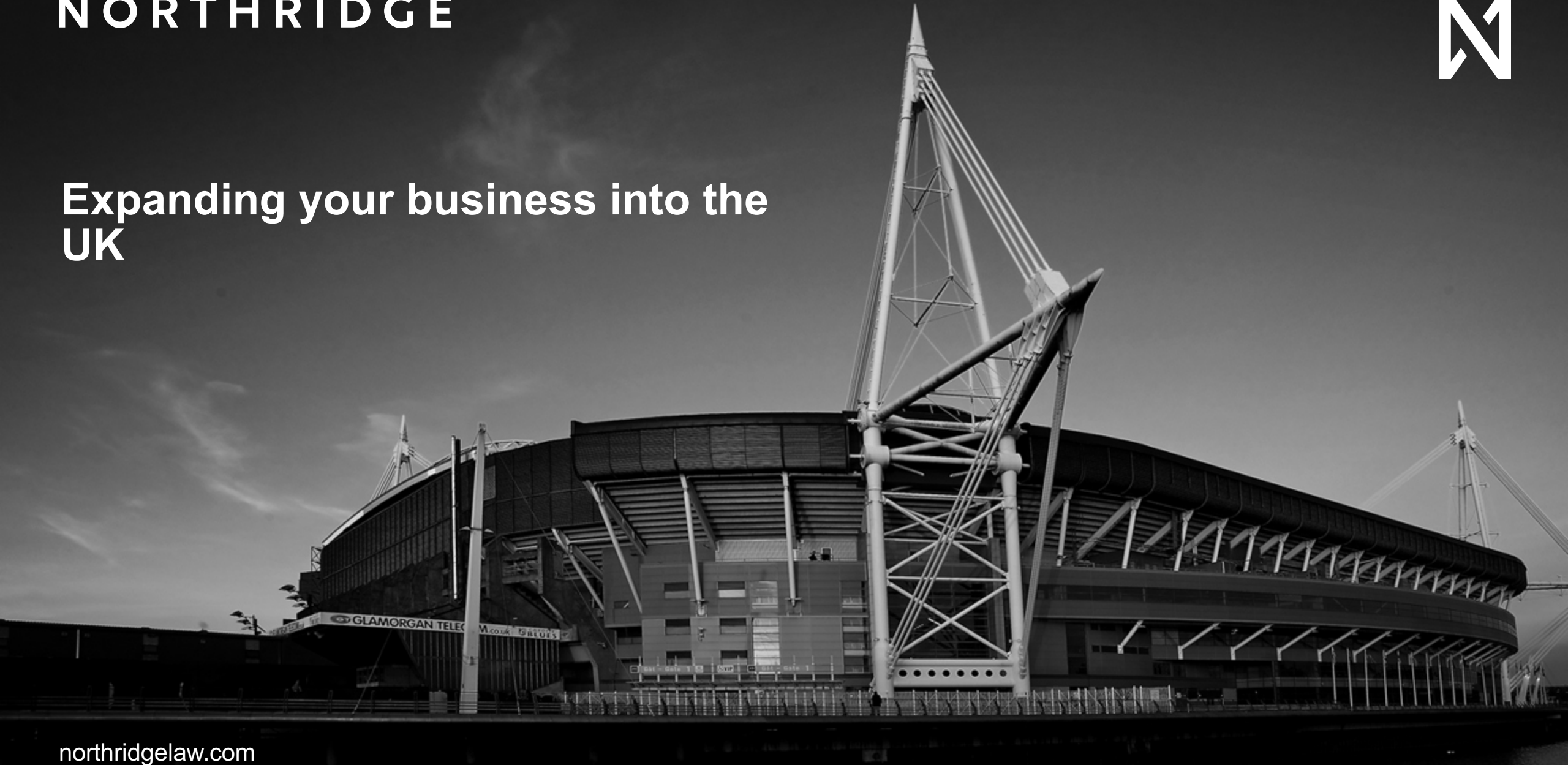


# NORTHBRIDGE

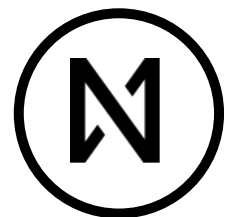


## Expanding your business into the UK

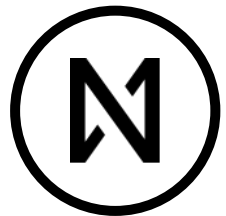


[northridgelaw.com](http://northridgelaw.com)

