Turbervilles Solicitors

Inside Track

Autumn 2010

The Business Newsletter of Turbervilles Solicitors

Government confirms October start for Equality Act

The Government has confirmed that the Equality Act will start to come into effect in October. The Act, which brings together nine separate pieces of legislation under one umbrella, was introduced by the previous Labour administration.

There was some speculation that the new coalition was not committed to the Act but the Government Equalities Office says it will go ahead. It means there will be several changes affecting businesses and employers relating to discrimination in its various forms.

For example, businesses should be aware that people who access goods, facilities and services are protected from discrimination relating to a "protected characteristic". These characteristics are:

- *disability*
- *gender reassignment*
- *pregnancy and maternity*
- *race – including ethnic or national origins, colour and nationality*
- *religion or belief*
- *sex and sexual orientation*

With the exception of pregnancy and maternity, people do not have to have one of these characteristics themselves to be protected from discrimination. The protection also applies if a person is unfairly treated because they are wrongly perceived to have a particular characteristic.

This might apply, for example, if a person is discriminated against because they are perceived to be gay when in fact they are not. The protection also extends to people who are treated unfairly because they associate with someone who has a protected characteristic.

The Act also introduces several changes relating to the workplace and employment law. For example, the Act develops the concept of indirect discrimination, which can occur when there is a rule or policy that applies to everybody but creates a disadvantage for employees with a particular protected characteristic.

As with goods and services, discrimination relating to perception or association is unacceptable. There are also changes relating to harassment and victimisation, and the Act also introduces the concept of harassment by a third party. This means that employers are potentially liable for harassment of their staff by people they don't employ.

The Home Secretary and Minister for Women and Equalities, Theresa May, said: "By making the law easier to understand, the Equality Act will help business treat staff fairly and meet the needs of a diverse customer base. A successful economy needs the full participation of all its citizens and we are committed to implementing the Act in the best way for business."

Not all the changes will be implemented at the same time and the Government is still considering its position on some of the equal pay measures outlined in the Act. Ministers are expected to offer more guidance over the coming months.

Businesses and employers may want to review their policies if they have not already done so to ensure they meet the requirements of the Act.

Please contact us if you would like more information about the Equality Act and how it might affect your business.

Hotel wins damages because IT system 'not fit for purpose'

A hotel operator has been awarded £110,000 damages after buying an IT system that turned out to be unsatisfactory and 'not fit for purpose'.

The hotel bought the software package from an IT systems provider as a way to manage reservations and billing.

It was an 'off the shelf' rather than a bespoke system but it had been recommended by the provider as being suitable for the hotel's needs.

However, problems began to emerge as soon as it was installed. It failed to accurately reflect room availability and had particular difficulties in dealing with group bookings. The provider made some adjustments but nothing that fully

corrected the problems. Six months after installation, the hotel told the provider that it was rejecting the system and claimed compensation for the financial loss caused by its failure to work properly.

The provider argued that it was an 'off the shelf' system and so it was up to customers to check it and ensure it met their needs before purchasing. However, the court held that those terms could not apply in this case because the provider had recommended that the system was suitable for the hotel's needs.

Any contract terms that tried to restrict the provider's liability were therefore unreasonable.

The system had not been fit for the purpose for which it was sold and so was contrary to the Sale of Goods Act 1979.

The hotel was awarded damages of £110,000 to cover loss of profits and to pay for the additional staff time needed to deal with the problems the software system had caused.

Please contact us for more information about contract issues.

Developer who stopped work because of recession ordered to pay compensation

A developer who stopped work on a housing project because the recession had reduced potential profit margins must now pay damages for breach of contract.

Shortly before the economic downturn, the developer entered into an agreement with the landowner to build some houses and share the revenue the project would provide.

The terms of the contract stipulated that work should begin by June 2008 and be completed within 30 months. The work was to be carried out with due diligence and both parties agreed to act in good faith. The minimum sale price for each property was also set out in the contract.

However, the developer then failed to carry out the necessary work on the site. It said the fall in the property market meant the proposed minimum sale prices could not be achieved and the

agreement was therefore frustrated. The developer suggested that the project should either be delayed or the minimum prices and the payment terms should be reviewed.

The landowner refused to review the terms and began legal proceedings for breach of contract for failing to carry out the work. The developer submitted that the landowner had breached the contractual obligation to act in good faith by refusing to renegotiate the terms.

The High Court has now found in favour of the landowner. It held that the developer was in breach of contract by failing to carry out the work as agreed.

The obligation for both parties to act in good faith didn't mean that the landowner had to forfeit the financial advantage that had been freely negotiated and included in the contract.

The delay in carrying out the work meant the landowner would lose out on potential income and the developer was therefore liable for damages.

