



**In difficult economic times, a good new year resolution for 2009 is to put your house in order from the legal point of view.**

Ensure all contracts crucial to the business are in writing. Many businesses have found to their cost in recent difficult times, that suppliers or customers on whom they rely have rights to terminate agreements with immediate notice. However, some businesses have been able to secure 12 month contracts and long term legally binding relationships with suppliers and customers to their advantage. Now is a good time to ensure all important contractual arrangements are properly documented in writing.

Another concern has been customers going out of business before paying for goods. Companies which have written terms and conditions of sale which retain title to the goods until full payment is made, are well protected. They often have the right to enter the buyer's premises to recover goods from the liquidator for which payment has not been made.

From January 2009, executives and managers are at risk of being sent to prison for two years for breach of health and safety legislation.

The Health and Safety Offences Act 2008 increases the number of circumstances in which employees may be imprisoned for health and safety breaches. Employees could find themselves in prison under the new law if they fail to take reasonable care of the health and safety of others, or even themselves. In addition, a director and senior manager can infringe the law where the problem was

caused with their consent, connivance or neglect. The highest fine that can be imposed by the lower courts has risen from £5,000 to £20,000. Higher courts can impose unlimited fines.

The liabilities on businesses and individual directors have widened considerably in recent years. Directors face onerous duties under the new Companies Act and the Corporate Manslaughter and Homicide Act introduced a new offence, across the UK, for prosecuting companies and other organisations where there has been a gross failing, throughout the organisation, in the

management of health and safety, with fatal consequences. However, those companies without such a clause and who have no written terms of business discover to their cost that title to goods passes on delivery, even if payment has not been made. Ensure you have a good set of conditions of sale and that legally they apply. We can advise you on this aspect. Other steps that we recommend our clients consider, are an assessment of whether customers are in a good state of creditworthiness and if not, alter arrangements so that payment is made in advance, bigger deposits are required or payment is made by way of Letter of Credit.

Performance bonds are also increasingly being demanded for bigger projects and many companies require personal guarantees from directors and others where there is a fear the limited company for whom the director works might become insolvent. We have had an increase in litigation work as more companies seek to recover damages in legal disputes when money is tight and debt recovery is crucial in the current economic climate. Service of a statutory demand and, in appropriate cases, freezing bank accounts and other assets can be essential in securing payment.

Internally, shortage of cash can lead to director and shareholder disputes and it is wise, before disputes arise, to have written director service contracts and agreements between shareholders and partnerships. It is much more expensive to fund a legal battle when directors fall out than to have lawyers draw up a short shareholder or partnership agreement.

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It is sensible to have clear instructions to staff about their obligations and to ensure agreements with subcontractors and others who undertake work on your behalf deal with liability of the parties. Attempts to exclude liability for death and personal injury are void under English law but clear contractual provisions can help minimise risks coupled with adequate insurance cover. If you need advice on health and safety compliance and the impact of the new law on you, please contact us for further information.

# NEW CONSUMER CREDIT LICENSING REQUIREMENTS IN FORCE

Businesses offering debt administration or credit information services now need to be appropriately licensed by the Office of Fair Trading.

A new debt administration licence category is now required by those businesses wishing to administer debts under consumer credit or consumer hire agreements on behalf of the creditor.

There are also three new categories available to those wishing to provide credit information services and businesses need to ensure that they select the correct category. Any business carrying out these activities without an appropriate licence, is likely to be committing a criminal offence and could face prosecution.

The Consumer Credit Act 1974 requires most businesses that offer goods or services on credit, for hire or that lend money to consumers, to be licensed by the OFT.

The new categories of licence are:

- **Debt administration (Category G)**

(This does not include collecting debts, which would require the separate licence category F to cover debt collecting)

- **Credit information services excluding credit repair (Category H)**

- **Credit information services including credit repair (Category H1)**

- **Non-commercial credit information services including non-commercial credit repair (Category H3)**

Businesses need 'commercial' rather than non-commercial categories if they or their associates charge a fee or otherwise receive remuneration in connection with the provision of such services and/or in the course of carrying on any consumer credit or ancillary credit activities.

The only types of organisation that are likely to require non-commercial categories are non-fee charging charities or similarly altruistic organisations.

