

## Employment E-Brief No. 105

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### RESTRICTIVE COVENANTS - HOW WILL THEY BE INTERPRETED?

There have been a number of cases recently on the interpretation of restrictive covenants. These are restrictions placed on key members of staff who, following their departure from a business, could do damage by taking clients or information with them.

The courts dislike these clauses and require convincing of their fairness before enforcing them. The High Court in a recent case said that assessing the reasonableness (and therefore the enforceability) of such covenants requires a three stage process, as follows:

- The court must decide what the covenant means. Any ambiguity in the meaning (one lawful the other not) should be decided in favour of the lawful meaning. The reason being that the parties should be considered to have intended the agreement to be lawful.
- The employers will be required to show that they have a legitimate business interest to protect.
- The employers will then have to show that the restriction is no wider than is reasonably necessary for the protection of the legitimate business interest.

Having considered the three steps the court will decide on the reasonableness of the restriction and will then go on to decide whether, as a matter of discretion, it should be enforced by way of an injunction.

Restrictive covenants can be a very useful tool to protect your clients and contacts from departing staff but they do need to be drafted very carefully in order to stand any chance of enforcement. This means making sure that they do not go any further than is absolutely necessary to protect a legitimate interest. In short they are technical legal provisions which should be drafted by an appropriately qualified Solicitor.

If you want to consider your existing restrictive covenants or introduce new ones please contact Paul Seath who can guide you through the process.

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