Please contact us if you would like more information relating to contract issues.

More than £62bn now owed in overdue invoices

More than £62bn is now owed in overdue invoices in the UK, according to new research by NatWest and Royal Bank of Scotland.

The survey shows that 71% of SMEs in the UK have suffered because of late payments. Larger companies may have a higher value of invoices paid late but in terms of proportion of turnover, it is the smaller firms that are worst affected.

Approximately 1 in 5 businesses with an annual turnover of between £250,000 and £500,000 has suffered compared with just 1 in 15 larger companies.

Peter Ibbetson, Chairman of Small Business, NatWest and RBS, said: "The reality for most small businesses is that they are too busy to spend time chasing payment and managing debtors."

A total of 235,000 SMEs say that the time they have spent chasing debts has had an adverse effect on their business yet less than half have taken action to deal with the problem. This is unfortunate because some simple steps can often lead to early settlement. For example, a solicitor's letter will often be

enough to secure payment because people realise you are serious and they don't want to run the risk of court action.

Firms should also be aware that they are entitled to levy statutory late payment fees and impose punitive interest charges. Taken together, this can earn more than enough to pay any legal fees involved and turn credit control into a profit making operation.

Please contact us for more information and advice on achieving prompt settlement of overdue invoices.

Father fails to prove he was in partnership with his son

A father has failed to prove that he was his son's partner in business and so entitled to a share in his company.

The son had set up a courier business from scratch and after six years of successful trading he decided to incorporate it. He was allocated two thirds of the shares and the remainder went to the operations manager.

The father then claimed that he and his son had set up the business in partnership and so he too should be allocated shares. The court then had to decide whether the business had been conducted by "two or more persons in common" to meet the definition of partnership required by the law.

The father claimed that setting up the business had been his idea. He said he had dealt with clients because his son was dyslexic, and he had provided the necessary commercial experience. However, the son submitted that he had set up the business himself as a sole trader and that he had never treated his father as a partner.

The court held that the evidence of the son and his witnesses was more reliable than that of the father. The father's evidence was largely fictitious and based on very few documents.

There was, however, a large body of documentation relating to the company, none of which showed any reference to the existence of a partnership between father and son.

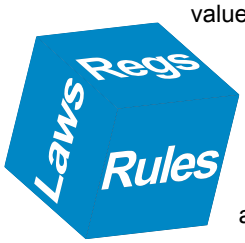
The father therefore had failed to show that there was a partnership.

Please contact us if you would like more information about the issues raised in this article.

New 'one in, one out' curb on business regulations

The Government has pressed ahead with its plan to reduce the burden on businesses by introducing the 'one in, one out' approach to regulation.

The new system, which came into effect on 1st September, means that when a minister wants to introduce new regulations that impose costs on businesses, they will have to identify existing regulations with an equivalent value that can be removed.



The independent Regulatory Policy Committee will scrutinise proposals for new regulations before they are introduced.

The new approach will apply initially to UK legislation but ministers hope to widen its scope in due course. In the meantime, the Government says it will be taking a rigorous approach to tackle EU regulations and ensure that they don't put British businesses at a competitive disadvantage.

Businesses and the public can also tell the Government which regulations they would like to see removed by visiting the new *Your Freedom* website which was launched in July.

The Business Secretary, Vince Cable, said: "Together these measures represent a fundamental shift in how Whitehall has traditionally used regulation. By ensuring regulation becomes a last resort, we will create an environment that frees business from the burden of red tape, helping to create the right conditions for recovery and growth in the UK economy."

There will also be an immediate review of all new regulations inherited from the previous Government which are now coming up to implementation. There are 200 new regulations which, if fully implemented, would cost over £5bn before next April and £19.1bn annually thereafter.

Please contact us if you would like more information about regulatory issues affecting your business.

Default Retirement Age to be scrapped

The Government has announced that it plans to scrap the Default Retirement Age (DRA) from October next year.

It means that employers will no longer be able to force employees to retire simply because they have reached the age of 65.

Ministers are now beginning a consultation process on the issue but have already outlined the timetable for a phased implementation.

It means that from 6th April 2011, employers will no longer be able to issue any notifications for compulsory retirement using the DRA procedure.

For the period between 6th April and 1st October 2011, only people who were notified before 6th April 2011 and whose retirement date is before 1st October 2011 can be retired compulsorily using the DRA. After 1st October next year, the DRA can no longer be used to oblige employees to retire. If employers wish to retire an employee after that date they will have to show that their reasons are objectively justified.

Valid reasons would need to relate to the nature of the work, such as the tasks carried out by police officers or air traffic controllers.

