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

WINTER
2021/22

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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.

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New move to resolve Covid commercial rent debt

The government is introducing new laws and a Code of Practice to resolve commercial rent debts accrued because of the pandemic.

Commercial tenants are protected from eviction until 25 March 2022. It's hoped this will provide time for landlords and tenants to negotiate how to share the cost of rent debts.

These negotiations will be underpinned by a new Code of Practice, which sets out that, in the first instance, tenants unable to pay in full should negotiate with their landlord in the expectation that the landlord waives some or all rent arrears where they are able to do so.

From 25 March 2022, new laws introduced in the Commercial Rent (Coronavirus) Bill will establish a legally binding arbitration process for commercial landlords and tenants who have not already reached an agreement, following the principles in the Code of Practice.

The Bill will apply to commercial rent debts related to the mandated closure of certain businesses such as pubs, gyms and restaurants during the pandemic. Debts accrued at other times will not be included.

The result of the arbitration process will be a binding agreement the landlord and tenant must adhere to, resolving rent arrears disputes and helping the market return to normal as quickly as possible.

The government is also protecting commercial tenants from debt claims, including County Court Judgements (CCJs), High Court Judgements (HCJs) and bankruptcy petitions, issued against them in relation to rent arrears accrued during the pandemic.

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

Directors didn't breach duties when withdrawing £1.2m

Two directors did not breach their legal duties when they paid themselves a total of £1.2m from their failing company.

That was the decision of the High Court in a case involving Brookmann Home Ltd (In Liquidation).

The company had been formed as a vehicle to purchase a textile business.

Most of the purchase price was raised from money advanced to the textile company under a factoring agreement. The directors used a bank account in Brookmann's name for the textile company's business transactions.

They also became directors of the textile business.

Between May 2011 and January 2013 over £1.2 million was paid to them from the bank account.

Company Law

They contended that the payments were remuneration for their services to the textile business. The payments included £150,000 for services in connection with the acquisition of the business and payments for management services.

Brookmann was compulsorily wound up on a creditor's petition in August 2013. The textile business went into administration in November 2013.

The liquidator submitted that the payments to the directors were not authorised by Brookman's articles, were made when Brookmann was insolvent and were in breach of their duty to have proper regard to the interests of its creditors.

The High Court dismissed the claim. It held that the bank account from which the payments had been made had been entirely funded from money paid to or for the benefit of the textile company.

That money was to be treated as an asset of the company, not of Brookmann.

The directors could reasonably be expected to make their decisions in respect of the textile company in their capacity as directors of it. It would not have been open to them to use the bank account for Brookmann's purposes.

The liquidator had failed to establish that the payments were made with Brookmann's money and the claim must therefore fail.

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

Tenants to get help to pay rent from £65m fund

Vulnerable tenants struggling to pay their rent are to get government help in a move that will protect the income of thousands of private landlords.

The government is making £65 million available to councils in England to support low-income earners in rent arrears.

It will be for councils to determine the best way to support each household on a case-by-case basis.

Any payment is likely to be paid directly to the existing landlord, or a new landlord if the money is being used to support a household to find a new home.

Ministers say they are grateful to landlords for their support and the funding will mean more of them will be able to reach agreements with their existing tenants.

The £65 million comes on top of the £500 million Household Support Fund, which was announced by the government in September and is helping vulnerable households across the country with the cost of food, energy, water and other essentials.

The Minister for Rough Sleeping and Housing, Eddie Hughes, said: "This new funding will support families that are struggling and help to get them back on their feet as we begin to recover from the Covid-19 pandemic.

"The £65 million will be available through the winter months and households at risk of eviction or homelessness should contact their local council if they require

support. The fund recognises the impact the pandemic has had on households in the private rented sector with the lowest income."

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

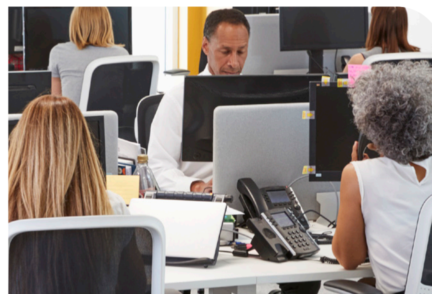
Tribunal warns against hyper-sensitivity in the workplace

The Employment Tribunal has warned against encouraging a 'culture of hyper-sensitivity' in the workplace.

