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Legally Speaking - Judge & Priestley's Quarterly Legal Update for Commercial Clients

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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your business.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

Judge & Priestley LLP
Justin House
6 West Street
Bromley
Kent BR1 1JN

Sharp increase in sex discrimination claims

The number of sex discrimination claims has risen over the last two years. There were 13,700 cases in 2013 compared with 10,700 in 2012.

Research from the Times newspaper shows that they now make up 55% of all discrimination claims, whereas they made up just over 33% two years ago. Sex discrimination claims are now the highest growing area of workplace law.

It comes at a time when the number of other employment claims has fallen, following the introduction of fees for bringing a case before a tribunal. Unfair dismissal claims are down 80%. Discrimination claims cost £1,200 to proceed to a hearing. This has forced people to think carefully about whether they can afford to lose the claim, or whether it is worth the risk.

There is also a compensation limit of £76,574 or a year's pay – whichever is lower – for unfair dismissal claims. Breach of contract claims are limited to £25,000 compensation. However, there is no maximum pay-out for a sex discrimination claim.

It's thought that in these cases employees still think the reward could be worth the risk of paying a fee.

For more details contact
Paul Stevens - 020 8290 7422 pstevens@judge-priestley.co.uk .

Licensee awarded £8m following breach of contract

A drinks company has been ordered to pay damages of £8m to a licensee following a breach of contract.

The case involved a dispute over cordial and carbonated drinks.

The parties had an agreement that the licensee could produce and distribute the products in Pakistan for a period of five years. The licensee spent a lot of time and money preparing to launch the product, including recruiting staff, renting premises and upgrading machinery.

The drinks company then increased its prices and said it would only supply single strength cordial. It later wrote to the licensee offering to negotiate a new contract. The licensee refused and took legal action, saying that the company had gone back on the contract because of pressure from a larger distributer which also imported the products into Pakistan.

The company said that as the licensee refused a new contract it had failed to mitigate its loss. It also accused the licensee of breaching the original terms by delaying the launch.

The court held that the licensee had not acted unreasonably in refusing the offer of a new contract.

The drinks company had waited six months before offering to renegotiate, by which time the licensee had lost all faith that the matter would be dealt with fairly.

It also emerged that the company had actually agreed to the delay of the launch as it would tie in with other products. As there had been no sales, the loss to the licensee was calculated by the size of the potential market. Evidence suggested that sales would have been very high.

The licensee was therefore awarded damages of 1.36 billion Pakistani rupees, which is around £8.1m.

For more details contact
Mark Oakley - 020 8290 7337
moakley@judge-priestley.co.uk

Directors used unlawful sales tactics

Five company directors have been disqualified from trading for a combined total of 39½ years after repeatedly using sales tactics that breached consumer legislation.

The directors worked for a company that sold fire and burglar alarms. It was investigated by Trading Standards in 2013 for its aggressive sales approach.

The investigation by the Insolvency Service found that customers were being cold-called over the phone, and coerced into agreeing to an appointment for a presentation of the products in their home.

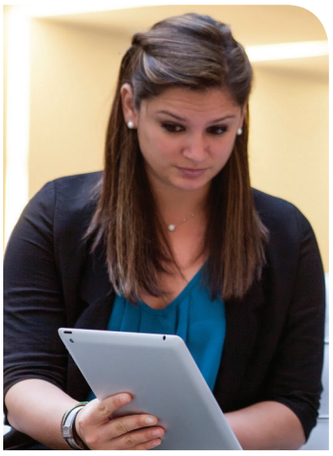
The sales agents then used misleading and false claims about the products to secure sales. Payments were usually taken in full from customers before the mandatory seven-day 'cooling off' period was complete. Payments ranged from £1,500 to £6,000.

Four of the directors were disqualified in 2013 after the initial investigation. The company was warned to amend its approach or face further penalties. It failed to comply, and a second investigation led to a further director being disqualified for six years in September 2014.

The company, which had accumulated more than 7,000 customers by this point, was shut down by Trading Standards on the grounds of public interest.

For more details contact
Neil Cuffe - 020 8290 7405
ncuffe@judge-priestley.co.uk

Businesses still worried about late payments



Late payment and cash flow remain two of the key problems faced by businesses in the UK, according to a recent survey carried out by credit card company American Express.

The survey revealed that 95% of business owners and managers continue to prioritise efficient cash flow practices, and consider it a key factor towards long-term success.

More than 90% of businesses admitted that they often have to wait longer than they would like for invoices to be paid by their clients.

Karen Penney, of American Express, said: "For UK companies, working capital still has a major role to play in giving businesses an advantage. Clearly, better management of working capital can free up much-needed liquidity, which can in turn be re-invested into growth initiatives, enabling UK companies to benefit from the upturn in the economy.

