



Outside the Box

SUMMER
2011

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Bribery Act - New Guidance Issued

Article by Rachel Brown



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The Bribery Act is due to come into force on 1 July 2011.

The Act has received much criticism since it was enacted last year. The Act introduces a new strict liability offence for corporate organisations who fail to prevent bribery occurring within their organisation. The Act is aimed at preventing lavish corporate hospitality where it is intended to influence performance and decision making and/or affect an individual's impartiality.

The defence available to organisations is to show that they had adequate procedures in place, designed to stop incidences of corruption.

However, critics of the Act have said the new anti-bribery framework goes too far, is "anti-business" in approach and will limit the ability of UK companies to compete with rival organisations based overseas. Foreign companies listed in the UK have also raised concerns about whether they will be caught by the Act.

The Ministry of Justice has now published guidance on the Act and hopes that the new guidance will alleviate some of these concerns.

The new guidance says that foreign companies will only be caught by the Act if they have a demonstrable business presence in the UK.

The guidance also clarifies how corporate hospitality

will be treated by the Act. Bona fide hospitality will not be caught by the Act. The Act only seeks to criminalise unreasonable and improper behaviour. Improper performance is a key element of the new bribery offences and will only arise if it is intended that, by paying a bribe, the recipient will be influenced to perform his or her duties improperly.

The Serious Fraud Office and Public Prosecutions have also issued joint prosecution guidance on the Act, which seeks to clarify the public interest test for prosecutions. It is suggested that small payments or payments made to those in a vulnerable position will tend to lean towards a public interest decision not to prosecute.

The Government is keen to emphasise in the new guidance that the Bribery Act is not intended to be "anti-business". The Act only seeks to criminalise the behaviour of businesses involved in real wrongdoing.

However, the Act does mark a significant change to the current law and there are serious consequences if your organisation is found guilty of the new corporate bribery offence. It is, therefore, advisable that businesses carry out a risk assessment to establish how their organisation will be effected by the new anti-bribery framework when it comes into force on 1 July 2011.



NEWS

Employment Seminar

On 10 March 2011 Wendy Beach, Andrew Dashwood-Begg and Rachel Brown presented an employment seminar at the firm's offices to clients and contacts.

The breakfast seminar was well attended and included talks on the Agency Workers Regulations 2010, the default retirement age and TUPE in the context of share sales.

Following on from the success of that event, the Litigation Department will be holding a Property Litigation Seminar on Thursday 14 July 2011. The breakfast seminar will include talks on the operation of the PACT scheme, how to avoid negligence claims and the adoption of solar energy.

If you or your colleagues would be interested in attending this seminar please email Chris Rands at crands@wortleybyers.co.uk to reserve a place.

The Litigation Team hope to hold another employment seminar in the Autumn. If you are interested in receiving further details about this seminar or any other seminars we hold in the future, please register your interest by emailing Laura Russell at lrussell@wortleybyers.co.uk.

There is no charge for attending our seminars.

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Changing Terms and Conditions of Employment Contracts - Employer's Considerations

Article by Sue Dowman

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As businesses develop and adapt, particularly to survive in the current economic climate, it is inevitable that an employee's terms may need to be altered during the course of their employment. Such changes may be in relation to specific matters such as hours, wages or job role, may be as a result of a restructure or to introduce a standard employment contract across the business which reflects current legislation and provides legal protection to the employer.

Employment contracts are no different to any other contract in that they can only be amended in accordance with the terms contained therein or with the agreement of all parties to the contract. The courts will not allow an employer to use its power or force to vary a contract against the will of the employee.

Changes may not always be by mutual consent of both employer and employee and in such cases extra care must be taken to protect the employer's business from any potential claims from an offended employee.

Upon perusing the current contract it may be the case that changes are permitted without fundamentally amending the contract itself so the document should be read in full to identify whether formal alterations do in fact need to be made.