The comments came as the tribunal rejected a female employee's claim of sex discrimination after managers made questionable comments to her.

Miss Sithirapathy worked as a legal counsel for pharmaceutical company PSI CRO UK. When an opening at the firm's head office in Switzerland came up, she was encouraged to apply by the manager of UK operations, Mr Schmidt.

Sithirapathy was told that because of her age, she would not be able to command a salary any higher than 120,000 Swiss francs per annum in Switzerland. She declined the role due to personal



reasons and Schmidt commented: "You are not married, you don't have children and you do not have a boyfriend."

During the discussion, Schmidt also told a story about the Swiss office's tolerance of a lesbian staff member who worked there. The following year, Sithirapathy hoped to gain promotion to the company's senior legal team.

However, the company's head of legal, Ms Ruf, judged that she was not ready for promotion.

This feedback was passed on to Sithirapathy, who brought a claim to the Employment Tribunal of direct sex discrimination.

The tribunal ruled against her. It accepted the comments made to her were "unfortunate and awkward".

However, the behaviour did not amount to harassment and the judge was keen to avoid encouraging a "culture of hyper-sensitivity or of imposing legal liability to every unfortunate phrase".

Please contact us if you would like advice about employment law.

Directors' phone call amounted to binding agreement

The High Court has ruled that a telephone conversation between the managing directors of two companies amounted to a binding agreement and had to be honoured.

The case involved Mansion Place Ltd v Fox Industrial Services Ltd.

Mansion had engaged Fox to refurbish and extend student accommodation.

There were delays in the performance of the works.

Fox said they were due to the Covid-19 pandemic and, to a greater extent, Mansion's failure to give timely possession of the site and to clear it of students. Mansion said that Fox had failed to progress the works and to commit sufficient labour and resources.

The situation was discussed by the managing directors of each company in a telephone call to resolve the situation while each was driving.

Fox said the conversation resulted in a binding agreement that Mansion agreed to forego any entitlement to liquidated damages and in return Fox agreed to forego any right to claim payment for loss and expense resulting from the delay.

Mansion insisted there was no such binding agreement, but an adjudicator found that there was.

The High Court upheld the adjudicator's decision.

It held that the court was able to make a finding as to the gist of the conversation on the balance of probabilities. The two parties had reached a binding agreement that Mansion agreed to forego its right to liquidated damages under the contract.

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

More than 1,400 firms close as insolvencies soar

More than 1,400 firms ceased trading in September as insolvency figures reached their highest level since March 2020.

Finance experts fear there is worse to come as the furlough scheme and other government support for businesses have come to an end.

Some of the smaller energy suppliers were among the 1,446 companies to go bust in September – a 7.2% increase on August.

Other firms, like the chilled food delivery business EVCL Chill Derbyshire, also went under, partly because of the HGV driver shortage.

Overall, the number of insolvencies was up 56% compared with the September 2020 figure of 928.

A report by the Bank of England says that a third of the UK's small businesses were classified as highly indebted with debt levels of more than 10 times their cash balances, compared with 14% before Covid-19.

Garry Lee, chair of the insolvency and restructuring trade body R3 in the south, said: "The dramatic increase in corporate insolvencies illustrates just how crucial the government's support has been in keeping businesses afloat and suggests that there may be a rocky road ahead for the business community now it has ended.

"The monthly increase in corporate insolvencies was driven by a rise in Creditors' Voluntary Liquidations, which increased for the third consecutive month.

"This suggests that directors are choosing to close their businesses after deeming their financial survival unlikely after 18 months of trading through a pandemic.

"Despite the fact that businesses have benefited from two months of restriction-free trading and the economic boost over the summer, conditions are still not back to where they were before the pandemic.

"Consumers are now increasingly cautious about the state of the economy, their personal finances and the increased cost of living and are more wary about spending their money.

"And with widespread supply chain disruption and significant wholesale energy price increases building up between September and October, there is likely to be little slack in the system for businesses and individuals who have yet to get back on their feet following the impact of Covid."

