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Your GDPR Checklist

It is now only three months until the General Data Protection Regulation goes live and we are seeing an increasing number of requests for assistance in making businesses compliant. Geoffrey Sturgess, Consultant Solicitor, provides a useful checklist for businesses on how to ensure compliance with this revolutionary change to data protection regulations.

It is fair to say it is not an easy process to ensure compliance. Businesses now need to document what they do with personal data and demonstrate that it is lawful. GDPR (and its associated draft legislation) is unclear in many important respects.

The Information Commissioner's Office (ICO) has much guidance on its website, but they too are waiting for guidance from Europe. It is therefore possible that systems and procedures adopted by business will need to be changed once more guidance is available.

We suggest the following process to achieve compliance:

1. Get a general understanding of GDPR; attending a course will help achieve this and give you the opportunity to share best practice with fellow delegates. With a variety of courses available, it is important to ensure it is the right course for your business.
2. Create a data "map" showing what personal data you process, where you get it from, what you do with it, how long you keep it and with whom you share it.

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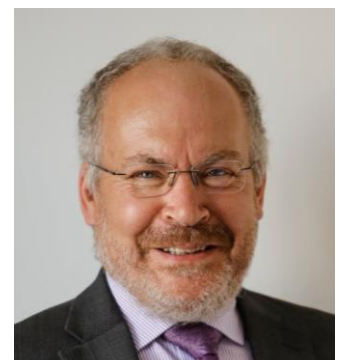
Restrictive covenants for employers; what do you need to know?

Restrictive covenants in employment contracts are used by employers to prevent an ex-employee unreasonably exploiting business contacts and confidential information. Such covenants may restrict working for or establishing a competing business, or soliciting and dealing with clients, as well as poaching former colleagues. In order for restrictive covenants in employment contracts to be enforceable, they must go only as far as is necessary to protect the legitimate business interests of the employer. Here, we explain the appropriate actions that must be taken to meet this requirement, and the steps to take should an ex-employee breach their covenants.



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What are the different types of restrictive covenant?

There are several types of restrictive covenant that can be included in employment contracts:

- **Non-compete**

This restricts an ex-employee from working for a competitor, or setting up a competing business, and will be more pertinent if they had access to confidential know-how or pricing structures. The ex-employee would be prevented from taking this confidential or valuable information to a competing business. These clauses should be time limited in effect, generally three to six months from the employee's leaving date.

- **Non-solicitation**

This restricts an ex-employee from approaching a business's clients and prospective clients after they have left. The covenant can name clients with whom the ex-employee worked or alternatively forbid contact with any, un-named, clients with whom they would have worked within a certain time period, generally the 12 months, leading up to the end of their employment.

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substantially improved the premises, you may still be liable for additional costs when you leave. The landlord cannot though ask you to hand back a new property.

If you have a lease including the roof and structure of the premises then you will be expected to keep them in repair. Even with an internal demise, this will likely include boilers, electrical installations etc. If the wiring is not safe, or the gas boiler gives up the ghost two months into the term, you may have to replace them, even if your lease is short. This sounds grossly unfair on the face of it but 'caveat emptor' applies as much here as it does when buying property – buyer (or tenant) beware!

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Government Reform - County Court Judgements

Against a background of government reforms in Courts and Tribunals, the Ministry of Justice aims to ensure that the process of debt recovery strikes a balance, between the legitimate right of an individual or business to pursue a money claim, and the right of a debtor, to know of any claim against them and have the opportunity to defend that claim.

On 27 December 2017, the Government published a consultation paper following concern regarding the adverse impact of a County Court Judgment ('CCJ') on individuals who, unaware that a CCJ had been made against them, discover months or years later that their credit rating has been damaged. A significant number of consumers become aware of CCJs registered against them only when applying for a mortgage, loan or mobile phone contract and are subsequently rejected due to the CCJ's effect on their credit rating. Too often, CCJs are genuinely unknown to individuals until it is legally impossible to defend the claim or have the judgement removed from the register even if the sum is paid.



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Current Process - County Court Judgments

A CCJ is a Court Order to pay money owed to a judgement creditor. A CCJ may be made where a claim is issued and the defendant has not responded.

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Key Employment Law changes in 2018

As we move into a New Year, we look ahead to the upcoming changes in employment law legislation. It is important employers familiarise themselves with the upcoming changes in adequate time to enable the necessary steps to be taken to avoid potential fines or claims being brought against them. The key employment law changes for 2018 are as follows:

Gender pay gap reporting obligations

The Office for National Statistics (ONS) has been monitoring the average pay gap between men and women since 1997. In 2016, the gap was 9.4% for full-time employees; the lowest since the monitoring began in 1997 when the gap was 27.5%.

The Gender Pay Gap Regulations came into force on 6 April 2017, and now require large private and voluntary sector employers (defined as those with 250 or more employees) to analyse their gender pay gap each April. The deadline for the first reports to have been published is 4 April 2018.

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Are Credit Card surcharges really banned?

As from 13th January 2018 businesses are no longer able to charge a consumer for payments made by credit card or debit card.

The detail of this ban is not easy to find but can be located in Schedule 8 of the Payment Services Regulations 2017. Schedule 8 amends a different set of regulations and inserts the new ban within the Consumer Rights (Payment Surcharges) Regulations 2012.

The new provision is relatively straightforward in its expression. The section prohibits businesses from charging surcharges to consumers if they pay by certain payment methods. These methods include payments by card, PayPal, Apple Pay etc.

Businesses can apply a charge to payments received with cheques or cash as these are outside the scope of the regulations.

There are some very limited and technical exceptions to the ban on surcharges but these do not apply to normal retail and non-financial services businesses, and in the financial sector only apply to the big "payment service providers" like banks.

The ban does not cover payments made with a commercial card. Whether the transaction is for business purposes or personal purposes is immaterial. This is unlike most legislation. What matters is if the consumer is using a card issued to a business.

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In Brief...

In each issue of our Commercial Brief, we will bring you brief references to recent legal developments that could be of interest to you, our readers.

This issue of the In Brief includes the following topics:

- **Law of Frustration: The obligations of a contract cannot be discharged because of frustration where the frustrating event was in existence at time the contract was formed**
- **The Gig Economy: Uber held to be provider of transport services**
- **Does an exchange of emails constitute a binding contract?**
- **Small Business Commissioner Complaints Scheme launched**
- **GDPR: resources made available to SMEs ahead of introduction of new regulations**

To read more on these topics, simply click [here](#).



This Commercial Brief is edited by **Geoffrey Sturgess**. For further details on any of the articles, contact Geoffrey at geoffreysturgess@warnergoodman.co.uk.

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