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**Ortolan Legal Ltd**

# E-Newsletter

October 2012

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

Hello. We recently reported on a car park operator which had been unsuccesful in enforcing a parking charge. This month we bring better news for operators who now have a loophole used by some over-stayers firmly closed by the Protection of Freedoms Act. Our other articles cover a number of recent updates in the law as well as a timely reminder about a document which is so often merely glanced at by businesses, but becomes crucial in the event of a dispute - standard terms of contract. Without wishing to sound as if we are trying to drum up business, these really do need to be carefully reviewed on a regular basis to ensure they are consistent and compliant with an area of law which changes frequently.

As always, we hope you find our newsletter informative and at least relatively devoid of legal waffle...! Do let us know if there is a particular topic you would like us to consider in a future issue.

## Standard Terms & Conditions

***When did you last review them?***

A business's terms and conditions are an essential eleme armoury. They govern the trading relationship between it customers and should address most expected (and some unexpected) eventualities. Management can spend many hours over these documents until the final version is signe galling would it be, having spent all that time in drafting th not to be applicable!

It is not unusual for contracting parties to vie with one anc their terms and conditions accepted as the basis for the c the party with the best bargaining position is likely to be th a particular term relied upon is either particularly onerous then the party tendering the document must show that it h reasonably been brought to the other party's attention. Th beyond simply providing them with a copy of the terms an or referring to them on a purchase order or invoice.

Nowadays a business's terms and conditions tend to be c business's website and reference is made in the contract documentation to where they can be found. Despite this, principles still apply that a business's terms and condition incorporated into the contract before it is formed and parti onerous or unusual clauses must be drawn to the other p attention to be enforceable. Clauses on order forms, ever which say "By signing this agreement you confirm accept terms and conditions" are unlikely to incorporate the term conditions of the business unless it can be proved that the conditions were brought to the attention of the contracting

It is therefore worthwhile regularly reviewing your terms a conditions of business to ensure that the clauses within th inline with the relevant industry standards and if some are onerous or unusual that they are highlighted to the other party. Copies of the terms and conditions of business sho

## Parking Charges

***Loophole closed***

On 1st October the second commencement order for the Protection of Freedoms Act implemented another swathe of provisions addressed by this wide-ranging piece of legislation. The UK parking industry has been particularly concerned with the ban on wheel clamping on private land which has now been made illegal under the Act. Many column inches in the conventional and online media have been dedicated to this – unsurprising due to the high level of public interest.

What hasn't received so much attention is the other change to parking law. Until this month, it was impossible for the operator of a private car park to enforce a parking charge against the owner of the vehicle. While the registered keeper's details could be obtained from DVLA, the parking contract was in practice between the driver of the vehicle at the time and the car park operator. This meant that if the registered keeper declined to disclose the driver's details, the parking operator was left with no recourse. Section 56 of the Act now makes it clear that (in most circumstances) the operator has a legal right to recover these charges from the registered keeper if he or she doesn't disclose the driver's details or if the driver refuses to pay. Fortunately for car rental companies, they will not usually be liable if the driver doesn't pay the charge.

## Employers Working With

out with every quotation for work and you should seek a v
confirmation acknowledging them, to seek to safeguard y

## Employment Tribunal Hearings

***Unfair dismissal heard by judge alone***

Employment Tribunals normally comprise an employment judge and two lay members (i.e. non legally qualified individuals from industry). However, there are certain proceedings that may be heard by an employment judge sitting alone, including breach of contract and redundancy pay claims and since April 2011, this also includes unfair dismissal cases.

It is interesting to consider the risks and benefits of this. On the plus side, the cost of hearings will be lower with fewer members. This is helpful to the State, but only affects the parties if (rarely) a costs order is granted when the Tribunal believe that the matter was misconceived and thus make the losing party pay not only for its opposition's costs, but also the costs of the hearing itself. When hearings go part-heard the parties will not have to wait until both of the lay members are also available, which means that it will be easier to get further hearing dates and stop hearings dragging on for months. And requiring the parties to take one employment judge through the issues of a less complex case generally takes less time at a hearing, given employment judges' experience and knowledge of employment law. Judges are used to dealing with the "range of reasonable responses" test that is the key issue in most unfair dismissal cases, so they should not have a problem in considering this issue without the assistance of lay members.

Set against these benefits, however, lay members are arguably of most value when dealing with complex factual issues, which are more likely to arise in unfair dismissal cases. They have the advantage of industrial experience and can be useful in putting legal issues into factual and real-life context. Sometimes they are believed take a more Claimant friendly approach when considering "reasonableness" in the context of considering sanctions such as dismissal.

## 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 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 non-contentious company commercial and employment law, contracts, tendering, purchase, supply, distribution, franchising agreements and pre-litigation reviews. We also provide general 'Legal Health Checks' and a'Legal Hotline' offering legal support for a set number of hours each month.

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 .

## Children & Vulnerable Adults

***New checking procedures***

Changes to the safeguarding legislation came into force in September. The aim is to include far fewer workers than are currently subject to checks and looks at trusting employers to make rounded decisions about who they employ while reducing the bureaucracy associated with over burdensome checks.

Under the previous position, the Independent Safeguarding Authority (ISA) maintained a barred list. Those barred from regulated activity must not work, or seek work, in regulated activity. An employer who employs, or engages as a volunteer, a person to work with children or vulnerable adults in regulated activities must currently check to see whether the person's name appears on the appropriate barred list and must also undertake a CRB check.

From 10 September 2012, although regulated activities include the teaching, training and instruction of children, the ISA will no longer require checks to be undertaken on individuals who are also subject to the day-to-day supervision of another person who is engaging in regulated activity relating to children i.e. only one of the individuals will need checking.

The Act also makes provision for the setting up of a new service, the Disclosure and Barring Service, which will take over the roles of the ISA and the Criminal Records Bureau. It is anticipated that this new body will be operational from December 2012. This service will mean that, for a fee, individuals can pay for one criminal record check which can be effectively reused when future checks are needed.

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