

Court Warning for Non-Executive Directors

A Scottish court has spelled out a warning for non-executive directors (NEDs) who are of the view that they are in some way different from 'normal' directors in the eyes of the law.

In the case in point, a NED was held to be in breach of his fiduciary duty to the company that employed him when he gave the benefit of an

agreement to another company of which he was also a director by, in effect, diverting the company of which he was a NED from entering into a potentially profitable memorandum of understanding with another company. His argument – that his non-executive directorship was undertaken for tax purposes only and that he would not be expected as a NED to identify business

opportunities for the company – was rejected by the court.

A director is a director. A NED has exactly the same responsibilities under the law as a full-time working director.

Contact us if you require advice on your role as a director.

Company Accounts – New Disclosure Requirements



private companies, chief amongst which are the removal of the need to hold an annual general meeting and the change in the filing deadline to nine months after their financial year end. Public companies must file their accounts with the Registrar of Companies within six months of the year end and listed companies within four months.

accounts, or summary financial statements if appropriate, by the time these are due to be filed with the Registrar.

Other important changes are the removal of the option not to prepare group accounts for medium-sized groups and a new requirement that medium-sized companies must disclose their turnover. There is, however, no need for an analysis of turnover.

The Companies Act 2006 has led to a number of changes in accounting requirements for

Companies which do not hold annual general meetings must send out to members annual

New Minimum Wage Rates

The Government has announced increases in the National Minimum Wage rates that will apply from 1 October 2008.

year-olds the rate will be £3.53 an hour instead of £3.40.

The adult National Minimum Wage will rise from £5.52 to £5.73 an hour. The minimum rate for 18- to 21-year-olds will increase from £4.60 to £4.77 an hour and for 16- to 17-

For general guidance on the National Minimum Wage, see <http://www.berr.gov.uk/employment/pay/national-minimum-wage/index.html>.

New Consumer Protection Laws – A Reminder

Businesses are reminded that the Consumer Protection from Unfair Trading Regulations (CPRs) came into force on 26 May 2008.

The CPRs apply to all businesses that trade directly with consumers and prohibit a wide range of unfair practices. They specifically ban outright 31 types of unfair sales and marketing practices, including bogus 'closing down' sales, prize draw scams, aggressive doorstep selling, falsely claiming membership of a trade organisation, faking goods, using 'advertorial' which is not identified as such and many sharp practices in advertising, such as luring customers with a non-existent product or falsely claiming that a product will only be available for a limited time. They will also, for the first time, establish a catch-all duty not to trade unfairly, closing loopholes that rogue traders have



previously been able to exploit. Essentially, for a practice to be prohibited it must be of an unacceptable standard as well as there being an effect (or the likelihood of such) on the economic behaviour of the typical consumer – for example leading the typical consumer to buy a product that they would not otherwise have bought.

The legislation significantly increases the powers available to the authorities to crack down on offenders. Enforcement agency officers will be allowed to enter business premises without having to obtain a warrant and to seize goods and documents. In addition, an authorised officer will have the right to break open containers of any type (e.g. a locked filing cabinet) to examine goods or documents where there is a reasonable suspicion that a breach of the CPRs has been committed.

Breaches of the law can lead to substantial fines and/or imprisonment.

A basic guide to the Regulations is available at http://www.offt.gov.uk/shared_offt/business_leaflets/530162/oft979.pdf.

Guidance on Letters of Intent

Letters of intent are widely used in the building trade, because it is normal for both developer and contractor to wish to make progress on a building project without having to wait until the formal contractual arrangements have been fully agreed. However, letters of intent are fraught with possible pitfalls and have led to a procession of cases coming before the courts. The best way to ensure their successful use is to take advice to ensure the drafting of any documentation is as tight as possible.

Following yet another recent case dealing with a dispute (this time involving more than £1 million) over work done under letters of intent,

the court has issued guidance over their use.

The recommendations are that any letter should:

- state clearly whether it is intended to be binding or non-binding;
- state what the rights of the respective parties are in the event that a formal agreement is not subsequently reached. In particular, care should be taken to ensure that the method of dealing with any dispute and the effects of termination are clearly set out;
- set out whether it is intended to

constitute a contract under the Construction Act (and if it is not so intended, care should be taken that the wording does not unintentionally create such a contract); and

- set out any financial, time or other limits which apply to the work done by the contractor under the letter of intent.

