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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.

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New move to stop workplace sexual harassment

The Government Equalities Office is conducting a survey inviting victims of sexual harassment to share their stories and comment on the effectiveness of the law as it currently stands.

Ministers say the move is part of their commitment to strengthen protections for employees and will allow the public to have a signficant impact on Government policy.

The survey - which will go out to 12,200 people from every walk of life - will build a picture of how many people are affected, asking them about their experiences of sexual harassment inside and outside the workplace; where they experience harassment; and what forms of harassment they have experienced.

The Minister for Women, Victoria Atkins, said: "Sexual harassment is wrong and survivors must be able to share their stories. This survey will help us build a clear picture of who is affected and where.

"Working together with business, we can stamp it out."

The survey is part of a package of commitments to tackle sexual harassment at work, including a new statutory Code of Practice so employers better understand their legal responsibilities, and a consultation on new plans to tackle harassment at work - including giving explicit legal protections to workers, such as waiters and shop assistants, against harassment from customers.

The survey will go out to people across the UK.

The Equality and Human Rights Commission (EHRC) has also published a draft version of the Code of Practice, advising employers on how to make their workplace safe from sexual harassment and victimisation.

It is being developed by the EHRC under its Equality Act 2006 powers.

The government is also planning to consult on the evidence base for a new legal duty on employers to prevent sexual harassment in the workplace and whether further legal protections are required for interns and volunteers.

Employers may wish to ensure they have good anti-harassment policies in place to protect staff and prevent problems in the future.

Please contact us if you would like more information about the issues raised in this article or any aspect of employment law.

Tesco can't withdraw admission over profit statement

Tesco has been refused permission to withdraw an admission it made after being accused of overstating its expected level of profit.

The admission related to an allegation that its trading statement made in August 2014 was untrue and/or misleading in that it mis-stated the level of trading profit expected to be achieved for the first half of the 2014/15 financial year.

In regulatory proceedings, Tesco had accepted the Financial Conduct Authority's findings of market abuse in relation to the trading statement.

It later wanted to withdraw the admission and put forward a defence that its statement that trading profit was expected to be "in the region of £1.1 billion" was not untrue or misleading.

It wished to argue that the figure for trading profit was overstated by £76 million, rather than the greater sum of £250 million which it had originally announced; that the resulting correct figure for expected trading profit for the relevant period was £1.024 billion; and that £1.024 billion was indeed in the region of £1.1 billion.

The High Court rejected Tesco's application. It held even if it were permitted to contest the plea that its trading profit, though £76 million short, was still "in the region of" the forecast of £1.1 billion, it would nevertheless be bound to accept that the trading statement was false and/or misleading in its overall effect.

Please contact us for more information about company law and financial regulation.

Royal Mail employee wins unfair dismissal case

A Royal Mail employee has won her claim of unfair dismissal in a case that went all the way to the Supreme Court.

Ms Kamaljeet Jhuti joined the Marketreach unit of Royal Mail in October 2013 on a trial basis as a media specialist.

She quickly raised concerns about potential regulatory breaches in the processes. She made the comments under the company's whistle blower policy, in which her comments were "protected disclosures".

However, Jhuti's line manager responded by undermining her performance levels and giving the impression to other members of management that she was not a good worker. Another manager was tasked with determining if Jhuti should be dismissed or not. She had been signed off work with stress and did not have the opportunity to put forward her version of events to the decision maker.

Based solely on the evidence of the line manager it was decided that Jhuti would be dismissed.

The Supreme Court ruled that the dismissal was unfair.

Although the decision to dismiss her was not based on her having made protected disclosures against the company's procedures, it was based on false evidence put forward by her line manager who had taken offence at her making those disclosures.

In his ruling, Lord Wilson said: "If a person in the hierarchy of responsibility above the employee determines that she should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."

The level of compensation for Jhuti will be decided at a later hearing.

Please contact us for more information about the issues raised in this article or any aspect of employment law.

Protesters fail to prevent Lego converting listed buildings

A local campaigner has failed to stop Legoland Windsor Park getting planning permission for a holiday village in a conservation area containing old oak woods.

The planning officer's report recommended that permission be refused because the proposal constituted inappropriate development in the green belt, and it had not been shown that it could be achieved without harming the trees

However, Maidenhead Council's planning panel approved the proposal, saying there were economic benefits.

