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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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New powers to protect against late payments

The government is considering new powers to give businesses more protection against late payment of invoices.

Figures provided by Pay UK show that £23.4 billion worth of late invoices are owed to small firms across Britain, impacting on their cash flow and ultimate survival.

Small Business Minister Paul Scully has announced a new set of proposals to ensure these firms are paid on time.

The proposals, which would give new powers to the Small Business Commissioner (SBC), are being put to public consultation. They include:

- the power to order companies to pay their partners, either as a lump sum or agreed payment plan, when a complaint against them for late payment has been investigated and upheld. Companies that do not do so could face further penalties, including fines.
- the power to compel companies to share information during an investigation by the SBC. This will ensure cooperation with SBC investigations and provide more information about company payment practices.

- the power to launch investigations into suspected bad payment practice, without the need to have first received a complaint from a small business.
- expanding the scope for complaints to the SBC, to allow the commissioner to investigate complaints about other businesses relating to payment matters in connection with the supply of goods and services.
- to review and report on wider business practices outside of payment matters. These could be practices unrelated to payment matters specifically impacting small businesses such as supply problems, or broader issues like barriers to the adoption of payment technology.
- the power to claim investigation costs from an investigated company when there are adverse findings against them.

We shall keep clients informed of developments.

Please contact us if you would like advice about credit control and debt collection.

Jaguar ordered to pay £180,000 to gender fluid engineer

Jaguar Land Rover has been ordered to pay £180,000 compensation to a gender fluid engineer who was subjected to harassment and discrimination at work.

Rose Taylor had worked for Jaguar for 20 years and had initially identified as male. She began identifying as gender fluid in 2017 and started dressing in women's clothing.

This resulted in her being subjected to abusive remarks from colleagues and facing difficulties accessing toilet facilities at work.

She resigned and brought claims of harassment, discrimination and unfair dismissal because of her gender reassignment and sexual orientation.

Jaguar submitted that being gender fluid or non-binary, did not fall within the definition of a person who had undergone gender reassignment, a protected characteristic under the Equality Act (2010).

The Employment Tribunal dismissed Jaguar's defence as "totally without merit" and found in favour of Ms Taylor.

She was awarded £180,000 compensation at a separate hearing.

Judge Pauline Hughes said she hoped Taylor's case would bring positive change in the movement for equality.

A spokesman for Jaguar said: "I would like to apologise to Ms Taylor for the experiences she had during her employment with us. We continue to strive to improve in this area.

"Jaguar Land Rover does not tolerate discrimination of any kind. We are committed to creating an environment where everyone can flourish, where our employees feel listened to, understood, supported and valued equally."

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

Law could allow women to see men's pay rates

A new equal pay bill would allow women to find out how much their male colleagues are earning so they could be sure there's no sex discrimination over salaries.

The Equal Pay Information and Claims Bill 2020 would oblige companies with more than 100 employees to report their gender and ethnicity pay gaps.

It's a private members' bill introduced by Labour MP Stella Creasy. These bills often fail to make their way into legislation but this one has cross-party support, including the backing of former Home Office minister Caroline Nokes and so is considered to have a good chance of succeeding.

While introducing the bill in parliament, Ms Creasy said: "Pay discrimination becomes so prevalent because it is hard to get pay transparency.

"Unless a woman knows that a man who is doing equal work to her is being paid more, she cannot know if she is being paid equally."

The bill has the backing of the Fawcett Society, which helped to draft it. Its chief executive, Sam Smethers, is confident the

bill will succeed. "This bill has cross-party support, and as we mark 50 years since the Equal Pay Act there has never been a better time to give women the right to know."

We shall keep clients informed of developments.

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

Grant Thornton to pay £22m damages in negligence case

Grant Thornton has lost its appeal against having to pay more than £22m compensation in a professional negligence case.

The issue arose after Grant Thornton carried out an audit report for AssetCo Plc.

The report showed that a business group, of which AssetCo was the holding company, was successful and increasingly profitable, but in fact it was insolvent.

Grant Thornton accepted that it was in breach of its duty by failing to identify management fraud, and that if it had acted with proper professional skill and care the business of the group would

have been revealed as ostensibly sustainable only on the basis of dishonest representations made by senior management.

The situation became apparent two years after the audit and AssetCo entered into a scheme of arrangement.

It succeeded in its claim for damages against Grant Thornton in respect of the sums it had provided to its loss-making subsidiaries in the intervening period, expenses that would not have been incurred if the audit had been accurate. Grant Thornton appealed on the grounds that the judge had erred in finding that the losses for which AssetCo claimed damages were within the scope of its duty of care and that its breaches were the legal cause of those losses.