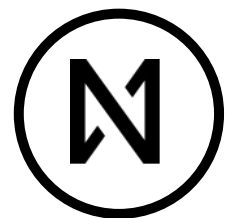
# Outline



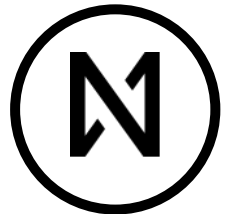
Structures for setting up in the UK



Investment / fundraising in the UK



Employment considerations



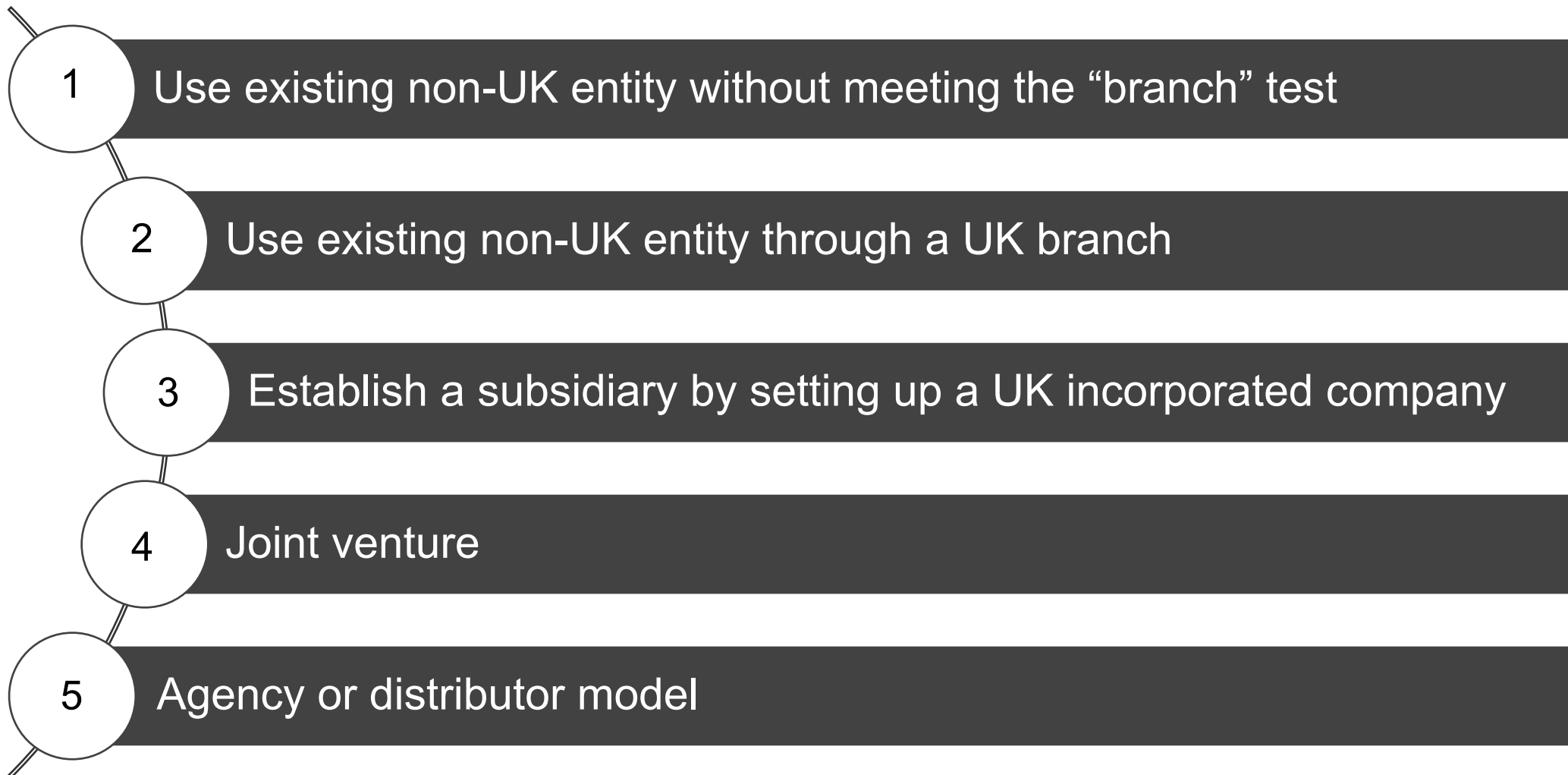
Data protection and the GDPR

# Structures for setting up in the UK

## Doing business in the UK

- › 65 million potential customers and the fifth largest economy in the world
- › Top 10 ranking on the World Bank's Ease of Doing Business Index
- › London ranked as the #3 startup ecosystem globally (*Startup Genome*)
- › Long history of international trade
- › Skilled and diverse workforce
- › Business friendly regulatory framework (lowest corporation tax in the G20)
- › *"A post-Brexit Britain will be unequivocally pro-business"* – Prime Minister Theresa May (September 2018)

## Options for setting up in the UK

- 
- 1 Use existing non-UK entity without meeting the “branch” test
  - 2 Use existing non-UK entity through a UK branch
  - 3 Establish a subsidiary by setting up a UK incorporated company
  - 4 Joint venture
  - 5 Agency or distributor model

## Key considerations in choosing a structure

- › What is the strategy for the UK?
  - “dipping the toe” with a first customer contract?
  - permanency of the UK operation?
  - accounting and tax
  - targeting UK investors?
- › If the company has: (i) a fixed place of business in the UK; or (ii) employees/agents in the UK, the company has a taxable presence in the UK
- › Often a choice between establishing a UK branch or a UK subsidiary

## Branch vs subsidiary

	Branch	Subsidiary
Status	<ul style="list-style-type: none"><li>• A branch is not a separate legal entity (shares the same legal entity as the overseas parent)</li></ul>	<ul style="list-style-type: none"><li>• Separate legal entity</li></ul>
Formation	<ul style="list-style-type: none"><li>• Required to register at Companies House within one month of opening branch</li><li>• Requirement to provide certain information (including accounts of parent company)</li></ul>	<ul style="list-style-type: none"><li>• Standard process to incorporate a private company (can be completed in one business day)</li></ul>
