

# E-Newsletter

October 2010

Ortolan  
Legal Ltd



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

Hello Nicholas. Welcome back to our monthly update on topical commercial legal matters. As well as a review of some important recent decisions and legislative changes we are asking you to spare two minutes to complete our survey on fee structures (and give yourself the chance to win a magnum of champagne!). As always, please do keep the feedback coming and don't forget that we have recently changed our e mail provider, so please mark our new mailing address as 'not spam' in order to keep receiving our updates.

## Equality Act 2010 *EHRC guidance published*

The Equality and Human Rights Commission has published guidance on the changes which came into force on 1 October 2010 by virtue of the Equality Act 2010 ("the Act"). The guidance covers recruitment; working hours, flexible working and time off; pay and benefits; career development, training, promotion and transfer; managing workers; dismissal, redundancy, retirement; equality policies, training and monitoring; adjustments for disabled people; and discrimination claims. The Act prevents discrimination and harassment in respect of specified "protected characteristics", namely age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The wide ranging provisions and complex transitional arrangements have already caused concern, with many businesses having to review employment practices to ensure compliance. As a minimum, policies, procedures and handbooks should be updated to take into account the changes, as well as contracts of employment, application forms and any other "employee documentation" regularly used by a business.

## Legal professional privilege *Importance of obtaining independent advice*

The recent case of Akzo Nobel Chemical Limited v European Commission may have significant implications for in-house lawyers. Legal professional privilege protects communications between a legal adviser and their client. Generally, this will extend to cover in-house lawyers who provide advice to the company employing them. However, the Commission decided that it had power to review documents and advice prepared by in-house counsel in the course of a competition investigation. Its decision was upheld by the European Court of Justice. The judgment is limited to investigations under EU competition law and UK law generally protects communications between an in-house lawyer and their employer. However, if in doubt, it is important to ensure that an independent lawyer is appointed to provide advice, to avoid having to disclose potentially sensitive material.

## Mitie Security *Termination date must be stated specifically*

The case of Mitie Security (London) Limited and Ibrahim highlights the need to ensure that notice of termination is specified. In the case, the employee was told that the employer would have four weeks in which to find the employee alternative employment. The employee was also told that, if there was no suitable alternative employment, the employee's contract would terminate. The employer did not specify the exact date when the employment would end. The EAT, in reversing the decision of the employment tribunal, decided that this was not sufficient notice and that there must be a specific date on which employment is due to end. Even a warning that dismissal was inevitable by a certain date will not amount to a dismissal.



## Sharp rise in legal fees

*Ortolan offers fixed fee legal health checks, free seminars and the chance to voice your opinions*

The Lawyer magazine has recently published details of the level of fees being charged by some solicitors' firms. In London, a partner can charge in excess of £750 an hour and fees can be as much as £550 an hour for solicitors with only 5 years' experience. Even outside London, fees of £450 an hour are not unusual. From our inception, we have been determined to break the mould of expensive and inflexible fee structures usually associated with legal advice and one of the ways we do this is by offering reduced cost legal health checks and free seminars to our clients and prospective clients. Please look out for your invitation to take advantage of this service. We would also like your opinion on alternative fee structures and, by answering our 60 second survey by clicking [here](#) you stand the chance of winning a magnum of champagne.

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@ortolgroup.com](mailto:cgerrard@ortolgroup.com)

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.

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