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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.

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Judge & Priestley Expand Private Client Team with the Acquisition of Preston Mellor Harrison

We are delighted to announce we have acquired Chislehurst firm Preston Mellor Harrison with effect from 8th May 2017.

Steven Taylor, Managing Partner, commented "For some time we have been looking to continue expanding our business. We saw this as a great opportunity as it coincides with our growth plan and our ambition to expand geographically into the Chislehurst region. The acquisition will enable us to provide a greater range of legal services to the community of Chislehurst and Kent borders."

From now on the current office of Preston Mellor Harrison at 30 High Street, Chislehurst will continue to trade under the Judge & Priestley name. The office is now closed for refurbishments to be undertaken and will re-open in June.

Preston Mellor Harrison primarily deal with Wills, Probate and Residential Conveyancing and the work currently undertaken at the Chislehurst office will be transferred to and undertaken at the Head Office of Judge & Priestley in central Bromley. It is intended that the remaining administration and support staff will relocate to Bromley.

Steven Taylor, David Chandra, Mark Younger, Robert Davis and Jackie Monk from Judge & Priestley Solicitors with John Harrison and Janet Meisner from Preston Mellor Harrison in Chislehurst

For any queries relating to the acquisition please contact David Chandra on 0208 290 7348 or email dchandra@judge-priestley.co.uk

Company wins £360,000 negligence claim against brokers

Professional Negligence

A company that lost thousands of pounds worth of stock in an arson attack has won its claim of professional negligence against its insurance brokers.

The court heard that the company used a former church to store amusement arcade machines and to carry out maintenance work on them.

An insurance policy covering the premises and the machines had been obtained from an insurer for the period from July 2008 to July 2009. In December 2008 there was a fire at the premises following an arson attack. The company made a claim on the policy, but the insurer declined the claim on grounds that the premises did not comply with the minimum security standards (MSS), which was a condition of cover. The MSS required external doors to have mortice locks and hinge bolts, and windows to have locks or steel bars.

The insurer also claimed that the company had not taken reasonable steps to prevent the loss from occurring.

The brokers accepted that the company had not been informed that the MSS were a condition of the policy but argued it would not have made improvements to the property even if it had been informed.

The court found in favour of the company. There was no real evidence that it would not have carried out the necessary work to comply with the MSS if it had been informed that it was a condition of cover. The expense involved was modest compared with the cost of the insurance.

The company was therefore entitled to receive £360,000 compensation.

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Number of private businesses now at record high

The number of private sector businesses in the UK has hit a record high of 5.5 million, according to the latest official figures.

The Business Population Estimates show that the UK had a million more small businesses at the start of 2016 than in 2010.

It also had 4,000 more medium-sized businesses and 900 more large businesses. The combined figures represent an overall increase of 23%.

Small and medium-sized firms account for at least 99% of businesses in every main industry sector.

The number of businesses in London has also reached 1 million for the first time and the number of businesses employing people across the country has risen for the third year running.

Establishing and developing a business can be exciting but it also presents many challenges. It's vital to carry out extensive research to make sure you progress in a sustainable way. You need to know your potential market but you also need to consider the legal structure of your business.

For example, you may start out as a sole trader but as you develop there might be advantages in creating a limited company or perhaps entering into a partnership.

The correct approach will depend on the type of business you operate. You may also need to consider employment contracts if you need to take on staff, and leasing arrangements if you need premises.

Good legal advice at the outset can prevent mistakes that could prove costly

in the future. Speaking about the latest figures, Business and Energy Secretary Greg Clark said: "Britain's businesses are the heroes of our economic revival and it is great to see the number of businesses rise by over a million since 2010."

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Developer unable to recover payments he failed to check

A developer has been told he cannot recover overpayments he made on a building project because he knew when he made them that they might be wrong but he failed to investigate.

The issue arose after the developer entered into an agreement to acquire a number of sites for a construction company. He agreed to pay the cost of building several houses and share the profits with the builders once the properties were sold.

The two sides agreed a costs budget in advance to build five houses and the developer made interim payments as work progressed.

He did not ask for any breakdown and assumed that the build costs were

the same as the budget costs. The relationship then broke down, leaving a further two projects unfinished.

The developer claimed that he had overpaid on all seven projects. The judge interpreted the term "build costs" and found that because of the parties' differing understanding of what it meant, the developer had overpaid on all the projects. He ordered the construction company to refund the overpayments on the incomplete projects on the basis that the developer had asked for a detailed costs breakdown and had made the overpayments by mistake.

However, he held that the developer was not entitled to recover the overpayments on the completed projects because he had assumed that the payment requests were within budget and had chosen to pay without investigating the figures.

The Court of Appeal has upheld that decision.

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Estate agent loses commission due to errors in contract

An estate agent who found a buyer for a block of flats cannot claim commission because of failings in his oral contract with the seller.

The issue arose after the agent offered to find a buyer for eights flats and told the developer that his standard commission was 2% plus VAT.

He did not specify the event that would trigger his entitlement to commission. He introduced a buyer and sent the developer written terms of business shortly after the buyer and developer had exchanged contracts.

The agent relied on the oral contract to claim commission.

The judge agreed that an oral contract existed, and implied a term that payment was due on the introduction of a buyer.

However, he reduced the commission by one-third because of the agent's failure to comply with his obligations under the Estate Agents Act 1979 to provide written details of the agreement.

The developer appealed against the decision that it should pay any commission at all, and the agent appealed against the reduction in the commission. The Court of Appeal found in favour of the developer. It held that the express identification of the trigger event was essential for the formation of a legally binding contract. There was no such trigger event and so commission was not payable.

