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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.

Judge & Priestley LLP
Justin House
6 West Street
Bromley
Kent BR1 1JN

New regulations for Homes in Multiple Occupation

The government is introducing new rules on minimum room sizes in homes in multiple occupation (HMO) as part of a crackdown on rogue landlords.

Ministers want to strengthen the ability of councils to tackle ruthless landlords who exploit tenants and charge them extortionate rents to live in poor conditions.

Other proposed measures to help councils raise standards in shared homes include:

- ensuring mandatory licensing rules apply to all shared homes with 5 or more people from 2 or more households, and to flats above and below shops and other business premises…currently, licensing is only triggered when homes have 3 or more floors and excludes homes attached to businesses, unless they are in a 3-storey building
- requiring landlords of shared homes to provide decent storage and disposal of rubbish
- tightening up the fit and proper person test for landlords and ensuring criminal record checks are carried out to weed out rogues.

Where landlords fail to obtain a licence they will be liable to pay a potentially unlimited fine. These measures will complement other government efforts to crack down on rogue landlords who cash in on renting out homes to vulnerable people.

More than £5m of targeted government funding to 48 councils has already brought a big increase in the number of homes checked. In early 2016, more than 33,000 homes were inspected and nearly 2,800 rogue landlords are now facing

prosecution for providing substandard homes. Since 2011, the government has provided £12m so local authorities can carry out more raids, issue more statutory notices and demolish more beds in sheds and other prohibited buildings.

Housing and Planning Minister Gavin Barwell said: "These measures will give councils the powers they need to tackle poor-quality rental homes in their area.

"By driving rogue landlords that flout the rules out of business, we are raising standards and giving tenants the protection they need."

The proposed measures are now subject to a public consultation. We shall keep clients informed of developments.

For more details contact
Steven Taylor - 020 8290 7304 staylor@judge-priestley.co.uk

Entrepreneur fund to help businesses scale up and grow

The government is providing a new fund to help small businesses grow and develop.

The Enterprise Capital Fund is backed by the British Business Bank and has a total investment capacity of £40m. Active Private Equity, which specialises in helping consumer-focused businesses grow their brands and build the infrastructure needed to scale up successfully, will run the fund.

Small Business Minister Margot James said: "Small businesses are at the heart of our economy and the whole country benefits when they grow and create jobs for people. The government-owned British Business Bank is helping more than 48,000 businesses with over £3.1 billion of support, much of it going to those with high-growth potential."

Creating and developing a business can be an exciting but daunting task. 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.

For more details contact
Neil Cuffe - 020 8290 7405
ncuffe@judge-priestley.co.uk

Company wins contract dispute with its bank

Contract Law

An aviation company has won a breach of contract dispute with a bank over a multi-million pound deal to buy an aircraft.

The court heard that the company had sought equity investment to finance the purchase and so entered into negotiations with senior bank staff. A commitment letter and a management agreement were drafted and the bank's investment committee approved their terms, subject to the documentation being satisfactory.

The bank's representative, its head of treasury and investment, signed the documents on its behalf. However, the bank's board of directors subsequently rejected the transaction and it did not proceed.

The company sought damages but the bank claimed that its representative lacked authority to sign a binding agreement and so no contract had been formed.

The court found in favour of the company. It held that it was plain from the terms of the commitment letter that it was intended to create legal relations and the bank's representatives had the authority to sign and make it legally binding.

The bank's sole reason for deciding not to proceed with the transaction was that it had considered that it was not in its commercial interests. That was not a ground on which it had reserved the right to withhold funding. The bank had therefore renounced its obligations under the commitment letter and committed a clear breach of contract.

For more details contact
Neil Cuffe - 020 8290 7405
ncuffe@judge-priestley.co.uk

New £18m fund established to speed up house building

The government has set up an £18m fund to speed up house building on large sites providing thousands of new homes.

Councils can bid for a share of the 'capacity fund' to tackle planning issues that cause delay and prevent builders from getting on site and starting work quickly.

The money will help accelerate delivery of up to 800,000 homes and infrastructure across large sites in England, and is part of a wider programme to increase the number of much needed homes in local areas.

Additional measures include creating 6 new Housing Zones that will support development on brownfield land to provide 10,000 homes.

