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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.

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

Nearly 50% of letting agents 'breaking the law'

Figures released by London Trading Standards (LTS) show that 46% of letting agents in the capital are breaking the law by failing to comply with new regulations.

They were fined a total of £1.2m for not displaying their fees or for not being members of a redress scheme.

Figures are not available for the rest of the country, but it's thought that the problem is widespread.

LTS inspected 1,922 agents in the 15-month period up to June this year and found that nearly half were non-compliant with either the Consumer Rights Act and/or the legislation on redress scheme membership.

As well as the fines, London boroughs instigated 14 criminal prosecutions for a range of offences including breaches of unfair trading rules.

The enforcement survey by LTS shows that there were over 6,000 letting agents operating across the capital and over 1,000 complaints about them.

Two new laws, the Tenant Fees Act and the Client Money Protection Schemes for Property Agents, which have recently come into force, are likely to add significant new protections to tenants. Until now, trading standards teams had limited powers to tackle rogue letting agents.

Under the Tenant Fees Act, which applies to tenancies signed since 1 June 2019, agents are banned from charging fees for all but a handful of controlled subjects, and deposits are strictly limited.

Also, since 1 April 2019, agents must hold any client money in a separate client money account. This must be protected through membership of a client money protection scheme.

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

Rules to ensure large firms pay promptly come into effect

New rules that mean large companies could lose government business if they don't pay their suppliers on time have now come into force.

The rules, effective from 1 September, mean companies must pay 95% of their invoices within 60 days or run the risk of losing out on major government contracts.

This will be particularly beneficial for small businesses, which are an important part of the supply chain.

A government spokesman stressed the need to tackle late payments. He said: "Developing a prompt payment culture is critical for all companies helping to deliver vital public services.

"And it's particularly important for small businesses who may not have the reserves of larger organisations. That's why we're making it clear to big

businesses that they must get their payment records in order or face the very real risk of missing out on large government contracts in the future."

The new rules were first announced by the Cabinet Office in November 2018.

Since then, there has been evidence of an improvement in payment rates by government suppliers, but ministers have been clear that many businesses still need to do more.

Josh Hardie, the CBI's Deputy Director-General, said: "Businesses know that strong supply chain relationships are the bedrock of a successful UK.

"Paying on time is at the heart of this - which is why companies welcome the Government's efforts to support a culture of prompt payment.

"Companies are already raising their game. These new rules - applied fairly and consistently - will further enhance the UK's responsible payment culture."

Large businesses are already required to publish their payment performance every six months. The figures are available at: http://www.gov.uk/check-when-businesses-pay-invoices.

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

Landlords call for new court to speed up justice

The Residential Landlords Association (RLA) is calling for a new housing court to speed up justice for landlords and tenants.

The association says that under Civil Procedure Rules, repossession claims should only take about nine weeks, but official figures show they're taking an average of more than 22 weeks.

It believes that a government proposal to abolish Section 21 'no-fault' evictions will add to the number of cases going through the courts making matters even worse.

Ministers say the changes will lead to a "simpler, faster process through the courts" in repossession cases but have not published any detailed plans. The RLA is calling for a properly funded housing court to ensure that landlords have to wait no more than 10 weeks between submitting their case and getting a decision.

David Smith, policy director for the RLA, said: "Words alone will not improve the court system for tenants or for landlords.

"What is needed is a firm plan for a fully funded housing court which reverses cuts which have made access to justice more difficult and take far too long. Tinkering with the existing system is simply not good enough.

"Without such changes, plans to reform the way landlords can repossess

properties are dead on arrival." We shall keep clients informed of any developments following the election.

For more details contact
Nitika Singh - 0208 290 7347
nsingh@judge-priestley.co.uk

Printer wins claim after being misled over new business

A print firm has won its claim that it was deceived into buying a business because the seller had fraudulently misrepresented key issues and withheld damaging information.

Glossop Cartons and Print Ltd had bought Contact (Print and Packaging) Ltd after lengthy negotiations.

The deal meant that Glossop took on Contact's entire business including its employees, and the leases of three commercial units.