There are other licensing changes taking place which relate to those engaging in debt collection and debt purchasing. If a business collects debts due to others, arising from consumer credit or hire agreements (whether regulated or exempt), it is likely to require licence Category F to cover debt collection.

In difficult times, more customers will ask for credit. Contact us if you need advice on the consumer credit legislation and how to protect your commercial position in general against customers who go out of business.

## CHANGES IN PLANNING LAW

Changes to planning laws have come into effect. Owners of terraced properties, for example, can now extend the roof space by up to 40 cubic metres and other properties up to 50 cubic metres without planning permission. However, some of the changes make the law stricter.

Planning permission may now be needed for:

- the installation or repair of driveways;
- extensions or conservatories to the side of a house;
- extensions or conservatories to the rear of a house within two metres of a side boundary;
- the construction of any building (shed, garage) within two metres of any boundary;
- decking over 30cm in height;
- installation of side windows to a house.

The new rules relate to house extensions, in particular to roof conversions and rear extensions, which may now in some cases automatically be allowed. However, this is subject to conditions.



Other changes are to reduce flood risks caused by water run off. New driveways or parking areas over five square metres are only now exempt from planning control if they are constructed using surfaces that allow the water to soak through to the

ground. Proposals using traditional impermeable surfaces are not authorised and now require planning permission.

If you have a property law issue contact our property department for assistance and we can guide you through the complex laws in this field.

## COMPANY LAW CHANGES

- New company law provisions have come into force.

- These include:

- the general duties of directors in respect of conflicts of interest;
- the new procedure for private companies to make capital reductions supported by a solvency statement instead of by a court order;
- companies now have to have at least one natural person (not a company) as a director - a company cannot be a sole director of another company (some existing companies will have more time before the rules change);
- there is a new minimum age of 16 for directors;
- the restrictions under the Companies Act 1985 on financial assistance by private companies for the acquisition of their own shares have also now been repealed.

- Many companies are also updating their articles of association to reflect changes in the Companies Act 2006 such as the removal of the requirement to have a company secretary and the abolition of the rule that companies must have an Annual General Meeting each year.

- Some directors are tempted to cut corners in recessionary times. However, directors' duties are now clearly set out in the Companies Act 2006 and compliance with the law is essential.

- Contact us if you want more information on how the new company law provisions affect your business.



# legal eye

## COMPULSORY PURCHASE WINDFALL



**A recent ruling by the Court of Appeal has resulted in a property owner being awarded £1.6 million in compensation for the compulsory purchase of land with an agreed market value of only £15,000.**

Rejecting an appeal by the London Borough of Wandsworth, the Court approved compensation amounting

to over 100 times the market value of the property and 50 times the purchase price of £30,000.

The case hinged on an interpretation of the 1961 Land Compensation Act that was upheld by the Court.

When Wandsworth Council issued the compulsory purchase notice to Greenweb Ltd., the level of compensation was assessed by the Lands Tribunal.

As the land was being used as a park and planning permission for any other use was unlikely, the market value was assessed at £15,000.

The reason for the Lands Tribunal's assessment of the value of the property at £1.6 million stemmed from its former use. Prior to the Second World War, a Victorian terrace had existed on the site.

The buildings were destroyed during the Blitz and the date of their destruction fell within the time limit to which the Act applies.

When Wandsworth wished to acquire the land for its own development plans, Greenweb benefited from provisions of the Act that require the Lands Tribunal to assess compensation as if planning permission had been granted to rebuild the previous buildings, in spite of the fact that Greenweb had not received such permission, nor would the company be likely to receive planning permission. The Court was in no doubt about the proper interpretation of the relevant parts of the Act. Greenweb became, in the words of the Court, 'the fortunate recipient of an enormous windfall'.

Attention to the detail of planning law can sometimes reap unexpected rewards. Contact us for legal advice on all property transactions and other property law matters.

The Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008, have been in force since May last year.

The first prosecutions under the regulations are now starting to come through. One case concerned some Wiltshire traders whose customers had complained of aggressive behaviour and poor quality work.

Wiltshire County Council's Trading Standards Department, with case support from the OFT, became the first consumer protection organisation in the UK to obtain an enforcement order under the Consumer Protection from Unfair Trading Regulations 2008.