"Companies and their suppliers are inextricably linked, and as the global supply chain gets ever more complex, a balance must be sought for both to prosper. It is critical companies consider their working capital options fully."

The problem of late payment in business has been much discussed in the last few years.

It is considered to be one of the biggest threats to small-to-medium-sized enterprises in the current economy.

The government has encouraged larger companies to sign up to the Prompt Payment Code, to try to address the issue.

If you are left waiting for excessive periods for payment from a client, then you should seek professional advice as soon as possible. A letter from a solicitor is often enough to prompt a payment.

Failing that, there are several other steps that can be taken, including court action.

For more details contact
Rachel Addai - 020 8290 7356 raddai@judge-priestley.co.uk

Director must honour independent valuation of shares

A director has been told he must honour an independent company's valuation of his business.

The case involved a company that was owned by two directors who decided to go their separate ways.

The first director owned 60% of the business. While he didn't have an official contract with the company, a lot of its success was down to the good relationships he had with contacts at other businesses. The second director owned the other 40% of the company.

The relationship between the two men broke down and they decided that the first director would buy out the shares of the second director. They brought in independent valuers to determine the price of the shares.

The first director believed that the independent company had overvalued the business. He said that the valuers had failed to take into account the fact that he didn't have a contract. As he was responsible for a lot of the company's success, the lack of a contract should have resulted in a lower valuation.

He took legal action saying that the independent valuation wasn't intended to be binding. He said that the court should decide the value. However, the court ruled that the valuation should stand. The directors had sought the advice of the independent company because they had wanted an expert opinion. There was nothing in their letter of engagement to the independent company that suggested that the final decision would be taken by the court.

The judge ruled that it wasn't the job of the independent company to consider the lack of contract between the first director and the company, just the value of the company.

The Court of Appeal has upheld that decision.

For more details contact
Neil Cuffe - 020 8290 7405
ncuffe@judge-priestley.co.uk

Landlord was justified in refusing new business tenancy

A court has ruled that a tenant's breaches of contract in relation to business premises were serious enough to justify the landlord's decision not renew the lease.

The case involved a landlord who owned a commercial and residential property. It was leased to a tenant with an agreement that it would be used as a shop and a home.

The tenant occupied the building for more than three years but never made any attempt to open a shop, despite receiving numerous warnings from the landlord. When the lease agreement expired the tenant applied for a renewal on the same terms.

The landlord refused on several counts: the tenant had not always been on time with the rent, the property had not been used for commercial purposes and the maintenance and upkeep had not been sufficient.

The judge ruled in favour of the landlord. Individually, the breaches of rent arrears and failure to keep up with the maintenance of the property did not justify the landlord refusing to renew the agreement. However, when considered alongside the failure to utilise the property's commercial potential, it would be unfair to force the landlord to continue a business relationship with the tenant. Therefore, there was no obligation to renew the lease.

For more details contact
Julia Ferguson 020 8290 7433
jferguson@judge-priestley.co.uk

Company prevents employee joining rival firm

A company has been granted an injunction to prevent a former employee from going to work for one of its competitors for 12 months.

The employee had worked for the company for a number of years but became unhappy when he was given a new role. However, he continued to work there while he looked for opportunities elsewhere.

He later handed in his notice and informed the company that he was joining one of its rivals.

The company asked him not to leave for another 12 months but he refused.

The company then sought an injunction to prevent him joining its rival. It claimed he was in breach of a covenant in his contract which prevented him joining a competitor for at least 12 months after resigning.

The court granted the injunction. It held that the man's knowledge of the company and its processes would be a factor in his actions in his new role at the rival business, whether it was his intention or not. This could cause serious damage to his former company's success.

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The employee tried to counter this by arguing that the covenant in the contract was unenforceable as he had been constructively dismissed after the company changed his role.

The court rejected this argument, pointing out that he had continued to work for the company for a period after his role had been changed. Any claim of restriction of trade was also invalid as the company had offered him a further 12 months employment, which he had rejected.

For more details contact
Paul Stevens - 020 8290 7422 pstevens@judge-priestley.co.uk

Landlords must check immigration status of tenants

The government's 'right to rent' scheme, which will require landlords to check the immigration status of tenants, is being piloted in Birmingham and the West Midlands.

Landlords will need to check a tenant's 'right to rent' before providing a property. This includes seeing evidence of identity and citizenship. Landlords will then need to make copies of the tenant's documents as proof that the correct checks have been made.

Landlords who fail to make the necessary checks could be fined up to £3,000. It is the first phase of the scheme which the government says will "create a hostile environment" for illegal immigrants.

