

E-Newsletter

June 2011

Ortolan
Legal Ltd



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

This month's newsletter reports a number of interesting decisions ranging across the commercial legal arena and we hope you find them interesting and applicable to your business. We can only touch on the highlights in our newsletters so please don't hesitate to give Claudia a call if you would like to understand more about any of them. As always, we hope you enjoy reading our newsletter and please feel free to forward it on to anyone you know who might find it helpful.

Negligent Misstatement

Liability for statements made in email

The high court has decided that an employer owes a duty of care if negative comments are made about a former employee. In the case of *McVie v Swindon College*, the former employee was dismissed from his then current employment as a result of the comments. The tort of negligent misstatement requires proof of a duty of care, breach of that duty and subsequent damage. The court decided that all these elements were present as the statement was inaccurate and the ex-employer knew that it was highly prejudicial. The damage was foreseeable as the ex-employer knew the statement might have an impact on the former employee's job. The court decided there was sufficient proximity between the parties, even though the employee had stopped working for the ex-employer six years previously. It has long been established that employers should exercise caution when providing references about former employees. However, the case also makes it clear that an ex-employer will be liable for any false statements made, whether or not they are contained in a reference.

ICO Publishes Code of Practice on Data Sharing

Make sure your policies are updated!

The Information Commissioner's Office ("ICO") has published a Code which contains two checklists for sharing of data under the Data Protection Act 1998 ("DPA"): one relates to systematic data sharing and the other applies to one-off requests. The Code covers activities such as collection of personal data through online application forms, the use of cookies, using personal data to market goods or to deliver public services and the use of cloud computing to process personal data. In addition, there are good practice recommendations designed to deal with issues such as whether personal data should be shared, when data subjects should be told that their data is being shared, security and staff training, rights of access and when personal data should not be shared. The Code also includes case studies, details of the steps the ICO can take and the penalties for breach of the DPA. The Code highlights the need for all companies to ensure that their data policies are up to date and in line with the Code to avoid being in breach of the DPA.

Religious Discrimination

Case decided by Employment Appeal Tribunal

In the case of *Chefri v G4S Security Services*, Mr Chefri made a claim for indirect discrimination on the grounds of religious belief when G4S changed his working pattern. As a result of the change, Mr Chefri was required to work through lunchtime and was unable to attend at a mosque on Fridays. His claim was that the requirement to remain on site put him at a disadvantage as a practising Muslim. The Employment Appeal Tribunal ("EAT") decided that the treatment was not discrimination. The EAT reviewed the employer's decision and found that there was a legitimate reason for the change in working pattern, as the client required a security officer to be present during the entire shift. The employer had also suggested alternative working patterns to accommodate Mr Chefri. The case shows some



Corporate Manslaughter Cotswold Geotechnical lose right to appeal

It was previously reported that Cotswold Geotechnical was found guilty of corporate manslaughter following the first prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007. The company was fined £385,000 in February of this year following the death of an employee. The company applied to the Court of Appeal for leave to appeal against the decision. However, the Court of Appeal has denied the company's application. In reaching the decision, the Court of Appeal acknowledged that the level of the fine was intended to reflect the seriousness of the offence and to act as a deterrent. The Lord Chief Justice, Lord Judge, also stated that it was unavoidable and inevitable that the company would probably go into liquidation as a result of the fine. The decision stresses the need for all businesses, regardless of industry sector, to ensure they have appropriate health and safety policies in place and that everyone takes responsibility for improving health and safety in the workplace.

of the difficulties in proving religious discrimination in the workplace. However, when faced with similar requests, employers need to exercise caution and ensure that decisions are only taken after careful consideration of all possible options.

About Ortolan Legal

Ortolan Legal is a radically different law firm providing pragmatic and commercially focussed legal advice. We are all experienced in-house lawyers, based remotely so 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 Claudia Gerrard on 0844 5611 638 or e-mail her at cgerrard@ortolangroup.com

Ortolan Legal Limited is a limited company (7039595) registered in England & Wales whose registered office is at Genesis Centre, Birchwood WA3 7BH. It is a legal disciplinary practice regulated by the Solicitors Regulation Authority (520355).

[Want to unsubscribe
or change your
details?](#)
[Forward to a friend](#)