Legal considerations	<ul style="list-style-type: none"><li>• No protection to the overseas company from the UK operation's trading losses/other liabilities</li><li>• Overseas company will make decisions and enter into contracts on behalf of the UK operation</li></ul>	<ul style="list-style-type: none"><li>• Benefits from limited liability (offers the overseas company protection)</li><li>• Subsidiary can enter into contracts directly</li></ul>

## Branch vs subsidiary

	Branch	Subsidiary
Commercial considerations	<ul style="list-style-type: none"><li>• Most UK counterparties are comfortable contracting with overseas entities</li><li>• Less formal process for winding-up a UK branch</li></ul>	<ul style="list-style-type: none"><li>• Familiarity for counterparties contracting with a UK company</li><li>• It may be easier to secure grants or loans through a UK entity</li><li>• Employment considerations</li></ul>
Investment	<ul style="list-style-type: none"><li>• Possible for UK investors to invest in an overseas parent</li><li>• Potential additional analysis for the investor to consider regarding their own tax position of holding shares in foreign entities</li></ul>	<ul style="list-style-type: none"><li>• UK investors very familiar in investing in UK limited companies</li></ul>
Tax	<ul style="list-style-type: none"><li>• Subject to UK corporation tax (currently 19%) on the profits of the overseas parent company which are attributable to the UK branch</li><li>• Start-up losses may be available to set-off against home profits</li></ul>	<ul style="list-style-type: none"><li>• Subject to UK corporation tax on the UK subsidiary's worldwide profits</li><li>• Start-up trading losses can only be carried against future trading profits in the UK</li></ul>



# Investment / fundraising in the UK

## UK investment market

- › In 2017, nearly £6bn raised by equity financing
  - Seed (<£1m): £0.78bn
  - Venture (<£3m): £1.8bn
  - Growth (>£3.5m): £3.3bn
- › 39% of investments in SMEs by PE/VC funds in 2018
- › UK early stage investment is heavily driven by substantial UK governmental tax relief support
- › 86% of UK angels believe that the government tax reliefs means they invest more in SMEs than they otherwise would

