

Employment E-Brief No 73

For further
information contact:

Judith Ellery

jellery@metcalfes.co.uk

0117 9453080

Paul Seath

pseath@metcalfes.co.uk

0117 9453084

PROTECTING CONFIDENTIAL INFORMATION POST EMPLOYMENT - EXTENT OF PROTECTION GIVEN BY IMPLIED TERMS

In a recent case Fibrenetix Storage Ltd sought an injunction preventing a former sales manager (Davis) using confidential information, obtained while he was employed by them, to interfere with its business. It claimed that implied terms prevented Davis from

- making use of confidential information obtained through his employment;
- disclosing to a new employer pricing information;
- divulging information about its customers with the intention of interfering with their business relationships with it;
- disclosing pricing other information confidential to it to seek business for Davis' new employer.

The application was unsuccessful. The Court said the only term to be implied was that an ex-employee would not use any information learned from his employment that was of a sufficiently high degree of confidentiality as to be a trade secret or equivalent. Fibrenetix was unable to convince the Court that it was entitled to have its information protected and it was noted that its general pricing information was not so confidential as to amount to a trade secret and therefore justify protection. Davis had necessarily acquired that information in the course of his employment and had not been privy to significant information that was not already available within Fibrenetix. Further, there was no evidence that Davis had been given special instructions about the confidential or sensitive nature of the information or the need to keep it secret.

The Court did say, however, that it would restrain an ex-employee from obtaining an unjust head start against a former employer, if gaining that advantage involved the copying or memorising of confidential information during employment for use when that employment comes to an end. Such protection though would be limited to what was realistically necessary to protect the employer and would not prohibit or discourage legitimate competition.

Essentially, while there is some implied protection for employers in respect of confidential information, that protection is limited (even where the employee deliberately takes that information during employment), and all employers should consider the need for express protection drafted into their contractual documentation.

2nd July 2004

Whilst every care has been taken in producing this E-brief, no liability is accepted for any errors or omissions. The E-brief is not a substitute for proper legal advice, merely an aid. For further advice, contact Judith or Paul or your usual Metcalfes contact.