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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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Agents warned not to break competition law

A number of estate and letting agents have been sent official letters warning them that they may be at risk of breaking competition law.

The letters, from the Competition and Markets Authority, follow a recent case in which an association of estate and letting agents, and a newspaper were fined a total of £735,000 for agreeing to restrict the advertising of fees or discounts in a local newspaper.

The CMA says it sent out the warning letters to other agents that may be engaging in similar practices. It has also received complaints about other groups of estate agents and newspapers who may become the subject of further legal action.

A statement from the CMA said: "Businesses that are found to have broken competition law can be fined up to 10% of their annual worldwide turnover, and company directors can be disqualified for up to 15 years where their conduct in relation to such a breach makes them unfit to be concerned in the management of a company.

"In addition, individuals involved in certain very serious cartel activity, such as price-fixing, may be found guilty of the criminal cartel offence and could go to prison for up to 5 years and/or have to pay an unlimited fine."

The CMA is now working with a number of industry bodies, including the National Estate Agents Association and the Property Ombudsman, to help publicise the lessons to be learned from this case and encourage best practice.

Ann Pope, CMA Acting Executive Director, Enforcement, said: "We encourage businesses to have an effective compliance programme.They need to assess if they are at risk of breaking competition law and, if necessary, take steps to remedy the situation."

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Judge & Priestley has achieved excellent results in Legal 500 2015

Judge & Priestley are delighted to announce that once again they have received excellent results for 2015 with six of their lawyers recommended as experts in the Legal 500 this year.

The annual directory benchmarks the quality of the legal profession by reviewing lawyers based on recommendations and research with firm's clients.

The firm's social housing and debt recovery departments were recognised for the high level of service and quality of work. Both practice areas have moved up and now appear in the second tier.

Social Housing

Mark Oakley is newly listed in the "Leading lawyers" list, the Legal 500 guide to outstanding lawyers nationwide. Whilst both Pamela Bachu, Nitika Singh and Suki Dhoopher have all been recommended as leaders in their practice areas.

"Judge & Priestley LLP's team has 'real talent and ability': the 'calm, unflappable' Mark Oakley 'inspires confidence' and is 'excellent on leasehold issues'; Pamela Bachu is 'very knowledgeable and concise'; and associates Nitika Singh ('well-respected') and Suki Dhoopher ('very popular with clients') also attract praise."

Debt Recovery

The firm's debt recovery department continues to grow with continued investment in IT system and people.

Mark Oakley and Rachel Addai are recommended once again with Mark Younger a new recommendation from the team this year.

"In Judge & Priestley LLP's debt recovery department, a specialist team acts for insurance clients to recover subrogated claims following road traffic accidents. Mark Oakley, Rachel Addai and Mark Younger are recommended."

Steven Taylor, Managing Partner commented;

"We are delighted to have been recognised once again by the Legal 500 this year and our improved rankings reflect the high quality and standards of our work and dedication of our staff."

Action over rogue landlords and illegal migrants

The government has announced plans to prevent illegal immigrants renting properties. It will also crack down on rogue landlords who exploit immigrants and supply them with substandard accommodation.

Ministers say measures in the Immigration Bill will enable landlords to evict illegal immigrant tenants more easily, by giving them the means to end a tenancy when a person's leave to remain in the UK ends - in some circumstances without a court order.

This will be triggered by a notice issued by the Home Office confirming that the tenant no longer has the right to rent in the UK.

The landlord would then be expected to take action to ensure that the illegal immigrant tenant or occupant leaves the property. In addition, landlords will be required to conduct "Right to Rent" checks on their tenants' immigration status before offering a tenancy agreement. The move follows a successful pilot scheme running in the West Midlands.

There will also be a new criminal offence targeted at unscrupulous landlords and agents who repeatedly fail to conduct the "right to rent" checks or fail to take steps to remove illegal immigrants from their property.

These landlords may face a fine, up to five years' imprisonment and further sanctions under the Proceeds of Crime Act.

Forthcoming legislation will create a blacklist of persistent rogue landlords and letting agents, helping councils to focus their enforcement action on where it is most needed, and keeping track of those who have been convicted of housing offences. New measures will also prevent a landlord or letting agent from renting out properties if they are repeat offenders.