The gloomy outlook emphasises the need for businesses to keep a tight rein on cash flow and to take prompt action ensure invoices are paid on time.

Please contact us if you would like help with credit control and debt collection.

Accountants not liable for their client's failed investment

The High Court has rejected a claim that a firm of accountants failed in their duty of care and should be held liable for a client's failed investment.

The client, Mr Knights, sought damages from Townsend Harrison Ltd for losses he suffered after the firm introduced him to three tax schemes and an investment opportunity.

Townsend was not authorised by the Financial Conduct Authority to conduct investment business and was therefore not permitted to recommend individual investments under the Financial Services and Markets Act 2000.

However, it was licensed by the Institute of Chartered Investments in England and Wales to provide limited investment services complementary to, or arising out of, the professional services it provided to clients.

It was therefore entitled to provide advice on investments generally and to refer clients to third parties.

The firm introduced Knights to several parties regarding the tax schemes and the investment opportunity.

Two of the tax schemes had failed to achieve the desired tax savings, and the other appeared likely to fail in the same way. The investment had resulted in a total loss of the funds invested and it was likely that it had been a Ponzi scheme.

Knights alleged that the firm owed a duty of care in making the introductions to the providers of the tax schemes and providing advice regarding those schemes. He claimed it had agreed to carry out due diligence in respect of the investment but failed to do so.

Townsend maintained that it acted as a mere introducer of the tax schemes and had stated in its terms of business and limitation of liability letters that it could not provide advice on those matters.

It therefore denied that any duty of care arose for any of the introductions.

The court ruled in favour of Townsend.

It held that Knights' case could not succeed. There was insufficient evidence to support the contention that Townsend had assumed any responsibility to give advice. The limitation of liability letters clearly explained that the firm could not advise on the success or otherwise of any tax planning strategy.

Knights had failed to establish the existence of the duty of care alleged, and it followed that no breach of duty had been established.

Please contact us for more advice about the issues raised in this article or any aspect of professional negligence.

Employers keeping tips may face tribunal claims

Employers in the hospitality sector could face tribunal claims if they withhold tips from workers, under new regulations being introduced by the government.

The move is set to help around 2 million people working in one of the 190,000 businesses across the hospitality, leisure and services sectors, where tipping is commonplace and can make up a large part of their income.

Ministers say it will ensure customers know tips are going in full to workers and not businesses.

Labour Markets Minister Paul Scully said: "Moves towards a cashless society have accelerated dodgy tipping practices, as an increase in card payments has made it easier for businesses to keep the funds."

Under the changes, if an employer breaks the rules, they can be taken to an Employment Tribunal, where they can be forced to compensate workers, often in addition to fines.

It's hoped this will create consistency for those being tipped by cash or card, while ensuring that businesses who already pass on tips fairly aren't penalised. The legislation will include a requirement for all employers to pass on tips to

workers without any deduction, and new rights for workers to request information relating to an employer's tipping record, enabling them to bring forward a credible claim to an employment tribunal.

There will also be a Statutory Code of Practice setting out how tips should be distributed to ensure fairness and transparency.

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

Consultants entitled to £212k because of implied contract

A firm of consultants were entitled to a large fee for introducing a client to an insurance company even though there was no specific contract.

The law allowed for a fair payment to be implied in the business agreement.

That was the decision of the High Court in a case involving Premia Marketing Ltd v Regis Mutual Management Ltd.

The court heard evidence that Premia had made a recommendation to Regis that it implement a mutual insurance scheme.

From April 2016, it liaised with Regis about managing any such scheme for a potential client it had found. It held discussions and meetings with both parties separately, finally introducing them to each other in August 2016.

A year later, the client signed a four-year mutual management contract with Regis.

Premia maintained that Regis had been asked at the outset whether it would pay an introductory fee if things progressed and it had said it would.

Regis pleaded that there had been no agreement to pay a fee nor any legal basis upon which one could be demanded. The court found in favour of Premia. It held that the evidence showed that Regis had indicated at the outset that it was willing to pay for Premia's services.

It must also have been obvious to all concerned that Premia was not facilitating the arrangement from the goodness of its heart.

Premia's entitlement was £212,000 plus a continuing fee of 10% of Regis' net profit each year.

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

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