## Footballers Raheem Sterling and Alex Oxlade-Chamberlain invest in wearables start-up

STATSports secures star investors as it takes on Apple, Fitbit and Garmin

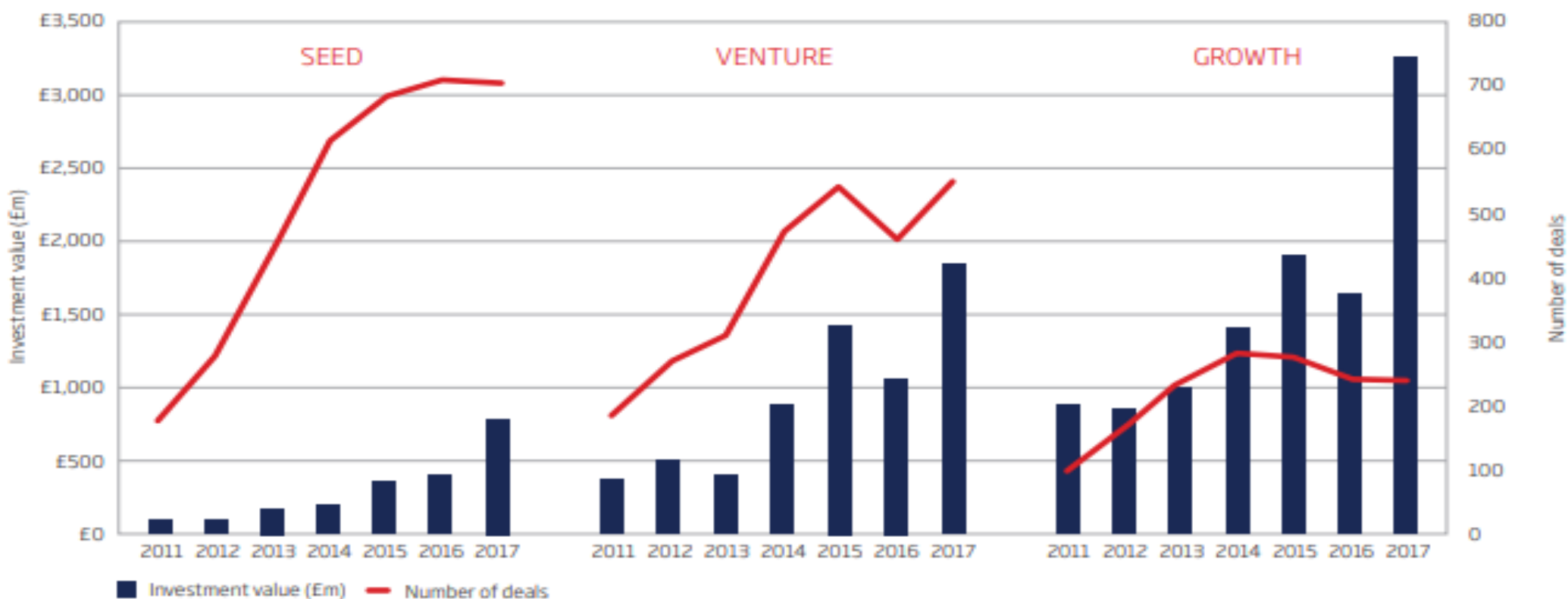


## Investment trends

FIG 1.3

### NUMBER AND VALUE OF EQUITY DEALS BY BUSINESS STAGE

Source: British Business Bank analysis of Beahurst



## Tax schemes

	Seed Enterprise Investment Scheme ("SEIS")	Enterprise Investment Scheme ("EIS")
Company eligibility	<ul style="list-style-type: none"><li>• Permanently established in the UK</li><li>• Gross assets under £200k</li><li>• Fewer than 25 employees</li></ul>	<ul style="list-style-type: none"><li>• Permanently established in the UK</li><li>• Gross assets under £15m at the time of issue</li><li>• Fewer than 250 employees</li></ul>
Share eligibility	<ul style="list-style-type: none"><li>• Ordinary shares (no preferential rights)</li></ul>	<ul style="list-style-type: none"><li>• Ordinary shares (no preferential rights)</li></ul>
Limits	<ul style="list-style-type: none"><li>• Maximum total investment of £150k into the company</li></ul>	<ul style="list-style-type: none"><li>• Maximum of £5m per year (and a maximum of £12m over the company's lifetime)</li></ul>
Investor benefits	<ul style="list-style-type: none"><li>• 50% income tax relief</li><li>• Exemption on capital gains tax if hold shares for at least three years</li></ul>	<ul style="list-style-type: none"><li>• 30% income tax relief</li><li>• Exemption on capital gains tax if hold shares for at least three years</li></ul>