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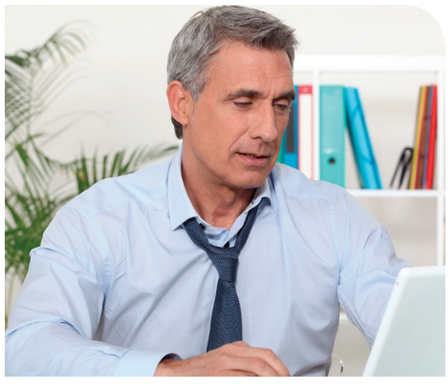
Landlords writing off unpaid rent to speed up evictions

There has been an 11% increase in the number of landlords prepared to write off unpaid rent in order to speed up the process of eviction, according to figures released by the business and information company,Thomson Reuters.



Researchers say the number of accelerated procedure notices jumped from 26,929 in 2013/14 to 29,821 in 2014/15.

Speaking to the Solicitors Journal, property law barrister Daniel Dovar said: "With demand for rental property outweighing supply and forcing rents upward, the opportunity cost to a landlord of having a property occupied by someone that can't pay the rent has increased, which makes emptying a loss making property quickly a bigger priority.

"Private landlords are also under increasing pressure to meet their mortgage payments on buy-to-let investments. They simply don't have the time to go through the potentially lengthy process of recovering unpaid rent."

In a further development, the number of landlords using County Court bailiffs to repossess property has reached records levels. There were 41,489 cases in 2014/15 compared with 37,706 in 2013/14.

Mr Dovar said higher rents had driven many tenants to breaking point, particularly in London where rental costs are at record levels.

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Negligent accountants must pay damages to financiers

An accountancy firm must pay damages in full after being found negligent when providing advice to a finance company.

The court heard that in 2006, the financiers loaned £15m to a business on the advice of the accountants.

By early 2007, it was clear that the borrower was experiencing financial difficulties. The financiers loaned a further £1.75m. The borrower failed to make the due repayments so the financiers loaned a further £3m in 2008. At the end of 2008, the owner of the finance company undertook a refinancing exercise. As part of this process, he provided funds to the borrower, which then repaid the 2006 and 2007 loans to the finance company.

The borrower continued to experience difficulties and eventually agreed that its business should be surrendered and transferred to another firm controlled by the owner of the finance company. The 2008 loan was not repaid.

The High Court held that the accountants had been negligent in the preparation of the due diligence report. It awarded damages in respect of all three loans from 2006, 2007 and 2008. The accountants appealed saying they should only be liable for the amount of the 2008 loan because the owner of the finance company had repaid the 2006 and 2007 loans.

The Court of Appeal rejected that argument saying the accountants would be unjustly enriched if they benefited from the owner's repayment of the first two loans.

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Contractor allowed to challenge £658,000 award

A contractor has won the right to challenge a £658,000 award made against it by an adjudicator more than six years ago.

The court heard that the contractor had been engaged by a developer to carry out an asbestos survey on a block of maisonettes. The developer later claimed that the contractor had failed to identify all the asbestos on the site.

The contract between the two sides was subject to the adjudication provisions implied by the Scheme for Construction Contracts (England and Wales) Regulations 1998 Sch.1. In July 2009, the adjudicator ordered the contractor to pay £658,017, which it did in August 2009. In February 2012, more than six years after the allegedly negligent survey, but less than six years after making the payment, the contractor issued proceedings to overturn the adjudicator's decision.

It claimed that the contract contained an implied term entitling it to have the adjudicator's decision finally determined by legal proceedings in court and, if successful, to have the money repaid.

The case went all the way to the Supreme Court which ruled in favour of the contractor. It held that the Scheme for Construction Contracts contained an implied term permitting the contractor to take legal action to challenge the payment. It also held that the limitation period was six years from payment, and that the contractor's claim was not time-barred.

It was a necessary legal consequence of the Scheme that the contractor had to have a directly enforceable right to recover any overpayment identified following a final determination of the dispute. Since the contractor's causes of action in contract and restitution arose from the payment, they could be brought at any time within six years of the date of payment.

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Review to assess impact of employment tribunal fees

The government is to carry out a review of Employment Tribunal fees, which have proved highly controversial since they were introduced in 2013.

The fees are designed to discourage frivolous claims and ensure that the person taking legal action bears some of the cost. Employees currently have to pay up to £1,200 to bring a claim before a tribunal.