If it is found that no such provisions are contained within the contract, it is likely that formal modification will be required. There are three routes which an employer can consider to achieve this: Firstly, it should try and obtain the agreement of the employee to the changes. This is obviously the most harmonious approach but it may be the case that not all employees will agree and the employer will then need to decide

whether to dismiss those who refuse to agree to the amendments. In such circumstances the affected employees may have a claim for unfair dismissal and if the employer does not serve notice, the employee may also be able to claim breach of contract.

The second option for the employer is to terminate all contracts currently held by employees across the board and subsequently offer re-employment on new terms. Again, any such action on the employer's part may give rise to claims for unfair dismissal from those who refuse the new contracts, though the employee's failure to accept the new contract may be deemed in such a claim to be a failure on the part of the employee to mitigate their loss and their claim damaged as a result. Further, if the employer fails to serve appropriate notice in either of these situations it may also be leaving the business open to a claim for breach of contract.

The third option is to impose the changes without agreement and wait to see how the employee reacts. An employer may find that the employee reluctantly accepts the new terms. Alternatively, the employee could bring a claim for breach of contract, and could even resign and bring a claim for constructive dismissal.

In addition to the contractual considerations for implementing changes, depending on the variation required, there may also be statutory requirements. Should you require any further advice in this area or assistance in the practical aspects of consultation or amendments then please do not hesitate to contact Sue Dowman or a member of our Corporate Commercial Team.

Property Fraud - Should You Be Concerned?

Article by Anne Elliss

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During the current recession the Land Registry has confirmed that it has had to pay millions of pounds to land owners in compensation for property fraud. Is this something that may affect you?

One of the ways that property fraud can occur is where a fraudster has used forged documents to claim they are the owner of a property. They then apply for mortgages against that property and the mortgage is registered against the title to the property at the Land Registry. The fraudster then pockets the proceeds of the mortgage and disappears leaving the owner of the property with a debt they know nothing about until the lender claims they have defaulted on the mortgage.

If a property already has a mortgage secured against it, then the consent of the original lender is required before additional borrowing can be completed which makes any fraud harder to undertake. What if you do not have a mortgage though? Or if you do not live at the property and do not therefore receive any notices or letters that may be sent there?

To try to protect yourself against this kind of fraud we would recommend that you make sure that you notify the Land Registry of any change of address you may have so that they have up to date records of where to

write to you. You can have up to 3 addresses listed so if you travel frequently you will be able to choose the most appropriate addresses for you.

It is also possible to insure against fraud but the policies which are available now have yet to be tested and are not being currently recommended by the Law Society.

Finally it is possible to register a restriction on your legal title. This requires the consent of a third party before a mortgage can be completed and registered against the title to your property. Clearly if the fraudster is presenting themselves as the property owner it would not be wise to require the property owners consent to the mortgage as the fraudster will be able to fraudulently provide this. Is there a trusted third party/ member of your family that would be prepared to be involved instead?

If you would like to discuss this or would like us to assist you in entering a restriction on your title please contact Anne Elliss or a member of our Property Team.



NEWS

SME Event -
15 June 2011

Small to medium business enterprises are at the heart of our economy and we were delighted to have co-sponsored an event for SMEs at the Holiday Inn, Basildon on 15 June.

Addressing well over a hundred business representatives, Wendy Beach, Partner and Head of Litigation, outlined the far reaching changes which have been made in employment law recently and gave her insights on the extensive challenges to come and how to prepare for them.



Wendy was joined on the platform by speakers from our co-sponsors Royal Bank of Scotland and Rickard Keen LLP accountants as well as Eleanor Chapman from the Instant Group, an SME office location company based in London which ranks consistently in the Sunday Times Top 100 Companies.

The event was concluded with a presentation by Royston Guest a superb motivational speaker who inspired all of us to reflect on the client/customer experience and how critical that experience is to the success of any business.

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Protection of Reputation - The Draft Defamation Bill

Article by Rachel Brown



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The Government released the draft Defamation Bill on 15 March 2011. A consultation has now taken place on its contents.

The draft Bill is set to reform the law of defamation in England & Wales. The law of defamation seeks to protect against harm to reputation, without just cause.

The new draft Bill hopes to strike a balance between protecting free speech and the protection of reputation.