## Features of a UK investment

- › Common approach in the UK is to subscribe for ordinary shares
- › Contrast to traditional “preferred stock” issued to investors in the US
- › Valuation
- › Negotiation of minority shareholder rights (e.g. early stage VC funds will often seek board representation and information rights)
- › Less common to invest via SAFEs and convertible debt instruments
- › Investment into a UK subsidiary of an overseas parent

# Employment considerations

# Employment Status

## The three types of employment status:

- I. Employee
- II. Worker
- III. Self-employed

## Why is employment status important?

- Legal rights and obligations
  - Employees owe implied obligations
  - Core legal protections only apply to employees
  - Vicarious liability
  - Employer's Liability Insurance
- Tax implications



## Employment Status – Legal Protections

Employment Right	I. Employee	II. Worker	III. Self-employed
Right to not be unfairly dismissed (if have two years' continuous employment)	✓	✗	✗
Statutory minimum notice period to terminate the agreement	✓	✗	✗
Right to statutory redundancy payment (if have two years' continuous employment)	✓	✗	✗
Statutory sick pay	✓	✗	✗
Protection under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002	✓	✗	✗
Protection on a TUPE transfer	✓	✗	✗
Right to paid holiday	✓	✓	✗
Right to national minimum wage	✓	✓	✗

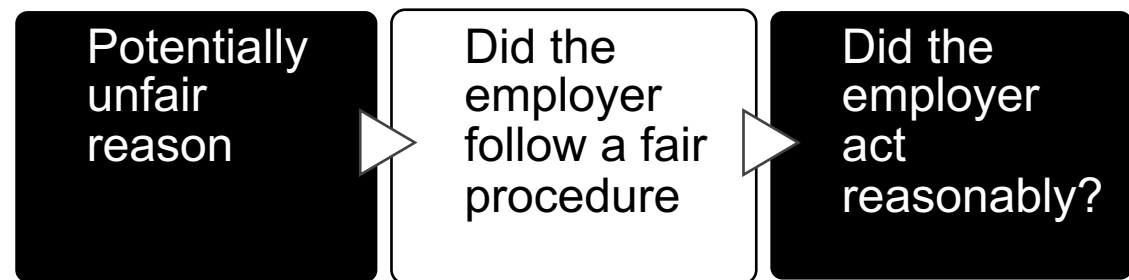
## Unfair Dismissal

The dismissal of a qualifying employee will be unfair unless:

- The employer can show that the principal reason for the dismissal was one of the five potentially fair reasons; and
- in all the circumstances (including the employer's size and administrative resources) the employer acted reasonably in treating the principal reason as a sufficient reason for dismissal.

### Five potentially fair reasons:

1. Capability or qualifications
2. Conduct
3. Redundancy
4. Breach of a statutory duty or restriction
5. Some other substantial reason



# Restrictive Covenants

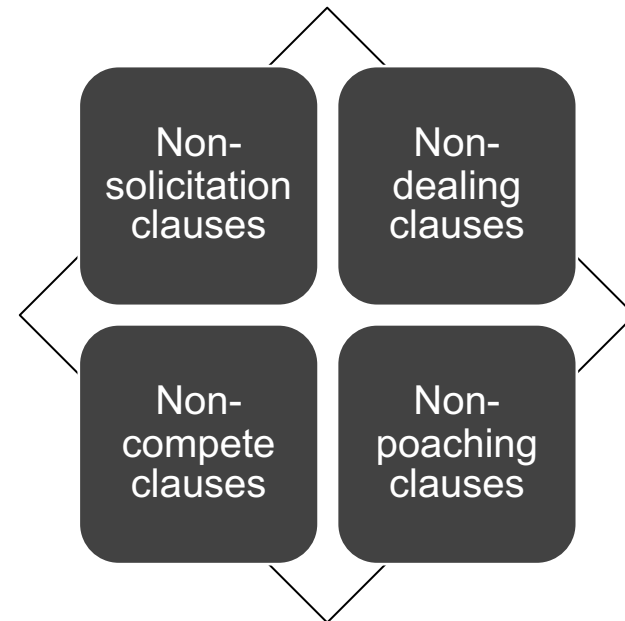
## Legitimate interest

The employer must show that it has a legitimate proprietary interest which it is appropriate to protect.