It followed, therefore, that the agent's appeal against the reduction of commission must also fail.

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Plumber wins high profile 'worker's rights' claim

A plumber who carried out jobs on behalf of a plumbing company should be classed as a "worker" under the Employment Rights Act, not a self-employed contractor.

That was the decision of the Court of Appeal in a high profile case involving Pimlico Plumbers and one of its operatives, Gary Smith.

Mr Smith carried out plumbing work for the company between August 2005 and April 2011. He complained that, following a heart attack, he was unfairly or wrongfully dismissed and claimed entitlement to pay during medical suspension, holiday pay and pay arrears.

The company said that the original contractual agreement between them, signed in 2005, described Mr Smith as a "sub-contracted employee". He was an independent contractor, he was VAT registered and filed his accounts as a self-employed person.

The court also heard that every operative was issued with a company identity card, which had to be carried when working. They also had to wear a uniform marked with the company's logo and were issued with a mobile phone.

Mr Smith worked only for Pimlico Plumbers. He could reject particular jobs, decide his own hours and work unsupervised, exercising his own discretion as to the work needed for a particular customer and whether to negotiate on price.

The contract provided for normal working hours consisting of five days a week in which he was required to complete a minimum of 40 hours.

However, the company had no obligation to provide him with work on any particular day, and if there was no work for him he was not paid.

Mr Smith only worked on average about 20 hours each week in the last weeks of his relationship with the company. The Employment Appeal Tribunal found that Mr Smith was a worker within the meaning of the Employment Rights Act 1996 and entitled to the benefits that brought.

The Court of Appeal has upheld that decision. It held that evidence before the tribunal was clear and consistent that the relationship between the company and its operatives would only work if the operative was given and undertook a minimum number of hours' work.

Mr Smith was required to use the van with the company logo on it and was issued with a company mobile phone.

He had to earn enough to be able to pay the van and telephone expenses, and provide an income.

The case has attracted a lot of public attention because of the rise of the so called gig economy in which operatives are paid on a task by task basis rather than receive a regular weekly wage.

However, the court warned against reading too much into this one decision.

Lord Justice Underhill said: "Although employment lawyers will inevitably be interested in this case - the question of when a relationship is genuinely casual being a very live one at present - they should be careful about trying to draw any very general conclusions from it."

The government is currently carrying out a review of workers' rights following similar high profile cases involving companies like Uber and City Sprint.

We shall keep clients informed of developments.

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Government to use banning orders on rogue landlords and agents

The government is to use banning orders to crack down on rogue landlords and property agents.

If a landlord or property agent is subject to a banning order they could be prevented from letting or managing a property indefinitely.

Their name would also be included in a national database of rogue landlords and property agents.

Proposed banning order offences include:

- illegally evicting a tenant
- renting out a property considered to be unsafe as a dwelling by local authorities
- failing to carry out works required by local authorities to prevent health and safety risk to tenants
- renting out a property to an illegal migrant.

The Minister for Housing, Gavin Barwell, said: "The banning orders will force the most serious and prolific offenders to either drastically improve the standard of the accommodation they rent out, or to leave the sector entirely, with a minimum ban lasting 12 months and no upper limit for a maximum ban.

"Those subject to banning orders will also not be able to earn income from renting out housing or engaging in letting agency or property management work.

"Landlords could also find that their property could be made the subject of a management order by the local authority, which allows the council to rent out the property instead."

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Directors urged to brush up on competition law

Directors are being urged by the Competition and Markets Authority (CMA) to make sure their company practices comply with the law.

Failure to do so could result in penalties and disqualification.

The CMA has provided a check list which includes:

Why should directors help companies avoid breaking competition law?

- Company directors have a special responsibility to be well-informed about their company practices and ensure they comply with the law
- If caught breaking competition law, directors can be disqualified from acting as a director of a company or carrying out other specified roles in relation to a company for up to 15 years
- Knowing about illegal practices without taking steps to stop them could be grounds for disqualifying a director.

What action do company directors need to take?

- You must ensure you are sufficiently abreast of your company's affairs to spot and stop any illegal practices as soon as possible
- If you suspect illegal practices you should investigate.

What is a cartel and how does being involved affect you?

In simple terms, a cartel is an agreement between businesses not to compete with each other. The agreement is usually secret and often informal. Individuals involved in cartels can go to jail for up to five years. Businesses that breach competition law can be fined up to 10% of turnover.

If you've been involved in an illegal cartel yourself: you may benefit from lenient treatment by being the first to come forward to the CMA.

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Director fined £17,000 for not complying with regulations

The director of an employment agency has been fined £17,000 for eight breaches of regulations relating to his business sector.

Stephen Paul Harvey, who is aged 63 and from N10 in London, was also banned from being a company director for two years.

Mr Harvey's offences related to the operation of two companies, one incorporated in England and Wales and the other in Malta. They were both called Whites Recruitment International Ltd, which led to some considerable confusion.

One or both companies operated as employment businesses that sent civil engineers and quantity surveyors to work on a project constructing universities in Libya.

Of the eight charges, four related to the failure to provide four workers with the necessary paperwork in relation to their employer and the terms their employment. The other four charges related to withholding wages totalling €25,905.60 even though the company had the means to pay.

Deputy Chief Investigation Officer, Ian West said: "This is a case where Mr Harvey took action that ensured that his employment business failed to comply with the regulations that govern the industry causing significant confusion and financial losses to four of its clients."

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