The key changes under the draft Bill are as follows:

- The introduction of a new "public interest" defence;
- The introduction of a requirement for claimants to demonstrate "substantial harm" before they can sue for libel;
- New rules to reduce the number of so called libel tourism claims and to make it tougher to bring overseas claims, where there is little connection to the UK, in the English Courts; and
- The introduction of a single publication rule to prevent repeat claims for libel every time a publication is accessed on the internet.

The consultation closed on 10 June 2011.

The Government has also launched a separate consultation paper on the role of the internet, a new court procedure to cut the sometimes overwhelming court costs associated with libel actions and a new procedure to encourage the early resolution of key issues.

The changes proposed in the draft Bill, along with the changes we are expecting to civil costs later this year, are likely to reduce the number of threats of libel litigation and the number of claims brought in English Courts.

The changes are also likely to make it more difficult for corporations to protect their reputations. If the changes in the draft Bill come into force, companies may be discouraged from bringing a claim for defamation, where their reputations are damaged through the statements of others, because they will need to prove "substantial harm" before bringing a claim.

Companies may decide to pursue non-legal solutions to protect their reputations, rather than resort to litigation, if these changes come into force. Brand managers and PR agencies may see an increase in business as a result.

If you are worried about your reputation, or the reputation of your company, or have any queries about the contents of this article please contact Rachel Brown or a member of our Litigation Team.

Extension/Alteration Costs Rising

Article by Albert Barrett



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All property owners should be aware of the provision of the Party Wall etc Act but a recent case highlights the power of the surveyor who determines a Party Wall Award to require security for the obligations of the landowner undertaking the proposed works.

In simple terms, property owner A may wish to build on their own land within 3 metres of the adjoining property or which may affect the foundations of an adjoining property. Owner A serves a notice to Owner B specifying the proposed works. If agreement is not reached Owner B appoints a surveyor at Owner A's cost and if they cannot agree a third surveyor will make an Award. The Act allowed the surveyor to include provisions for security of costs for any damages that may be occasioned to the adjoining owner's property which is sometimes specified where

the two buildings are connected.

The case of *Kaye v Lawrence* stipulates such arrangements where there is no physical connection. Whenever the Act applies Owner B's surveyor should provide an estimate of the likely cost of repairing Owner B's property if damage is caused by the work, and seek security. New issues arise (1) Is this an obligation on Owner B's surveyor to seek security (2) Should the third party surveyor determining the Award independently attempt to evaluate the risk factor (3) How should Owner A provide that security?

Yet more potential for cost and concerns for surveyors.

National Minimum Wage Increases

Article by Rachel Brown



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The following increases in the national minimum wage will take effect from 1 October 2011:

- The standard rate for workers aged 21 or over will rise to £6.08 per hour (currently £5.93 per hour).
- The development rate for works aged between 18 and 20 will rise to £4.98 per hour (currently £4.92 per hour).

- The young workers rate for workers aged under 18 but above the compulsory school age, who are not apprentices, will rise to £3.68 per hour (currently £3.64 per hour)
- The rate for certain apprentices (those aged under 19 or those aged 19 and over but in the first year of their apprenticeship) will rise to £2.60 per hour (currently £2.50 per hour).



NEWS

Another Country Stroll

Making the most of the good weather and extra bank holiday, 12 from our firm spent the Royal Wedding weekend in the Lake District with the aim of adding Scarfell Pike summit to our list of peaks climbed over the last year.

Keswick was selected as our base with some of us making it in time for the street party and boating, on the Friday, ahead of the climb on Saturday.

Starting, and ending, at drought hit Seathwaite the worst weather we had to contend with was a stiff breeze sufficient to almost blow some of the lighter members of the party off their feet on the more exposed areas.

With the highest peaks in England and Wales now safely scaled we are looking to add the highest in Scotland with flights booked to Glasgow for the ongoing journey to Fort William for the climb up Ben Nevis in September.