### What can be protected?



### How can it be protected?



# Data protection and the GDPR

# GDPR v Beyoncé

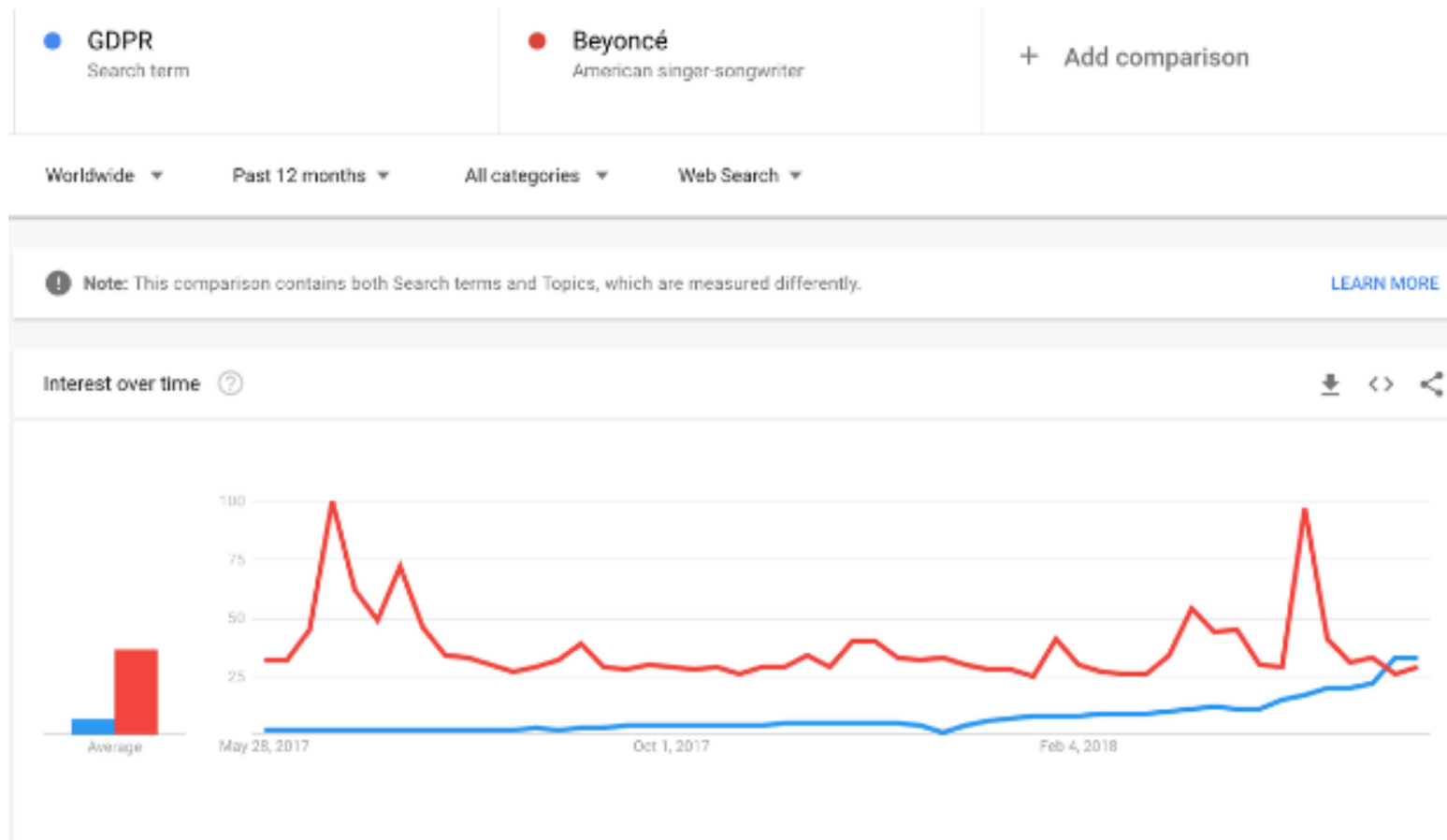


IMAGE: GOOGLE TRENDS

## Outline

- › **EU General Data Protection Regulation ("GDPR")**
- › **Monetising data and "data ownership"**

## Consumer expectations of privacy

**Spam Email and no GDPR compliance**

Ever since GDPR kicked in, this company has been emailing me every few days to "update my profile". I've never used this company before, so why do I need to update my details?