Housing Minister, Gavin Barwell said: "We want to turbo-charge house building on large sites to get the homes built in the places where people want to live.

"These sites offer enormous potential to transform brownfield land into new homes and our £18m funding will help get them built much sooner.

"Capacity funding offers crucial investment to prevent large-scale, long-term developments from stalling. It provides local authorities with the capacity to take projects forward and

obtain additional resources and expertise. It will primarily be aimed at large sites of 1,500 units or more, and Housing Zones, which support the development of brownfield land. Developers will also be able to apply for funding from the Home Building Fund, which is making £3 billion available to house builders."

For more details contact
Steven Taylor - 020 8290 7304 staylor@judge-priestley.co.uk

Director disqualified for transferring assets to his name

A businessman has been disqualified from being a director for six years after it was discovered that he transferred a property belonging to his insolvent company into his own name.

Mohammed Liton ran the restaurant Penicuik Clippers Ltd for seven years until it went into voluntary liquidation in 2015. It owed creditors £58,800.

An investigation by the Insolvency Service found that shortly before the liquidation, Mr Liton transferred a freehold property from the company to his own name in settlement of his outstanding loan account to the company. The property was worth at least £66,723 net of mortgage finance.

Mr Liton has now signed a disqualification undertaking, which prevents him from directly or indirectly becoming involved in the promotion, formation or management of a company for six years.

Robert Clarke, Head of Company Investigation at the Insolvency Service, said: "Directors who put their own personal financial interests above those of creditors damage confidence in doing business and are corrosive to the health of the local economy.

"The undertaking signed by Mohammed Liton should send a clear message to other directors tempted to help themselves first; they have a duty to their customers and creditors and if they neglect this duty they could be investigated by the Insolvency Service and removed from the business environment."

For more details contact
Neil Cuffe - 020 8290 7405
ncuffe@judge-priestley.co.uk

Number of company insolvencies rises by 2.2%

An estimated 3,633 companies entered insolvency in the third quarter of 2016. That was an increase of 2.2% on the previous quarter and a 1.1% increase on the third quarter of 2015.

The figures were released by the Insolvency Service, which says the trend in case numbers has been flat over the last year, following a generally declining pattern between 2011 and 2015.

The autumn increase was driven mainly by a rise in creditors' voluntary liquidations. There were an estimated 2,569 cases; an increase of 5.2% on the previous quarter and 2.2% higher than in the autumn quarter 2015.

There was a decrease in the number of compulsory liquidations. There were 632 in total, a fall of 4.5% compared with the previous quarter.

Blair Nimmo, UK head of restructuring at the financial services company KPMG,

told Credit Today: "The good news is that the predicted post-referendum spike in insolvencies hasn't materialised, as companies refused to panic in the immediate aftermath of the vote, but instead adopted a 'wait and see' attitude.

"Many sought to keep up those good habits developed in recent years regarding keeping a close grip on cash and cost which has left them in good stead. However, we shouldn't be naïve to the fact that this period of relative stability may not be here for the long term. There undoubtedly will be some companies who are already feeling the pinch due to the significant fall in the value of sterling, while others will be looking nervously towards their supply chains.

"Added to this are pressures unrelated to the referendum, such as increases to the Living Wage and movement in oil prices."

The uncertainty over Brexit and the falling pound may cause problems for many firms over the coming months.

Firms should ensure they keep a tight control over credit and debt collection. Early action to ensure prompt payment of overdue invoices can prevent major problems developing in the longer term.

For more details contact
Rachel Addai - 020 8290 7356
raddai@judge-priestley.co.uk

Mediation could 'save firms millions in settling disputes'

Several leading judges and lawyers say businesses could save millions of pounds if they used mediation as a way of settling disputes with employees and other companies.

Research by the Centre for Effective Dispute Resolution (CEDR) suggests that about 10,000 cases went through mediation last year - an increase of 5.2% on 2014.

Mediation allows disputing parties to settle their disagreements with the help of a trained mediator at a fraction of the cost of going to court.

The approach is less confrontational and enables both sides to maintain greater control of the proceedings.

It can also help both sides to maintain a good working relationship after the dispute is resolved. Lord Justice Briggs told the Solicitors Journal that mediation worked particularly well for small claims up to £10,000 and he expected it to "take centre stage" over the coming years.