The new system quickly led to an 80% fall in claims, although there is some evidence that the figures are now starting to rise again.

The review will assess how successful fees have been in achieving the government's original objectives, which were:

- to transfer a proportion of the costs from the taxpayer to those who use the tribunal where they can afford to do so
- to promote alternative ways of resolving disputes.

The review will also cover whether there has been a reduction in weak claims and the take-up of alternative dispute resolution services. We shall keep clients informed of developments.

Meanwhile, the ban on exclusivity clauses in zero-hours contracts has now come into force.

It means that employees can no longer be tied to a company that may not have any work to offer them. The ban took effect on 26 May as part of the Small Business, Enterprise and Employment Act 2015.

The measure was introduced because some firms, including recruitment agencies, had been using exclusivity clauses to prevent an individual from working for another employer, even if the firm had nothing to offer them for long periods.

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Directors disqualified over accounts and VAT returns

Two directors have been disqualified after a court heard how they tried to "buy time" for their ailing company by producing misleading accounts and VAT figures.

The directors were sole shareholders in a company importing and supplying plywood and sheet materials. At first their company was successful but it suffered a downturn in 2009 and ceased trading in 2011.

It then became apparent that the directors had produced dishonest accounts for 2009 and 2010. The accounts gave the impression that the company was owed money by other businesses belonging to the directors when in fact it was not.

The directors had also submitted false VAT accounts, understating the amount due.

The court held that the directors had deliberately set out to mislead and give the impression that the company was due to receive substantial sums.

The targets of the misleading accounts included HMRC and potential suppliers with whom credit terms were sought. The court accepted that the directors' intention was that the company would pay all the money due in the longer term. The under-declarations were a way of buying time that would not otherwise have been available to the company.

However, in the circumstances, the directors' conduct in respect of the false VAT returns and misleading accounts made them unfit to be concerned in the management of a company.

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More help for small firms to tackle late payment

The government is planning to appoint a Small Business Commissioner to help firms tackle late payment problems and unfair practices carried out by larger companies.

The move comes after research by Bacs showed that small and medium-sized businesses are owed a total of £26.8 billion in overdue late payments and that £10.8 billion is spent per year in attempts to recover overdue payments.

A survey by the Federation of Small Businesses in 2014 revealed that 51% had experienced late payment within the previous 12 months.

A new commissioner would be able to offer advice and conciliation services, and would have the power to look into complaints and publish the findings. Small Business Minister Anna Soubry, pictured left, said: "The government is backing small businesses to grow and create more jobs and opportunity. Small businesses are owed £26 billion in late payments and spend millions more chasing down money they have already earned through hard work.

"This is simply unacceptable – it limits their growth and productivity, and can put an otherwise successful business at risk.

"The Small Business Commissioner will tackle the imbalance of bargaining power between small suppliers and large customers, and encourage them to get round the table and sort out disputes at a fraction of the cost of going to court.

"It will also provide advice, investigate complaints and see where further action is needed to clamp down on unfair practices." The government has published a discussion paper on the proposal to appoint a commissioner and is asking businesses for their views. We shall keep clients informed of developments.

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Company wins damages over non-delivery of goods

A steel company has won damages of $7.4m plus interest from a supplier that failed to deliver materials on time.

The High Court heard that there had been a contract between the companies for the supply of four consignments of steel billets from Ukraine to Morocco, where the buyer had a factory. Difficulties arose and the two sides agreed to delay the shipment dates.

However, the revised date passed without delivery. The seller then said that the Ukrainian mill had been declared insolvent and asked the buyer to accept a reduced quantity of steel. It agreed to pay compensation to the buyer.

In spite of this, no delivery took place and no compensation was paid so the buyer took legal action, claiming that the lack of raw materials had prevented production at its Moroccan factory.

The seller argued that it was relieved of liability by a force majeure clause that held it would not be responsible for non-delivery for a reason outside of its control.

The court ruled in favour of the buyer. It held that the force majeure clause was irrelevant because the non-delivery pre-dated the Ukraine mill becoming insolvent. The seller was in breach of the contract.

Damages were assessed by calculating the difference between the contract price and the market price of the goods at the time they should have been delivered to the buyer. This amounted to $7.4m. As the buyer's factory was in Morocco, interest was awarded at the historical Moroccan rate of 3%.

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