

E-Newsletter

November 2011

Ortolan
Legal Ltd



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

Hello. I hope you find our newsletter a useful digest of some current legal issues. We aim to keep our reporting short and to the point, but if you would like any further information on any of these articles, please feel free to drop me an email or give me a call. Could I also encourage you to let me know of any topics or issues which are of particular interest to you so we can include them in next month's edition.

Today we include an update on the first conviction under the Bribery Act as well as the outcome of an interesting Advertising Standards Authority complaint regarding website price indications. Employment news always continues to be of interest to many of you so there are two reports in this area which I hope you will find of interest.

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 of interest.

Bribery Act *First conviction*

After last month's report on the Bribery Act 2010, the first person has been convicted under the Act. The Act seeks to prevent bribery and covers both giving and receiving a bribe. In the case, an employee of Redbridge Magistrates' Court (Munir Yakub Patel) admitted receiving a £500 bribe in exchange for omitting to record a traffic offence. Mr Patel also pleaded guilty to misconduct in public office for that and other offences. Seven charges of possessing false garage receipts for use in fraud have been ordered to lie on file. An individual convicted under the Act could face up to 10 years' imprisonment and a fine. As reported, it is significant that the Act applies not only to people engaged in public activities, but the private sector as well. However, it is likely that Mr Munir's position as a public servant may mean a harsher sentence is imposed. Sentencing is due to be carried out on 14 November 2011.

Default Retirement Age *Abolished from 1st October*

With effect from 1 October 2011, the default retirement age has been abolished. This means that there is no longer the statutory power to retire someone compulsorily at the age of 65. As a result, many employers will decide to abandon a fixed retirement age and instead deal with retirement of employees on an individual basis. If so, default retirement age provisions should be removed from contracts of employment and employees should be notified of the change. However, it is possible for an employer to decide to retain a fixed retirement age. In order to do so, the employer needs to show that the needs of the business are such that a fixed retirement age is essential. The employer also needs to consider if the business needs can be met in a different way. Employers need to be aware of how elderly employees are dealt with to avoid the possibility of a claim for age discrimination under the Equality Act 2010. This includes sickness absence and disability policies which may be unfair to elderly employees. Employers would be well advised to review handbooks, sickness absence and disability policies to remove any suggestions of age discrimination, particularly in terms of forcing an employee to retire. Ultimately, though, it is a question of ensuring that any decision is reasonable and justifiable.

Statutory Holiday *5.6 weeks can be carried over by sick workers*

The issue as to whether employees on sick leave still have an



Website Price Indications

ASA upholds complaint

The Advertising Standards Agency has been particularly active lately dealing with complaints about websites and pricing issues. Most recently, the ASA has dealt with two complaints against Merlin Attractions Operations Limited trading as Warwick Castle. The company advertised on its website that entrance prices were from £10 with £2.00 VAT added. In fact, there was a £1 or £2 charge added to the purchase price depending on the type of card used for payment. The ASA upheld both complaints. Firstly, the website was misleading as it did not mention that there was a non-optional card fee. This was contrary to the ASA Code which stated that quoted prices must include any non-optional taxes, duties, fees and charges which would apply to all or most buyers. This also constituted misleading advertising. Secondly, the ASA upheld the complaint that the prices should not be quoted exclusive of VAT as most visitors would be liable to pay VAT, so the advertisement was also misleading. With an increase in purchasing over the internet, the decision will be welcomed by many consumers who are often penalised for using credit or debit cards when making such purchases. However, it also means that many website operators will need to review their

entitlement to statutory holiday has been considered in a recent employment tribunal case. The Working Time Regulations 1998 state that all employees must be given a minimum of 4 weeks as statutory holiday entitlement. A debate has arisen, however, as to whether employees on sick leave still qualify for that statutory minimum. In the case of Adams v Harwich International Port, the judge decided that employees off sick were entitled to statutory minimum holiday but also an additional 1.6 weeks leave. The judge said that if an employee was unable to take that leave due to sickness, that holiday entitlement in full could be carried over to the following year. Despite, the decision, though, the matter is still far from clear as the judge said that even though there was a right to carry over, this right could not be carried over indefinitely. So, the issue remains as to when the entitlement comes to an end and it is likely that more cases will arise in the future to clarify this point.

pricing elements to ensure that there is no breach of the ASA Code.

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

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