The local authority granted permission subject to conditions to protect "significant and veteran trees".

A local campaigner sought a judicial

review of the decision, arguing that the authority had failed to give adequate reasons why it had departed from the recommendation in the officer's report.

It had also failed to reconsider the decision in the light of new policy in the National Planning Policy Framework, which required that there be "wholly exceptional reasons" to justify granting planning permission for development which would harm significant trees.

The High Court rejected the application.

It held that the authority had considered all the issues and concluded that the mitigating measures would ensure that there was no harm to the trees.

It was true that the authority had acted unlawfully by failing to carry out an appropriate assessment of the effect of the development on an adjacent special area of conservation, but it was highly unlikely that its decision would have been substantially different if an appropriate assessment had been undertaken.

Please contact us if you would like advice about the legal aspects of planning and development.

Government confirms it will abolish no-fault evictions

The government has confirmed that it will provide tenants with more protection by abolishing no-fault evictions.

It will also provide renters with a new lifetime deposit scheme, making the process of moving home easier and cheaper for millions.

Ministers point out that more than 4 million people live in the private rented sector, yet when moving home, some tenants can find it a struggle to provide a second deposit to their new landlord – risking falling into debt or becoming trapped in their current home.

Under the new plans, the tenancy deposit paid by renters will move with them from property to property.

This will give them more control and allow them to retain more of their money.

Proposals to abolish no-fault evictions mean landlords will no longer be able to uproot tenants from their homes at short notice for no good reason – bringing greater security to millions of families.

However, this will be matched with new powers to strengthen the rights of landlords to gain possession of their property through the courts when they have a clearly valid reason to do so, in order to create a fair market where good and responsible landlords flourish.

The government is expected to release more details about the proposals over the coming months.

We shall keep clients informed of developments.

Please contact us if you would like information or advice about commercial property law.

Directors 'should be held liable for late payments'

Company directors should be held responsible for late payment of invoices, according to a survey of supply chain managers.

The research, carried out by the Chartered Institute of Procurement & Supply (CIPS), found that 7 out of 10 respondents believed there should be independent oversight and stronger penalties to prevent businesses abusing their suppliers.

The survey also found that British businesses are being weighed down by a chronic culture of long payment terms and late payments, with 16% of British businesses believing most payments in the UK are paid late. Only 5% of suppliers believe all their invoices are paid promptly.

As the UK looks beyond the EU for trade following Brexit, the data also revealed that many potential trade partners have even worse payment records than the UK.

Chinese firms are reportedly the worst performing with 32% of UK respondents stating that most payments from the country were late, with the United States next at 21%. Only 12% believe most of the invoices from the EU were paid late.

Last year, new powers were proposed for the Small Business Commissioner to tackle late payments, including the power to impose financial penalties or binding payment plans on large businesses found to have unfair payment practices. So far, there is no sign of these measures coming into effect and large businesses are still taking advantage of their suppliers to improve cashflow. More than half (51%) of UK companies believe large businesses in the UK force long payment terms on their suppliers because they know they can get away with it.

Malcolm Harrison, CIPS CEO, said: "While there are pockets of good practice where payment is prompt, the UK's rotten culture of late payments is eating away at the core of Britain's economy. We must act diligently and swiftly to protect SMEs.

"Britain's supply chain managers are clear that cultural change can only happen when the leaders at the top of Britain's largest companies are made to answer for their serial late payment and take positive action to tackle the issue. You would not be happy if your employer decided to not pay your wages for 90 days, so why is it acceptable for companies to treat their suppliers in this way?

"Unfortunately, late payment is not just a British issue. Business leaders and politicians should be wary of late payments from abroad harming the UK payment culture still further and creating more payment delays which trickle down to affect UK SMEs."

Please contact us if you would like help with debt collection, credit control or enforcing payment of invoices.

Network Rail avoids suspension of £1.8 billion contract

Network Rail has succeeded in lifting the automatic suspension of a £1.8 billion contract for the delivery of a digital train control system.

The issue arose after it invited tenders to install the European Train Control System (ETCS), a common digital signalling and control standard adopted by the EU to improve interoperability between railways in different member states.

Alstom Transport UK Ltd submitted a tender but was unsuccessful. It then decided to challenge the procurement process.

This triggered an automatic suspension of the contract until the matter could be settled in court.

Network Rail applied to have the suspension lifted because it would cause problems that could not be rectified by the award of damages if it won the case.