Prior to the purchase agreements, there were concerns that one of the units was prone to flooding because of a drainage problem but Contact assured Glossop that the problem was being addressed.

After the purchases, Glossop discovered that the drainage problem was still an issue and the electricity was routed via

a unit belonging to a third party who was entitled to cut off the supply.

It also found that the capacity of the electricity was not sufficient to run their printing machines.

Glossop asserted that Contact had fraudulently misrepresented all three issues to induce them to enter the purchase agreements at an inflated price, and they withheld the final instalment that was owed.

Contact claimed that Glossop were exaggerating the issues, had overstretched their finances and were looking for a way out of the agreements.

The High Court ruled in Glossop's favour on two of the counts. It held that Contact had fraudulently misrepresented the situation regarding the flooding and the status of the electricity supply to the unit.

These were significant matters to Glossop and was an inducing cause of their agreement to purchase the business. They would not have acted in the same way if the representations had not been made.

Glossop was therefore entitled to claim damages.

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

Company ordered to settle unpaid invoices worth £560k

A vehicle leasing company has won its claim to recover more than £560,000 in unpaid invoices following a dispute with a customer.

The case involved Venson Automotive Solutions Ltd v Morrisons Facilities Services Ltd.

The two companies had entered into a contract in which Venson leased a fleet of 1,014 vehicles to Morrisons.

The hire agreement set out a regime of payment by direct debit and contained a clause preventing Morrisons from relying on set-off or counterclaims as a defence to non-payment. There was a further clause stipulating that if Morrisons disputed any of the payments, it needed to notify Venson within seven working days of receiving the invoice.

In 2016, Morrisons raised concerns that it had been historically overcharged and cancelled its direct debit.

Venson began proceedings to recover the amounts of its unpaid invoices.

It submitted that Morrisons was obligated to pay the outstanding sums as it had not raised any dispute regarding the invoices within seven days of their receipt.

The court found in favour of Venson. It held that the agreement made it clear that if Morrisons wished to dispute an invoice it was under a mandatory obligation to notify Venson within seven days of receipt of the invoice.

Morrisons had not done that so its defence had to fail.

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

Equality watchdog 'calls time on cover-up NDAs'

The Equality and Human Rights Commission says it's calling time on the practice of using confidentiality agreements to cover up company wrongdoing in discrimination cases.

The commission has published new guidance offering both employers and employees clarity on the law governing the agreements, often referred to as Non-Disclosure Agreements (NDAs), including when and how they can be used.

It also sets out good practice on the use of NDAs in order to encourage greater transparency and improved understanding of different types of discrimination at work, so that systemic problems can be identified and tackled by employers and employees alike.

Rebecca Hilsenrath, Commission Chief Executive, said: "We're calling time on NDAs, which have been used to cover up discrimination, harassment or victimisation.

"There are no more excuses. Everyone should have the power to speak out about harassment and victimisation. Nobody should be silenced.

"We all have the right to work in a safe environment and a healthy workplace needs employers to step up and make sure those who work for them have a voice. Our guidance will help make that happen."

The guidance follows the commission's 2018 report *Turning the tables: ending sexual harassment at work* which explained that, while some confidentiality agreements do have legitimate uses, they are routinely and inappropriately used to cover up and stop workers from speaking up about harassment. This can then prevent discussion of discrimination on a wider scale.

It offers some key bullet point advice:

- don't ever ask a worker to sign a confidentiality agreement as part of their employment contract which would prevent them from making a discrimination claim against you in the future
- don't use a confidentiality agreement to prevent a worker from discussing a discriminatory incident that took place in their workplace unless, for example, the victim has requested confidentiality around their discriminatory experience
- don't ever use a confidentiality agreement to stop employees from whistleblowing, reporting criminal activity or disclosing other information as required by law
- do always give your worker time to read and fully understand the terms of a confidentiality agreement
- do always give your worker a copy of the confidentiality agreement
- do make sure the confidentiality agreement spells out the details of exactly what information is confidential
- do monitor the use of confidentiality agreements in your workplace.

The commission says its new guidance also serves as a timely reminder for employers to update any out-of-date policies, such as those on bullying and harassment.