At a recent legal forum on mediation, Eileen Carrol QC said: "After all my years litigating, I can't imagine that it could be worse than spending three, four, five hundred thousands of pounds and being out of control of the dispute."

For more details contact
Mark Oakley - 020 8290 7337 moakley@judge-priestley.co.uk

Leftover partitions invalidated company's break clause

A business tenant has failed to exercise a break clause correctly because it left some partitioning behind when it vacated its commercial premises.

The premises were on a 10-year lease with the option of exercising a break clause after five years on condition that proper notice was served and vacant possession was given on or before the break date.

The tenant served notice on the landlord exercising the option to break and ceased paying rent shortly after the break date.

It vacated the premises within the allotted time but left behind a large amount of partitioning which had been brought in following the granting of a licence for alterations.

That licence obliged the tenant to reinstate the premises to their original condition at the end of the tenancy.

It was undisputed that the tenant had not obtained prior approval for the works from insurers or given notice to the landlord of their commencement and completion, as required by the licence. The landlord claimed that the notice to break the lease was not effective because the presence of the partitioning after the break date resulted in the tenant's failure to give up the premises with vacant possession.

The court ruled in favour of the landlord.

It held that the partitioning deprived the landlord of the "physical enjoyment of the premises" and meant that vacant possession had not been given.

For more details contact
Steven Taylor - 020 8290 7304
staylor@judge-priestley.co.uk .

Court of Appeal upholds ruling on holiday pay

The Court of Appeal has upheld an employment tribunal finding that employees are entitled to have commission earnings added to their holiday pay.

The case involved British Gas and one of its salesmen, Mr Joe Lock. Mr Lock earned a basic wage plus commission. However, when he took holidays, he was only paid at the basic rate, with no element of commission.

He challenged this in 2012. The Employment Tribunal referred the case to the Court of Justice of the European Union. It ruled that his commission was “intrinsically linked” to his work and should be included in his holiday pay.

It returned the case to the tribunal to determine how the ruling could be incorporated into British law under the Working Time Regulations (WTR).

Last year, the tribunal held that the European court’s ruling was compatible with the WTR and so commission should be included in holiday pay. The Court of Appeal has now

upheld that decision. It means that companies have to include commission in holiday pay. Employers should note that the ruling only relates to the four week holiday entitlement under European law; it doesn’t include the extra 1.6 weeks available under UK law.

For more details contact
Paul Stevens - 020 8290 7422 pstevens@judge-priestley.co.uk

Bank wins negligence claim against property valuers

A bank has won a professional negligence claim against a property company that failed to carry out two valuations correctly.

The court heard that the valuations concerned two seaside arcades.

The corporate owner of one of the arcades wished to buy the other and run them as a joint business. It had been a customer of the bank for years and had a significant borrowing history.

It applied for a loan of £1.8m to buy the second arcade and to perform building work so that the two could be operated together. The bank instructed a specialist property company to perform valuations. The valuers used a turnover multiplier basis of valuation.

They valued the company’s existing arcade at £2.7m and the second one at £1.5m.

The borrower later went into administration and the arcades were sold for only £1.35m.

The bank's case was that the valuers had taken the wrong approach, which resulted in negligent over-valuations.

It argued that the valuers should have adopted an EBITDA-based approach (earnings before interest, tax, depreciation, and amortisation). It claimed just over £1m comprising of capital losses and interest.

The court ruled in favour of the bank, saying the EBITDA approach would have resulted in more accurate valuations. However, the court reduced the damages figure by 40% because the bank had been contributorily negligent itself in failing to respond to the borrower’s mortgage history.

It had previously advanced money to the borrower in 2003 under a commercial mortgage, which the company directors had dishonestly used to purchase a property in Spain.

The bank had overlooked the company's lack of integrity and obvious misuse of the money on the basis that it could still make a profit.

For more details contact
Mark Oakley - 020 8290 7337
moakley@judge-priestley.co.uk

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Services

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Meet the team


Mark Oakley


Pam Bachu


Rachel Addai


Lucy Rudd


Neil Cuffe


Steve Taylor


Paul Stevens


Nitika Singh

For further information **T.** 020 8290 0333 **F.** 020 8464 3332 E. info@judge-priestley.co.uk
Justin House, 6 West Street, Bromley, Kent BR1 1JN www.judge-priestley.co.uk