The High Court found in its favour. It accepted that a breach of regulations that deprived Alstom of a contract worth £1.8 billion would be extremely serious. However, the company was unable to establish that it would suffer losses for which damages were not an adequate remedy.

Inherent in any tendering process was the risk that the bid would be unsuccessful, resulting in wasted costs and lost profits. Those losses could be quantified.

It was not credible for Alstom to suggest that it would be at a disadvantage in future tenders for ETCS schemes in the UK: it had extensive experience in delivering such projects. It was likely that damages would be an adequate remedy if it went on to win the case.

In contrast, there was evidence that delayed improvements to safety, and the wider impact on business and the travelling public caused by delays and disruption to rail services, could not be quantified properly or compensated. It was likely that damages would not be an adequate remedy for Network Rail if it succeeded at trial.

Maintaining the suspension was likely to cause the abortive costs of urgent replacements, years of delay and risked putting in peril funding for the project. The balance of convenience lay in favour of lifting the automatic suspension.

Please contact us for more information about the issues raised in this article or any aspect of contract law.

New tenancy agreements to ease pet restrictions

The government is to draw up new model tenancy agreements that will revise the restrictions on tenants having pets.

Housing Secretary Robert Jenrick said more people than ever before are renting and should be able to enjoy the happiness that a pet can bring to their lives. However, currently only around 7% of landlords advertise homes as suitable for animals.

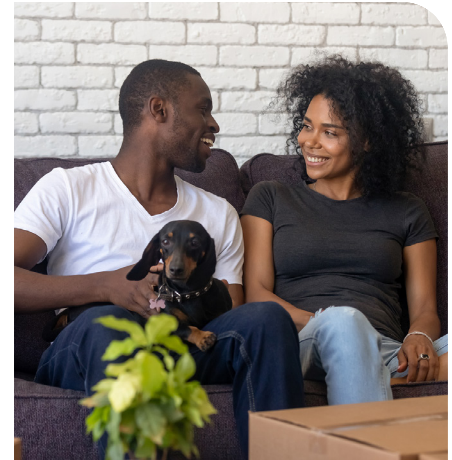
The government's model tenancy contracts, which can be used as the basis of lease agreements made with tenants, will now be revised to remove restrictions on well behaved pets.

Mr Jenrick said: "The government is clear there should be a balance with responsible pet owners not being penalised and landlords being more flexible in their approach, and it is right that landlords' properties should be protected from damage by badly behaved pets.

"I'm overhauling our model tenancy contract to encourage more landlords to consider opening their doors to responsible pet owners. And we will be listening to tenants and landlords to see what more we can do to tackle this issue in a way that is fair to both.

"This is part of this new government's mission to improve life for tenants, recognising that more are renting and for longer in life. We've already taken action, banning unfair letting fees and capping tenancy deposits, saving tenants across England at least £240 million a year, and I will continue to take more steps to secure a better deal for renters up and down the country."

A revised model tenancy agreement will be published by the government this year to update the relationship between



tenants and landlords, and to introduce a Lifetime Deposit scheme, to make moving between properties easier and cheaper.

Please contact us for more information about the issues raised in this article or any aspect of commercial property law.

Director must compensate creditors for cut price deal

A director has been ordered to compensate creditors after purchasing a property from his insolvent company in a cut-price deal.

The case provided a landmark ruling on the extent to which a director's duties remain in place after their business is placed in administration.

The issue arose after System Building Services Group Ltd went into liquidation. While still a director, Brian Michie, bought from the company a property at what he knew to be a substantial undervalue without regard to the interests of the creditors.

The company and its liquidator took legal action, claiming that Michie had acted in breach of duties owed to creditors and the company as its director under the Companies Act 2006.

Michie argued that once a company entered into administration or creditors' voluntary liquidation (CVL), the "general duties" of a director only survived in respect of the requirements of the Insolvency Act 1986.

The High Court rejected that argument. It held that the general duties of a director survived a company's entry into administration or CVL.

In procuring the sale of the company's property to himself at a significant undervalue when he knew the company to be insolvent, Michie had acted entirely out of self-interest.

In doing so, he had failed to have regard to the interests of the creditors.

He was ordered to repay the company £19,000 and a further £65,513.28 for unreasonable salary and dividend payments to himself.

Please contact us for more information about the issues raised in this article or any aspect of company law.

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