



## E-Newsletter

August 2013

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

Hello. For journalists and lawyers alike, August is notoriously a slow news month. This year, however, there seems to be quite a lot going on despite the holiday season. So our newsletter this month spans a wide range of legal issues. From important CCTV and consumer law updates to some changes in employment law, we've also included an update on the easing of restrictions for private companies which wish to buy back their own shares. And the first Bribery Act prosecution is underway - you probably have policies in place, but are you monitoring compliance effectively?

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.

### Protected Discussions With Employees

*A common sense approach to pre-termination offers*

We are pleased to confirm that the Government has taken another pragmatic step in addressing the imbalance between employers' commercial needs and employee protection. It is now confirmed that Protected Conversations will be implemented with effect from the 29th July 2013.

This means that employers will be able to have pre-termination negotiations with their employees which will remain secret and which will not be admissible in evidence before an Employment Tribunal in particular will not point towards predetermined unfair dismissal decisions. Employers may offer a negotiated settlement before a dismissal and before any formal procedure is commenced and these discussions will not be admissible unless there is improper behaviour or undue pressure involved.



### Bribery Act

*First prosecution*

On 14 August 2013, the Serious Fraud Office announced it has charged three men with offences of making and accepting a financial advantage, contrary to sections 1(1) and 2(1) of the Bribery Act 2010. These are the first charges to be brought by the SFO under the Bribery Act.

It was only going to be a matter of time before the SFO launched such a prosecution and it serves as a timely reminder to businesses to review their anti-corruption policies and compliance procedures. If this is an area where you feel you may need some help, do contact Ortolan Legal who can conduct an audit, review and update policies and procedures or provide a comprehensive toolkit for you.

### Holiday Carry-Over

*Employees on long term sick leave*

Employers will be required to give the employee seven working days to consider any offers made for the termination of their employment. Failure to do so would be regarded as undue pressure and the discussion would then lose its protection and become admissible in evidence in any Employment Tribunal claim.

## New Consumer Protection Regulations

*Proposals to further bolster consumer rights*

If your business makes sales to individuals, you will need to be aware of some impending changes to consumer protection laws. This month the Government published draft Regulations aimed at strengthening the rights of consumers. They will give consumers a new right to seek redress from businesses if they have been the victim of a misleading or aggressive practice. This doesn't simply relate to sales practices, but extends to things like payment collection which will have implications for the private car parking sector amongst others. The Department for Business, Innovation & Skills estimate these practices cost consumers £3.3 billion in 2009!

Remedies will include a right to terminate and receive a full refund, or the right to a discount, and in some cases a right to receive compensation. For sales made away from the seller's premises (including online sales), the current cancellation period of 7 days will double to 14 days and where information is not given to the consumer about their right to cancel, this will increase to 12 months. However, there are new safeguards for businesses as well. Under the current law, if a consumer has received goods but then cancels the contract, the business must provide a refund even if the consumer does not return the goods. This will change so that no refund will be payable until the goods are returned. There will also be additional information requirements and a prohibition on "hidden costs" such as ambiguous "free" trials and boxes on websites which are ticked by default resulting in unexpected additional payments.

The BIS paper which is the Government's response to the consultation on these

Under Regulation 13 of the Working Time Regulations 1998 employees are entitled to 5.6 weeks leave which consists of 4 weeks "ordinary" annual leave and an additional 1.6 week's leave. The Employment Appeal Tribunal has, in the case of **Sood Enterprises v Healy UKEATS/0015/12/BI** clarified the confusion about how much holiday should carry over if an employee has not had the chance, due to sickness, to take his/her full annual leave entitlement. It is confirmed that where an individual is on long-term sick, only the 'ordinary' four weeks' annual leave carries over automatically as opposed to the additional 1.6 weeks provided under UK law. To carry forward the additional annual leave, there must be an agreement for this to happen.

## Buyback Of Shares

*Now easier for private companies*

On 30 April 2013, it became slightly easier for private companies to buy back their own shares, including shares held by employees. In particular, the Companies Act 2006 was amended by:

- removing the requirement for off-market purchases to be approved by a special resolution, an approval by an ordinary resolution will be enough;
- allowing companies to take a general authority to make off-market purchases for the purposes of an employees' share scheme;
- allowing private companies to defer payment for shares bought for or pursuant to an employees' share scheme; and
- making it easier for private companies to buy back shares

proposed Regulations can be read [here](#)

## **CCTV And ANPR Code Of Practice**

*Now in force*

It seems that CCTV is now ubiquitous and you only need to watch one of the many TV shows based on collected footage from cameras around the UK to appreciate there can be very few parts of the country which are not covered by a camera of some sort. It is no surprise, therefore, that this new Code of Practice has been introduced this month.

The Code addresses overt, not covert surveillance cameras and has been developed to address concerns over the potential for abuse or misuse of surveillance by the state in public places, with the activities of local authorities and the police the initial focus of regulation. Covert surveillance by the state is already regulated by The Regulation of Investigatory Powers Act 2000.

The Code creates the new post of Surveillance Camera Commissioner and is based on 12 Guiding principles. While it is aimed at the activities of local authorities and the police who are the initial focus of regulation, other operators of surveillance camera systems are being encouraged to adopt the code and its guiding principles voluntarily. They are also being asked to make a public commitment to doing so. They are not, however, obliged to do so.

## **Compensatory Awards For Unfair Dismissal**

*New cap*

The unfair dismissal compensatory award limit, from 29 July 2013 is now the lower of the statutory cap (currently £74,200) or one year's gross pay.

## **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

out of capital for the purposes of an employees' share scheme by introducing a solvency statement procedure.

The new rules include provisions to allow private companies to finance some smaller purchases without first having to check that they have sufficient distributable reserves. So long as the specified de minimis tests are satisfied, the company can decide after the event how it is to be financed. This exemption is likely to be of most assistance with employee buybacks, shareholders with small holdings and possibly some directors.

There is a limit on how much a company can buyback each year using this exemption. Companies will, in any financial year, only be able to purchase shares with a cumulative value of up to: (a) £15,000; or (b) if lower, 5% of the company's share capital.

To take advantage of this new de minimis exemption, a company must have inserted a specific provision into its articles authorising its use. This route will be useful where companies are buying back the shares of bad leavers who customarily only receive what they paid for their shares, or the company and its shareholders want to remove other small shareholdings.

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 can 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 and employment law including all forms of commercial contracts, procurement and tendering, outsourcing, purchase, supply, distribution, franchising agreements and pre-litigation reviews. We also provide general 'Legal Health Checks' and a 'Legal Hotline' offering legal support.

If you require any advice in connection with the content of this bulletin, or on any other issues, please contact Nick Benson or Carrie Beaumont on 0844 5611 638 or e-mail us at [nbenson@ortolangroup.com](mailto:nbenson@ortolangroup.com).

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