



## E-Newsletter

April 2014

Your latest commercial legal update from Ortolan Legal, the virtual in-house law firm

Hello. April is often a month for significant changes with the start of the new tax year. Inevitably, changes in legislation and procedure are often introduced in April also and this year is no different. We report on the key employment law amendments, the changeover from distress to Commercial Rent Arrears Recovery, implementation of a single County Court and the closure of the OFT and Competition Commission which all take place this month. We also report on the changes coming soon to consumer contracts, highlight a couple of recent significant IP cases and review retention of title clauses.

I hope you find this newsletter informative and easily digestible. As always, if there is a subject you would like us to address in a future newsletter, don't hesitate to drop us an email.

### Retention Of Title

*How effective are your retention of title clauses?*

It is often the case that a company will not have cause to review its retention of title clauses until it tries to enforce them against an insolvent company. Reviewing your clauses and your trading practices now can often save a lot of time and money later down the line. So, what is a retention of title clause and what should yours' aim to do? [More...](#)

### Employment Law In April

*A time for change....*

A number of employment legislation changes take place in April. There are changes to a variety of financial awards including statutory sick pay, maternity, paternity and redundancy payments and the maximum tribunal awards for unfair dismissal. [More...](#)



### Consumer Contracts

*New Regulations coming into force*

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (*SI 2013/3134*) will shortly come into force. The Regulations will apply (with some exceptions) to consumer contracts made on or after 13 June 2014. Anyone dealing with consumers will need to ensure they are aware of the changes and their terms and conditions are updated accordingly. A summary of the changes is set out in this article. Please contact us if you would like us to update your terms and conditions to comply with the changes. [More...](#)

### Lien Claimed Over Database Fails

*Court rules regarding intangible assets*

In a recent case the Court of Appeal held that it was not possible for a service provider to exercise a common law lien

## Implementation Of A New County Court

*Founding of a new national entity*

On 22 April 2014 the geographical jurisdictional boundaries between the County Courts disappears and a single County Court is established.

At the moment, each County Court is a separate entity and County Court Judges are restricted by geographical boundaries as to which courts they may sit in. The Crime and Courts Act 2013 creates a single County Court which will be established on 22 April 2014. It will be a national entity with national jurisdiction. [More...](#)

## Commercial Rent Arrears Recovery ("CRAR")

*New rules replace the ancient remedy of distress*

The basic procedure for CRAR is set out in the Tribunals, Courts and Enforcement Act 2007 and the Taking Control of Goods Regulations 2013 which came into force on 6 April.

The practical effects of CRAR will take some time to be understood but landlords should be aware that post 6 April 2014 they will no longer be able to levy distress on tenants' goods at a moment's notice. Before CRAR is exercised landlords must give 7 clear days notice of enforcement (in a prescribed form and calculated to exclude Sundays, Christmas Day, Easter and Bank Holidays) to their tenants. There is provision for the Court to shorten the notice period where it is satisfied that, without such an order, it is likely the goods will be moved. Only time will tell how willing the Courts are to exercise this power. [More...](#)

## Careful Drafting

*Reminder to landlords to take care when drafting notices of possession*

In the recent case of **Masih, R (on the application of) –v- Yousaf [2014] EWCA Civ 234** the Court of Appeal considered the landlord's failure to include formal wording in a section 8 Housing Act 1988 (HA 1988) notice. The Court ruled that the notice was valid even though it failed to include the precise wording set out in paragraph 8 of

over a database. The ruling will be welcome to many businesses that employ third parties to host and/or manage their databases. A cautionary note should be struck, however, to point out that the case relates to the exercise of a common law lien and not a contractual entitlement to withhold access to a database pending settlement of outstanding fees or a dispute. [More...](#)

## ISPs Can Be Ordered To Block Customers' Internet Access

*New ECJ ruling welcomed by copyright owners*

In a landmark ruling the European Court of Justice (ECJ) has ruled that Internet Service Providers (ISPs) can be ordered to block customers' access to websites containing material infringing copyright.

In **UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH and another, Case C-314/12, 27 March 2014** two film companies sought an injunction prohibiting an ISP from providing access to its customers to websites containing copyright infringing material. The ECJ ruled that the ISP could be considered as an "intermediary" whose services had been used to infringe copyright and, as such, a person against whom an injunction could be granted in accordance with Article 8(3) of the Copyright Directive (2001/29/EC). [More...](#)

## Employment Law Case Update

*ECJ ruling on surrogacy arrangements*

The European Court of Justice has held that a commissioning mother, who receives a child via a surrogacy arrangement,

schedule 2 to the HA 1988. [More...](#)

## Goodbye to the OFT & Competition Commission

*Regulators have closed their doors*

The start of April saw the end of the Office of Fair Trading (OFT) and the Competition Commission as part of the Government's continued overhaul of competition and consumer protection. In their place is the new Competition and Markets Authority (CMA) which opened in October 2013. The CMA takes over the functions of the Competition Commission and the competition and certain consumer aspects of the OFT. It has responsibility and powers for competition law enforcement, merger control, market studies and investigations. [More...](#)

## About Ortolan Legal

Ortolan Legal is a radically different law firm providing pragmatic and commercially focussed legal advice. We are all experienced in-house and commercial lawyers, based remotely so our overheads are kept to a minimum. Our pricing structure is entirely flexible; we will adopt your preferred structure and simply ask to earn a fair margin for our work. We don't charge administrative costs. Dealing with ad hoc work or retainer work, we assist where there is no in-house legal function and also provide holiday cover or supplement existing in-house legal teams. Our work covers the full spectrum of company commercial, employment and property law as well as dispute resolution, insolvency & restructuring and litigation.

If you require any advice in connection with the content of this bulletin, or on any other issues, please contact any member of the team.



For corporate or commercial matters please contact Nick Benson on 0844 5611 638 or by [email](#)



Liz Delgado also covers the full range of corporate and commercial advice and you can contact her on 0844 5611 638 or by [email](#)

does not have the right to maternity leave. The court stated that the primary purpose of maternity leave is to protect the health of the mother who is deemed "vulnerable" whilst pregnant and following childbirth. This vulnerability does not apply to women who use surrogates. Although maternity leave is also intended to ensure that the special relationship between a woman and her child is protected, that objective concerns only the period after a woman's pregnancy and childbirth and is not the primary objective. [More...](#)

## Early Conciliation

*Mandatory referral to ACAS*

From 6 May 2014 a Claimant must make an Early Conciliation notification to Acas before issuing a tribunal claim. To prepare for this change, early conciliation will be available from April 2014.

The system is intended to promote early settlement of a complaint or, if settlement is not achieved, the parties should have a clearer understanding of the issues and each other's position which should save time and money within the tribunal proceedings. The time limit for bringing a claim will be put on hold while early conciliation is attempted. [More...](#)



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