The new measures are part of an update to the Immigration Act.

They came in to force in Birmingham and the Black Country on 1 December and will be introduced in the rest of Britain in 2015.

Immigration and Security Minister James Brokenshire (pictured left) said: "We are building an immigration system that is fair to British citizens and legitimate migrants and tough on those who abuse the system or flout the law. The right to rent checks are quick and simple, but will make it more difficult for immigration offenders to stay in the country when they have no right to be here."

For more details contact
Pamela Bachu - 020 8290 7365
pbachu@judge-priestley.co.uk

Subcontractor must pay for its faulty workmanship

A subcontractor has been told it must accept liability for faulty workmanship that caused a flood at a block of flats even though the work was examined and signed off by the construction company running the project.

The case involved flats built in the south of England. The construction company responsible for the development subcontracted out much of the work.

Months after the job had been completed, a water pipe burst and caused substantial damage to several flats. The building owner made a claim against the construction company. The construction company sought indemnification from the subcontractor, claiming the flood was due to poor workmanship rather than a design error.

After lengthy investigations, it was found that there was a flaw in the construction company's design, but there was also a fault in the work carried out by the subcontractor.

The subcontractor accepted that there was a fault in its work.

However, it claimed that because this wasn't noticed when the work was signed off, the construction company was equally responsible. The judge ruled that the blame for the flood lay with the faulty work of the subcontractor. At the time of sign-off, it had not left the water system in full working order.

The design flaw of the construction company, and the fact that it failed to notice the faulty workmanship, were not enough reasons to invalidate the indemnity claim. The construction company was entitled to recover its losses paid to the property owner.

The subcontractor was ordered to pay damages for breach of contract.

For more details contact
Paul Stevens - 020 8290 7422
pstevens@judge-priestley.co.uk

Red tape on new build houses could be slashed

Many of the regulations relating to new house builds could be scrapped as the government tries to encourage the continuing growth of the housing market.

Currently, builders of new houses must meet numerous specifications on how new homes should be built. Each local council is able to select the regulations they feel most suited to them.

This system has been criticised for creating wide variations from one region to another, which can leave builders unsure of what they can and can't do on any given project. The government has proposed a simplified set of regulations, which will be consolidated into five core standards:

- security: introducing a national regulation on security standards in all new homes to protect families from burglary
- space: a national, cross tenure space standard that local authorities can choose to use to influence the size of new homes in their local area
- age friendly housing: new optional building regulations for accessible housing to meet the needs of older and disabled people

- wheelchair user housing: the introduction of an optional building regulation setting standards for wheelchair housing
- water efficiency: the ability to set higher water efficiency standards in areas of water shortage.

Every new house built would be subject to the security standards, with the other regulations being optional for local councils.

Communities Minister Stephen Williams said: "We need to build more homes and better quality homes. It's now time to go further by freeing up house builders from unnecessary red tape and let them get on with the real job building the right homes, in the right places, to help families and first time buyers on to the property ladder."

The government claims the change could save house builders and local councils up to £114m per year. The proposal was published in September 2014. We will keep our clients informed of any developments.

For more details contact
Steven Taylor - 020 8290 7304
staylor@judge-priestley.co.uk

Company ordered to pay consultant

A company has been ordered to pay a consultant his fee for helping to negotiate a business deal, despite there being no written record of any agreement being made.

The company was part of a Swedish industrial and transportation conglomerate.

The consultant was recruited to help secure a deal. He had worked with the company before and had contributed towards several successful projects.

He had always been paid a fee based on a percentage of the revenue generated.

In this case, the company refused to pay the consultant.

It claimed there was no agreement in place, and pointed out that there was no written contract. It also said that the final details of the deal were completed without the consultant's help. The consultant argued that he was entitled to a fee equal to 0.25% of the revenue the deal had generated for the company.

He claimed he had agreed the fee in a telephone conversation with the company manager shortly before the deal was completed.

The company manager denied such an agreement had been made.

The court ruled in favour of the consultant and ordered the company to pay him the 0.25%. It pointed out that he had contributed towards the successful deal. He should be paid in the same manner he had been in the past, regardless of whether or not the agreement was in writing.

For more details contact
Rachel Addai - 020 8290 7356
raddai@judge-priestley.co.uk

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Meet the team


Mark Oakley


Pam Bachu


Rachel Addai


Lucy Rudd


Neil Cuffe


Steve Taylor


Paul Stevens

For further information **T.** 020 8290 0333 **F.** 020 8464 3332
E. info@judge-priestley.co.uk
Justin House, 6 West Street, Bromley, Kent BR1 1JN
www.judge-priestley.co.uk