



The Default Retirement Age and Pensions

The Government has already stated in the Budget that it intends to review pensions and the Default Retirement Age (DRA) which is currently 65 may be phased out altogether.

As part of the review process a consultation has been started which could see the state pension age rising to 66 as early as 2016 for men and 2020 for women, rather than the previously anticipated date of 2026. There is speculation that this would be the first of a series of increases to the state pension age which could ultimately lead to it being fixed as high as age 70.

There has been a mixed response to these proposals and employers face a period of uncertainty while these issues are decided.

The Equality Act

The Government's Equalities Office recently removed the commencement date from its website for the majority of the Equality Act 2010 leading to doubts about the proposed implementation dates set for October this year.

The website has now been updated and states that the government "is currently considering how the different provisions will be commenced so that the Act is implemented in an effective and proportionate way. In the meantime, the Government Equalities Office continues to work on the basis of the previously announced timetable, which envisaged commencement of the Act's core provisions in October 2010."

No doubt there will be clarification in the future.

Registration under the Vetting and Barring Scheme on hold

The first phase of registration under the Safeguarding Vulnerable Groups Act 2006 for people taking up new roles (whether paid or voluntary) with children or vulnerable adults has been halted. This stage of the scheme would have come into effect on the 26th July 2010 but the Government is to remodel the scheme which has been described as 'disproportionate and overly burdensome'.

Provisions that have already been implemented will remain in place. These include:

- a criminal offence for employers who knowingly employ a barred individual or allow them to volunteer, and
- a requirement for employers and other bodies to pass on information on individuals who they consider to have caused harm or pose a risk to the Independent Safeguarding Authority who administer the scheme.



CASE STUDY - *Associated Foreign Exchange Ltd -v- International Foreign Exchange Ltd & Saeed Abbasi***Background**

The Claimant, Associated Foreign Exchange Ltd (AFEX) had applied to the High Court for an injunction against Mr Abbassi, their former employee, and International Foreign Exchange Ltd (IFEX), his new employer, to enforce post termination restrictions contained in Mr Abbassi's contract of employment. The contract contained a number of restrictive covenants including a 'non-solicitation' clause to prevent him from soliciting business from customers or potential customers for a period of 12 months after termination of his employment. There was also a clause that prevented him from, 'dealing' with customers or potential customers for 6 months.

Mr Abbassi had been employed as an accounts executive to buy and sell foreign currency to AFEX's clients and to expand this business to new clients. He had been placed on a 3 month period of garden leave prior to his employment with AFEX ending in December 2009. In January 2010, he began his employment with IFEX, a competitor.

Decision

The High Court concluded that there was insufficient evidence that a 12 month restriction (less time spent on garden leave) went no further than was reasonably necessary to protect AFEX's legitimate business interests. In reaching this decision the court took account of a number of points. There was a legitimate business for AFEX to protect, but:-

- Mr Abbassi did not hold a senior position within the business,
- The nature of the business was such that customers pursued the best deals and moved frequently to other providers of the service,
- Pricing information in this fast moving market would quickly become outdated,
- The 6 month non-dealing clause gave adequate protection to AFEX.

Comment

This case is a reminder that any restrictions contained in restrictive covenants must be no greater than are reasonably necessary to provide adequate protection to the employer. The court will consider the individual circumstances but if a covenant goes beyond this it will be void and unenforceable as seen above. An employer may be better served with a narrower but enforceable restriction.

COMMERCIAL LAW BULLETIN - Terms and Conditions of Business

Standard terms and conditions of business are often given a low priority by companies and may only be given detailed consideration when a dispute arises, by which time it may be too late.

Benefits of Standard Terms

- Set out a framework for how a company's transactions will be dealt with and brought to a conclusion without the time and expense involved in drawing up specific terms for each individual transaction.
- Enable a company to impose terms favourable to itself on others without negotiation and, in particular, to limit its liability (in the case of sale terms).
- Standardise a company's contracting procedures.
- Provide certainty in relation to transactions which form the main part of the trade of the company through the use of the same set of terms in all cases.

Effective Incorporation of Terms

- Ensure that standard terms are set out in pre-contract documentation, such as:
 - quotation forms; brochures and catalogues; and acknowledgement or confirmation of order forms.
- Instruct sales staff on the "battle of the forms":
 - fire last shot by issuing acknowledgement of orders on suppliers standard terms which make it clear that those terms apply.
- If introducing new standard terms, send a copy to every customer stating that the new terms will apply and enclosing a slip for acknowledgement of receipt.
- If terms are printed on the reverse of a document, is there a clear cross-reference to them on the front?

If you have any queries on the above or company/commercial matters generally please contact Janet Humphries on 01562 820575 or email jhumphries@thursfields.co.uk

DISCLAIMER - The content of this publication is for general information purposes only. It does not constitute professional advice (legal or otherwise) nor should it be used as such. We cannot accept responsibility for actions based on the material contained herein.