**Nick** @beanbaguk2 · 4 Jul  
Replying to @Edison\_app  
I have made a #DSAR rec curious to know what you have 30 days from the rec been in touch. #privacy

**Dodgy as hell**

Dodgy as hell. And keep emailing me despite me telling them in no uncertain terms never to do so again, and to remove all data they have about me. Am making a formal complaint to the ICO under the GDPR.

**Not GDPR Compliant**

Not GDPR Compliant. A Subject Access Request was treated with deletion.

**t of my spam went due to GDPR - not this lot though**

Idea who this lot are but wont stop sending me spam. Supposedly about GDPR regulations they are breaching. If they can't comply with GDPR trust them with a job search

**inisations without...**

ations without consent, unsubscribe etc. Non-ECR regulations. I urge anyone reading this to

**wanted spam?**

they have still not res I emailed hello@ that my data was

I have never joined this business. They have copied my CV and now send me spam emails to "update my CV".

I hope the ICO and GDPR catch up with them soon.

# GDPR

- › **Applicable from 25 May 2018**
- › **A single set of rules on data protection across the EU**
- › **Focus on priorities** – regulators are reactive, not proactive



## GDPR – the aims?

- › **“Extraterritorial” reach**
- › **Putting people in control**
- › **Focus on practical compliance**
- › **Stronger enforcement powers** - fines of up to the higher of:
  - 20 million Euros; or
  - 4% worldwide annual turnover



## GDPR – priorities for compliance

### Transparency & “lawful grounds”

- Clarity with customers on data collection and processing.
- Ensure a “lawful ground” for processing (e.g. consent).
- People should be in control of their data, e.g. around direct marketing.

### Data processing agreements

- Allocate responsibilities between organisations you share data with.

### Internal compliance - DPIAs

- Policies and procedures (e.g. Data Protection Impact Assessments).
- Staff awareness.

### Data security breaches

- Plans in place to mitigate risk of data breaches occurring.
- Prepare policies to ensure you can comply with specific breach notification requirements.

### International transfer

- Which mechanism?
- Strategic considerations.

## Data “ownership”

- › The **data subject** is the “owner” (not the company)....
- › **Data controllers** (e.g. a club) can find lawful grounds for monetising data relating to fans and athletes, e.g. direct marketing and data analytics provided they comply with the transparency requirements
- › If a pure **data processor** (e.g. SaaS platform), it is a challenge to draw value from the personal data – only supposed to use for the purpose of the contract
- › **Independent or joint-controller** arrangements (e.g. ticketing resale platform)

## Deriving value from data

- › **Direct marketing** – legal and non-legal analysis
- › **Big Data** – not all data is personal data
- › **Data in acquisitions** – merging databases

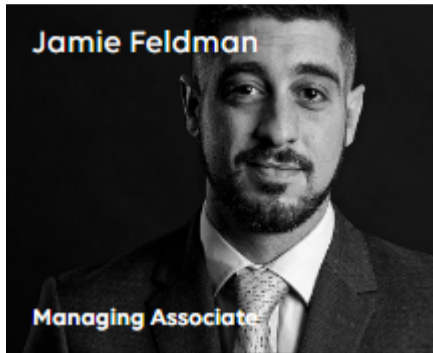
## Team



**Jon Walters**

[Jon.Walters@northridgelaw.com](mailto:Jon.Walters@northridgelaw.com)

+44 (0)20 3957 8810



**Jamie Feldman**

[Jamie.Feldman@northridgelaw.com](mailto:Jamie.Feldman@northridgelaw.com)

+44 (0)20 3957 8813



**Mike Herbert**

[Mike.Herbert@northridgelaw.com](mailto:Mike.Herbert@northridgelaw.com)

+44 (0)20 3957 8812



**George Willis**

[George.Willis@northridgelaw.com](mailto:George.Willis@northridgelaw.com)

+44 (0)20 3957 8806

If you would like to discuss any of this guidance in greater detail, or, have any other related queries, please get in touch with our Team.