The Order ordered the defendants not to breach a range of provisions in the Regulations including not to:

- act in a misleading manner by presenting false information or presenting it in a manner likely to deceive the consumer
- make contracts away from business premises without first notifying the consumer in writing of their cancellation rights
- act in an aggressive manner either in attempting to get the consumer to enter into a contract or by obtaining payment
- act without professional diligence.

They were also ordered not to breach the general rule of law of negligence when providing home handyman services. If the defendants disobey the terms of the Order they face being found in contempt of court which can attract imprisonment, a fine, or both.

The regulations apply to many companies who advertise and prohibit misleading omissions as well as statements made.

Suppliers need to be careful over the following issues (and many others too):-

1. Offering goods as 'free' when they are not.
2. Omitting to tell consumers there are long minimum service term periods before a good deal which is advertised is available.
3. Engaging in viral or buzz marketing including online where they market products without telling consumers the marketing is by a company and instead pretend to be an unbiased individual. This is particularly common on holiday comment websites.
4. Engaging in any of the 31 prohibited practices set out on the schedule to the regulations.

Contact us if you want further information on these provisions.

## APRIL EMPLOYMENT LAW CHANGES - LONGER HOLIDAYS!



A number of employment law changes take effect on 1st April 2009:-

- The minimum holiday to which employees are entitled increases from 4 weeks to 5.6 weeks including bank holidays. Some companies only provide their staff with the statutory minimum and may now need to increase holiday entitlement for staff up to the 5.6 week minimum.

- New rules about disputes with employees that simplify procedures come into effect. In an unusual move, the law returns to how it was before October 2004.

Note also some changes last year for temporary workers. The Fixed Term Employees (Prevention of Less Favourable) Treatment Regulations, remove the provision that agency workers working under contracts of fewer than three months' duration are excluded from SSP. Now they will all be entitled to sick pay.

Contact us for information on the new procedures for disputes and dismissals and whether your employment contracts need an update to take account of the new holiday rules and other recent changes.

## GOING SELF EMPLOYED

The numbers of people out of work are growing. For those tempted to become 'self employed' one court decision illustrates the risks where the individual is not regarded by the tax man as no longer an employee.

In this case the individual, Mr Bessel, who was an IT contractor was held to be an employee and now owes more than £99,000 in back tax as a consequence.

Mr Bessel, who was freelance, or thought he was, has been ordered to pay the tax as he worked almost exclusively for the AA for three years and just had one other client. He was so involved with the AA's business he was found by the courts to be an employee.

The man paid for his own equipment, broadband line and training but that was not enough to classify him as self employed.

There was no express provision in the contract between the AA and the company through which Mr Bessel contracted nor in the agreement between him and that company which would allow him to substitute another person to undertake the work.

Whereas if, say a law firm is hired, it will usually be up to the firm which lawyers they put on the job and they

can change them largely at will and the relationship is not one of employer and employee.

The judge said: "Bessel's performance of his duties was subject to a degree of supervision and quality control which went beyond merely directing him when and where to work. In the case of a skilled worker you do not expect to find control over how the work is done. Conversely, in the case of a self-employed worker in business on his own account, you would not normally expect to find regular appraisal and monitoring of the kind attested to".

Control and the right to substitute others to do the work have always been important elements of the so-called 'badges of trade' which help indicate if someone is self employed or not.

We can advise you on whether you are employed or self employed and seek to ensure that your contractual arrangements reflect the correct working practice under these rules known as IR35 which applied in this case.

If you would like us to check your contracts with consultants and employment agencies following this ruling, please contact us.

## SALE OF GOODS LAWS

Radical changes have been proposed by the European Commission to the law on sale of goods.

The changes, when in force, will affect many of our business clients as well as provide additional protection to consumers when they buy goods.

The new proposal will guarantee consumers, wherever they shop in the EU, clear information on price, additional charges and fees before they sign a contract.

It will strengthen consumer protection against late delivery and non-delivery, as well as setting out tough EU-wide consumer rights on issues such as cooling off periods, returns, refunds, repairs and guarantees and unfair contract term.

The proposed Consumer Rights Directive simplifies four existing EU consumer rights directives into one set of rules. It concentrates on e-commerce as part of a wide ranging overhaul and upgrading of existing EU consumer rights both online and in the high street.

Call us to check if your website and standard business documentation complies with the current law. We can help you to plan for the future changes.