The Government also proposes to remove the statutory retirement procedures which it regards as an unnecessary burden on employers. This is the process which gives employees the "right to request" that they are allowed to continue working after the age of 65.

It also obliges employers to give employees six months notice of retirement. Employment Relations Minister Edward Davey said: "We are committed to ensuring employers are given help and support in adapting to the change in regulations, and this consultation asks what kinds of support are required."

The consultation runs until 21st October this year. It asks for views on what level of guidance or formal code of practice is needed by employers in dealing with future retirement issues.

It also seeks views on whether removing the DRA could have unintended consequences for insured benefits and employee share plans.

Please contact us if you would like more information about the issues raised in this article.

Technical error prevents business tenant from terminating lease

The need to always get the legal technicalities right was illustrated in a recent case in which a firm failed to terminate a lease on one of its premises.

The lease had begun when the firm was run as an independent business. The terms allowed for the lease to be terminated by giving six months notice in writing.

The firm later merged with a group of companies. The landlord was informed that it would be changing its name to that of the parent company. Rent invoices were then sent to the parent company which took over responsibility for payment.

As time went by, however, the change of name did not take place. The parent company then decided to terminate the lease. It gave the necessary six months notice but used its own notepaper when doing so rather than that of the original firm.

The notice also used language expressing that it was written "for and on behalf of" the parent company.

The landlord claimed that the notice was invalid because it had not been given by the original firm which was still the official tenant.

The court has now found in the landlord's favour saying that the notice had clearly been written by and on behalf of the parent company. There was no evidence that it had any authority to act as an agent for the original firm that held the tenancy and so therefore the notice to terminate the lease was invalid.

Please contact us if you would like more information about landlord and tenant issues.

Unemployment 'to create boom' in business start-ups

High unemployment figures could lead to a boom in the number of new companies being formed, according to the Federation of Small Businesses (FSB).

It says it's expecting a record 300,000 people to become their own boss this year and start their own business. Many people may take the plunge because they have lost their job and see little prospect of finding another.

Others may be helped by the fact that they have a substantial redundancy payment to get them started. They may have built up a set of key skills while working for other companies and now feel the time has come to set up on their own.

John Walker, the National Chairman of the FSB, said: "Unemployment continues to be a worry for everyone, and this year we are expecting more people to become their own boss and go it alone by setting up in business, which will both help the economy grow and tackle unemployment as these businesses flourish."

Setting up a new business can be very exciting and satisfying but it is not without risk. There are several potential pitfalls that could damage a new enterprise and prevent it succeeding. It's important that before taking the plunge, budding entrepreneurs should seek legal advice on a whole range of matters from leasehold agreements to business contracts and employment issues. There are also important questions about the structure of a new company.

We have helped numerous new businesses get off the ground and are happy to offer advice on such things as setting up as a sole trader, partnership or new company. We have numerous contacts who can provide added-value to the service we provide, including accountants, surveyors, valuers and financial advisers.

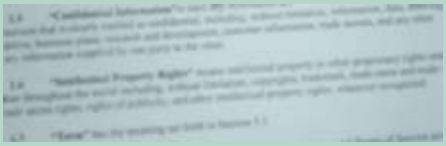
Please contact us if you would like more information about starting a new business or developing an existing company.

Consultation error costs property company £270,000

The need for businesses to comply exactly with relevant regulations was illustrated in a recent case in which a property company was left with a bill for £270,000 after failing to consult properly with its leaseholders.

The company had wanted to carry out major works at a block of flats and notified leaseholders of its plans, as required by law. A consultation period then began in which the leaseholders exercised their rights to see the various estimates being considered, put forward their observations and suggest alternative contractors.

During this period, the leaseholders began to express concern that they were not satisfied with the company's preferred choice of contractor and the reasonableness of the proposed



charges. While they were still discussing the specifications of the works to be carried out, they were informed that the contract would be awarded to the firm that had put in the lowest bid.

The case went before the Leasehold Valuation Tribunal (LVT) which concluded that as the leaseholders were told the contract had already been awarded, this meant that "the consultation period was for all practical purposes curtailed".

The Tribunal held that certain aspects of the Consultation Regulations had not been complied with and it also declined to dispense with the need for compliance. This meant that the liability of each lessee was limited to just £250 each and so the company would have to pay the remaining £270,000 necessary to carry out the work.

It appealed to the Upper Tribunal (Lands Chamber) but that has now upheld the decision of the LVT.

Lord Justice Carnwath said: "We are unable to say that the LVT has erred in principle, or that its decision was clearly wrong. The financial consequence may be thought disproportionately damaging to the landlord, and disproportionately advantageous to the lessees, but that is the effect of the legislation."

Please contact us if you would like more information about the issues raised in this article.

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