The Court of Appeal upheld the judge's decision. Grant Thornton's failure to detect the dishonest concealment had deprived AssetCo of the opportunity to call the senior management to account and to ensure that errors in management were corrected. That was a principal purpose of the audit.

Please contact us if you would like more information about professional negligence claims.

Director of insolvent company ordered to repay £188,000

A director has been ordered to repay more than £188,000 after his business went into liquidation.

Michael Edward Belcher was the sole director of BM Electrical Solutions Ltd.

The company had filed one set of accounts for the period to 31 January 2012. These disclosed a net asset position of £6,465, of which the profit and loss account was £6,365.

BM ran into difficulties because of a significant bad debt from a customer and because of issues with HMRC related to tax alleged to be due.

The liquidator reviewed BM's bank statements and identified bank transfers to Belcher of £221,034, cash withdrawals of £38,122 and payments to an online betting company of £10,242.

There were also miscellaneous payments for restaurants, gambling and football season tickets of £8,447.

After allowing for a credit balance of £4,215 as at 31 January 2012, the liquidator found that Belcher had received the sum of £273,631 from the company without explanation, which net of his salary came to £232,674.

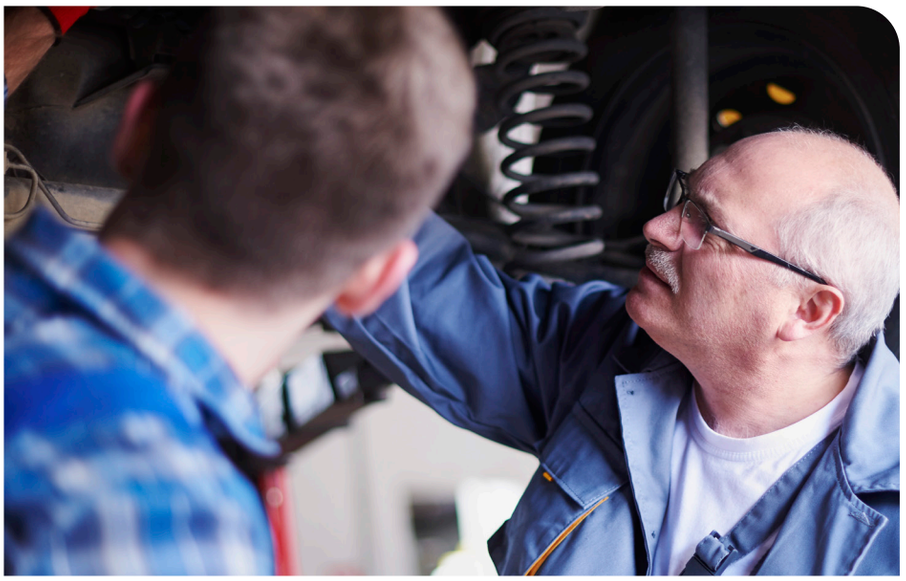
The liquidator accepted that he should give credit of £40,957 in respect of Belcher's net salary.

The case went to the High Court, which calculated that the sums outstanding on Belcher's loan account amounted to £193,029 less £4,215, which was the credit as at 31 January, 2012.

He had to repay that sum to BM as a debt.

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

Covid shouldn't halt business succession planning



With Covid still causing huge problems for many businesses, it's perhaps not surprising that many of them are focused on survival without too much thought for the future.

If possible, however, it's still important to consider what will happen once the pandemic is over, especially if you are planning to retire from your business and hand it over to the next generation.

It could even be that the reduction in business now could provide you with more time to plan and get new people and systems in place.

If you are intending to move on, it's important to have a succession plan in place as early as possible so that your business can be handed on in a way that is helpful and profitable to all concerned, whether that is to family members, work colleagues or outsiders.

Which choices you make will depend on several factors, some of them financial but many of them are more to do with emotion and loyalty.

If your family aren't interested in the business and you simply want to extract the best possible price, you may find that private equity firms have a lot to offer.

These firms have received a lot of criticism over the years, but they can have a role to play.

They can provide sellers with a simple way out at an attractive price with money up front. That can be very appealing to someone who wants to bow out quickly with a bulging bank balance to finance a comfortable well-earned retirement.

It's particularly appealing when compared to the possible alternative of selling to managers or partners within the existing company structure who may have to buy in instalments over several years.

The temptation to cut and run is high but that's when emotional ties kick in.

Most business owners become very loyal to their staff and worry about what will happen when people who've worked hard for the firm for several years suddenly find themselves at the mercy of hard-nosed outside owners.