We can assist you in making sure that your letters of intent create only the rights and obligations that you intend.

Contact us for advice on any commercial property or contract matter.

Unfair Dismissal and Alcohol Policy

A recent case serves as a reminder of the importance of circulating and abiding by your internal policies and procedures. The Employment Appeal Tribunal ruled that the dismissal of a council employee who had consumed alcohol whilst on duty was unfair because the council had failed to make known its published alcohol policy and had not followed it when dismissing him.

Expense Claims for Foreign Business Travel – New Rules

HM Revenue and Customs have published a new set of tables setting out benchmark scales for the claiming of accommodation and subsistence expenses for employees travelling abroad.

These include:

- a 'room rate' per night;
- a 'subsistence only rate', intended to cover the total cost of meals in a period of 24 hours, plus the cost of daily travel between the employee's hotel and office;
- a '24 hour rate'. This is the sum of the 'room rate' and the 'subsistence only rate';
- an 'over 10 hour rate', which is

intended to cover subsistence expenses for any period of more than 10 but fewer than 24 hours; and

- an 'over 5 hour rate', which is intended to cover subsistence



expenses for any period of more than 5 but fewer than 10 hours.

For areas where benchmark rates are not available, employers may reimburse their employees' actual accommodation and subsistence expenses, plus £4 per day to cover hotel-to-office travelling expenses.

The tables do not provide benchmark rates for other allowable expenditure that employees may incur en route – such as taxi fares. This may be claimed in addition to paying the benchmark rates.

The guide can be found at <http://www.hmrc.gov.uk/manuals/eimanual/eim05255.htm>.

Employee Liable for Employer's Losses

Employees who breach their duty of good faith to their employer can be held to account for any resultant losses to the employer, even if the employee has not benefited personally from the breach.

A recent High Court case involved an insurance broker who backdated insurance cover notes, which allowed claims to be made by the firm's clients who would otherwise have been uninsured. Following an investigation by the insurance company involved, the firm that employed the broker accepted that backdated cover notes had been issued and reached a settlement

with the insurer, which involved paying them compensation.

The firm dismissed the broker and sued him for its losses, which were the payment made to the insurance company plus the increase in the cost of its professional indemnity insurance and other costs which had arisen by virtue of the broker's breach of his duty of good faith.

The Court accepted that the accusations made against the broker were very serious and that the more serious these were, the higher the standard of proof had to

be, especially in the absence of any evidence of any personal gain resulting from the backdating of the cover notes.

Despite the broker's excellent past track record, the judge ruled that the evidence was compelling that he had backdated the cover notes and that this had caused each of the losses for which his ex-employer claimed. Accordingly, he was liable for the losses.

We can advise you if you find yourself in a similar position.

New Powers for ICO for Data Breaches

The Information Commissioner's Office (ICO) has been given the power to impose substantial fines on organisations that deliberately or recklessly commit serious breaches of the Data Protection Act (DPA). The new power is granted under the Criminal Justice and Immigration Act, which recently received Royal Assent. Hitherto, the ICO could only issue an enforcement notice against an organisation that was in breach of the DPA.



Victory for Licensee in 'Speculation' Case

Blackburn-based brewery Thwaites, which owns 400 pubs, has won a victory which will bring cheer to licensees, after the Court ruled that a decision by magistrates to cut the opening hours of its Saughall Hotel in Saughall Massie on Merseyside was not based on evidence.



The pub had initially been granted a licence by Wirral Council to open until 1 am on Friday and

Saturday and until midnight during the rest of the week. The Saughall Massie Village Conservation Society appealed against the decision to the local Magistrates' Court on the ground that the extended hours would lead to excessive noise and disorder. The magistrates agreed and reduced the hours.

Thwaites appealed to the High Court, arguing that the objection was based on speculation rather than evidence, as there had not been any complaints of noise nuisance, and also that the decision of the magistrates was contrary to the philosophy of the Licensing Act and the restrictions placed on Thwaites were unnecessary to promote the licensing objectives. The judge agreed, reinstating the original decision of the Council.

The effect of the decision will be to make it easier for licensees to defeat objections to extensions where these are based on speculation rather than evidence.



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