Wortley Byers Netball Team

We challenged our client Océ (UK) Limited to a game of netball on 12 May 2011. The game took place at Shenfield High School. After a landslide defeat our team are keen to organise another game. If your organisation would like to challenge our firm to a game of netball please contact Rachel Brown on 01277 268365 or by email: rbrown@wortleybyers.co.uk

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"Wedding Lists"

Article by Warren Hawkings

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With many turning their attention to weddings this year, we thought that it would be helpful to consider what things the happy couple might usefully add to their "To Do" list in addition to the usual dresses, shoes, flowers, food, venue, guests etc.

In this respect, we suggest that the well-organised couple might also pencil in a visit to their solicitor. Why you may ask?

There are many reasons why wedding planning should include an early consultation with your solicitor, particularly if one or both parties have been married previously and/or have children.

The act of marriage revokes an existing Will so that any provisions you may believe apply for the protection of your children by a prior relationship are immediately null and void and the law of intestacy will apply. This may not suit your requirements, either individually or as a new partnership. You can overcome the revocation of a Will by marriage by entering into a Will before the wedding "in anticipation of the intended marriage". This is an exception to the rule and will continue to be effective even after the wedding.

Without a valid Will the intestacy provisions dictate who will become entitled to your assets. If you leave a spouse and children, your spouse would be entitled to your personal effects and the first £250,000 of your estate. The remainder of your assets would be divided into two equal shares. Your spouse would have a right to income only in one half. On his or her death your children would become entitled to that share outright when they reach the age of 18 years. The other half would be held in a trust for your children who would become entitled outright on reaching the

age of 18 years. Is this really what you would want?

Similarly if you leave a spouse but no children, your spouse would be entitled to the increased amount of £450,000. The balance would, again, be divided into two equal shares. Your spouse would be entitled to one half. Other members of your family would be entitled to the other half. In order of priority family members would be your parents, your brothers and sisters, or if any of them have died, their respective children. All this can be avoided with a Will.

Notwithstanding the wish by all parties for a long and enduring marriage, some may also consider a pre-nuptial agreement. A "pre-nup", as it is becoming increasingly known, constitutes an agreement as to the intentions of the parties should the relationship break down. Most of us like to make provision for our dependents. The pre-nup is an attempt to balance the position where existing capital, such as equity in a house, becomes joined with, on occasion, a significant income but no capital. Each case must, of course, be considered on its own merits. Once those are resolved there is a firmer foundation.

Finally, amongst the many advantages that marriage can offer there are those specifically relating to tax and in particular Inheritance Tax and Capital Gains Tax.

If you would like any advice on the above, please contact Warren Hawkings or any other member of our Asset Protection Department who include Warren Hawkings, Poh Shan Chong and Andrew Spearman. Ros Plumb can also advise fully on pre-nuptial agreements and their usefulness.

Give to Charity and Save on Inheritance Tax

Article by Andrew Spearman

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If you thought making a gift to charity in your Will was not for you then perhaps a proposed inheritance tax concession might change your mind.

Gifts to charity in a Will are inheritance tax (IHT) free and in a professionally-drafted Will charitable gifts combined with gifts to other beneficiaries could help you cut your IHT bill on death and benefit a good cause in the process.

Now there are proposals to add further IHT benefits for estates leaving gifts to charity.

IHT is charged at 40% on the value of an estate over the "nil rate band" threshold, which is currently £325,000. Gifts to spouses and civil partners are IHT-free, no matter what the value of the estate, but

often the hit of IHT arises when the surviving spouse or surviving civil partner dies, leaving the estate to "chargeable" beneficiaries, such as children.

New legislation, due to be introduced by the Finance Bill 2011, could reduce the 40% IHT rate to 36%, where a person leaves 10% or more of their net estate to charity.

This could be a useful estate planning tool and is designed to encourage charitable giving by reducing the overall tax rate applicable to an estate. The proposal is still in the discussion stage at present, but it is anticipated to become law from next April.

This newsletter has been prepared for general interest and it is important to obtain professional advice on specific issues. We believe the information contained in it to be correct at time of print. While all possible care is taken in the preparation of this newsletter, no responsibility for loss occasioned by any person acting or refraining from acting as a result of the material contained herein can be accepted by the firm, the authors or the publishers.

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