It's quite possible that a private equity firm will want to put in new management and perhaps streamline the operation leading to redundancies.

Such prospects can make the seller feel disloyal. There may also be concerns that the whole nature of the company will change. That too can worry entrepreneurs who've spent all their lives building the business up and still feel a strong attachment to it.

These feelings can be magnified for directors running a family business where sons or daughters do want to take over.

It means many people prefer to ignore the higher price offered by private equity firms and sell instead to the next generation,

Successful Succession Planning

whether family members or long-term colleagues. In these cases, the best way to ensure a smooth succession is to start planning as early as possible, preferably several years ahead of the target retirement date.

This is particularly important for small to medium size firms where the departure of one key person can have a major impact.

Hold meetings with those who will be left running the company, so you can agree an exit strategy.

If you own a large share of the business, the remaining partners or directors may need to raise money to buy you out.

You may choose to sell your shares back over several years, so the firm's finances aren't put under too much pressure all at once.

In that case, you may need to change your will, so the arrangement can continue should you die before the sales are completed.

There could be tax implications whichever system you choose for withdrawing capital from the firm so professional advice should be sought.

If you own the business premises, you will need to decide whether to sell or lease them back to the firm. This could be influenced by how much capital you need to raise or whether you would be content with a monthly rent.

Whatever approach you take, you should consult your solicitor and accountant to get independent advice, especially if family members are involved because sometimes emotion can cloud practical considerations.

Please contact us if you would like advice about the issues raised in this article or any aspect of succession planning.

Tenant protections extended because of Covid

Protection for people who rent their homes is being extended while the Covid restrictions continue to affect people's livelihoods.

The measures include a ban on evictions until 11 January 2021 at the earliest. The only exceptions to this will be the most egregious cases, including where tenants have demonstrated anti-social behaviour or are the perpetrator of domestic abuse in social housing, and the landlord rightly would like to re-let their property to another tenant.

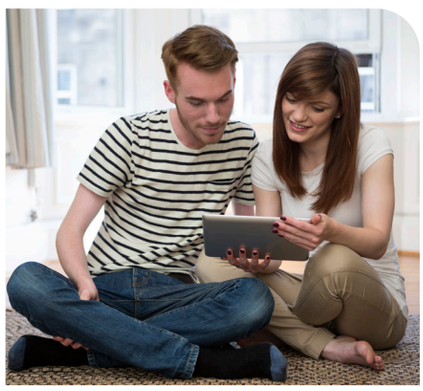
This builds on protections announced earlier this year, including 6-month notice periods, which mean that renters now served notice can stay in their homes until May 2021, with time to find alternative support or accommodation.

Courts will remain open and rules and procedures introduced in September will ensure protections for both tenants and landlords. These include the strict prioritisation of cases, such as those involving anti-social behaviour and other crimes.

Housing Secretary Robert Jenrick said: "We have already taken unprecedented action to support renters during the pandemic including introducing a 6 month notice period and financial support to help those struggling to pay their rent.

"We are now going further with a pause on bailiff activity other than in the most serious circumstances, such as anti-social behaviour or fraud."

Whilst national Covid restrictions apply, the only circumstances where these protections do not apply are illegal occupation, fraud, anti-social behaviour, eviction of domestic abuse perpetrators in social housing and where a property is unoccupied following the death of a tenant.



The government also intends to introduce an exemption for extreme pre-Covid rent arrears.

We shall keep clients informed of developments.

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

Company granted worldwide freezing order against debtor

A company has been granted a worldwide freezing order on the assets of a debtor who had put forward a "concocted case at trial".

The case involved GML International Ltd & Others v Harfield (2020).

GML and the other claimants had brought proceedings to recover significant sums of money paid to Harfield, who resisted by arguing that the monies had been paid to him as part of a compensation agreement.

The trial judge found that the payments had been loans, which the claimants were entitled to recover. He also awarded the claimants their costs on an indemnity basis because Harfield's evidence had been unreliable, he had deliberately tried to avoid his debt and he had subjected the second claimant to hostile and expensive litigation.

Harfield failed to pay the judgment debt, and attempts to contact him received no response.

The claimants submitted that a freezing injunction should be granted because Harfield had put forward a concocted case and failed to disclose his assets.

The court granted the application. It held that Harfield knew that he owed money but had concocted a defence to the claim. There was overwhelming evidence of a risk of dissipation of assets.

The judge's findings of dishonesty showed a wilful attempt by Harfield not to honour the judgment.

Furthermore, there were serious questions as to where he kept his money. Accordingly, a freezing injunction and disclosure order were granted.

Please contact us if you would like advice about credit control and debt collection.

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