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

Marketers win £150k enrichment claim against Formula One racing team

A marketing company has been awarded £150,000 following a contract dispute with a Formula One racing team.

The case involved Amp Advisory & Management Partners A.G. and Force India Formula One Team Ltd (In Liquidation) (2019).

The issue arose after Force India announced a sponsorship deal with an Austrian company in March 2017.

Amp had dealings with Force India in the period leading up to the conclusion of that deal. It claimed to have introduced the sponsor to Force India and to have reached an agreement whereby it would receive a commission.

Force India denied that it was liable to pay commission, so Amp brought claims of breach of contract and unjust enrichment from its services.

The court held that it was likely that at a meeting in February 2017, Force India's team principal had said words to the effect that he was fine with paying a commission. However, viewed objectively, the exchange to that effect was not intended to be legally binding. No binding contract to pay a commission was therefore formed.

However, looking at the services provided by Amp, the evidence revealed that it had contributed to getting the deal done by acting as an intermediary between the sponsor and Force India.

Force India's commercial director had also accepted in cross-examination that he had given Amp the impression that it would be paid a commission. The court should therefore impose an enrichment obligation on Force India to pay for the benefits resulting from the services performed.

As to the level of payment, the objective value of the benefit of the services provided was £150,000.

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

Ethical veganism held to be a ‘protected belief’

Employers may need to update their diversity policies to include ethical veganism after an employment tribunal held that it was capable of being a protected belief under the Equality Act.

The case, which attracted widespread publicity, involved Jordi Casamitjana, who was dismissed from his job with the campaign group, the League Against Cruel Sports.

Mr Casamitjana brought a claim of unfair dismissal, saying that he was sacked because of his ethical veganism after disclosing that the League had invested pension funds in companies involved in testing products on animals.

The League said his dismissal was for gross misconduct and had nothing to do with veganism.

The tribunal has yet to decide on the claim but as a preliminary issue, it ruled that ethical veganism is a philosophical belief and can qualify as one of nine "protected characteristics" covered by the Equality Act 2010.

The ruling does not refer to all vegans; only those for whom veganism is a deeply held belief system. It would not apply to people who choose not to eat meat simply because they feel it would be bad for their health.

Mr Casamitjana’s approach goes much further than that. For example, he said he would prefer to walk than take a bus to avoid possible crashes with insects or birds.

Judge Robin Postle said: "I am satisfied overwhelmingly that ethical veganism does constitute a philosophical belief." While the protection of the Equality Act may not extend to all forms of veganism,

employers may wish to ensure their policies are up to date to avoid any potential problems in the future.

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

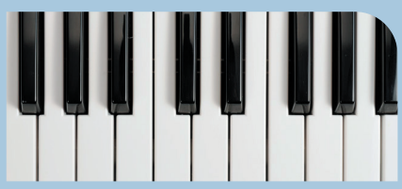
Casio fined £3.7m for forcing retailers to sell at high prices

Electronics company Casio has been fined £3.7 million for illegally preventing price discounts on its pianos.

The Competition and Markets Authority (CMA) issued a Statement of Objections against Casio Electronics in April 2019.

Casio had been telling retailers to sell its pianos at or above a certain price. It used software to monitor their actions and pressurised them to raise their prices if they fell below a certain level.

This is an illegal practice, known as resale price maintenance. It meant consumers were unable to find good deals even if they shopped around.



Casio admitted breaking competition law between 2013 and 2018 with a policy to restrict retailer freedom to set prices online.

The CMA imposed a £3.7 million fine.

This had been discounted to reflect the fact that Casio admitted the illegal behaviour and agreed to co-operate with the CMA, so shortening the its investigation.

Ann Pope, CMA Senior Director of Antitrust, said: “Casio’s illegal action – telling retailers not to offer their musical instruments at discounted prices – made it harder for customers to shop around for a better price and meant they risked paying over the odds.

“At the CMA, we take this type of anti-competitive practice seriously and we will not hesitate to impose penalties where we establish the law has been broken. That’s why we have imposed our largest ever fine for this type of offence on Casio at £3.7 million.”

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

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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