

foodforthought



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Birketts' Debt Recovery Services Team

The Debt Recovery Services team is led by Robert Howard from the firm's Ipswich office. Regularly ranked in the top tier of debt recovery teams by Chambers and Partners' Guide to the UK legal profession and the Legal 500, the team's clients include small and medium sized businesses through to major PLCs. Whilst the client base is primarily based in East Anglia, the team attracts instructions from clients based in other areas of the country.

An advanced computerised system and the use of email to take and receive instructions ensures that claims are managed and processed speedily. Judgment is obtained at the earliest opportunity, and the team is alert to the fact that a judgment is (in most cases) not the end of the recovery process. The key to our clients getting paid is the swift and efficient enforcement of a judgment debt. Enforcement is therefore managed proactively, in consultation with our clients.

The basis upon which the team charges can be tailored to meet a client's requirements. Our experience, however, is that our clients' primary aim is to recover the debt without deduction and therefore a charging structure that involves legal costs being met entirely by the defendant is often the most commercially attractive option. In such circumstances, the team offers a free letter before action.

Robert is assisted by Heather Abbott, Caroline Nichols, Alison Betts and Kirsty Scripps. Ann Parry, who for many years worked for the Office of the Sheriff of Suffolk, has particular responsibility for the transfer of County Court judgments to the High Court for enforcement.

To discuss any aspect of the Debt Recovery Service in more detail please contact Robert Howard on 01473 232300 or robert-howard@birketts.co.uk

New opportunities, more regulations

by
Matthew Atkins
Partner



For many farmers these are difficult times. In the last few years farmers have had to cope with a resurgence of foot and mouth, bird flu and fluctuating commodity prices. Celebrity chefs are taking an increasingly active role in telling us what to eat and, perhaps more importantly for farmers, how what we eat should be grown.

The government has encouraged farmers to diversify and often there is no choice. One of the visible results, particularly in East Anglia, has been the resurgence of farmers' markets and farm shops. The need to diversify has coincided with consumers' growing awareness of the origins of the food that we eat.

So far, so good. Farmers looking for a new market have found one close to home and one that does not suffer from the same level of bureaucracy as supplying conglomerates with a household name to protect.

Bureaucracy, in the form of rules and regulations, are never very far away and it will come as a surprise to no-one (least of all farmers and food producers) that these rules and regulations were made necessary by the need to bring the UK in line with the rest of Europe.

The Consumer Protection Act 1987 (the Act) was itself introduced to implement an EC Directive. Part I of the Act provides that where any damage is caused wholly or partly by a defect in a product, liability attaches to the producer. 'Producer' is defined to include the person who abstracts a substance and someone who carries out a process leading to the product having essential characteristics which are attributable to that process; the person who supplies the product under his

mark and any person who imports the product with the intention of supplying it.

An important exception was contained in Section 1 (4) of the Act. The provisions outlined above did not apply in respect of 'agricultural produce' (meaning any produce of the soil, stock farming or fisheries) if the only supply of the produce was at a time when it had not undergone an industrial process.

This position changed as a result of European intervention. The Consumer Protection Act 1987 (Product Liability) (Modification) Order 2000 (the Order) implemented a further EC Directive. The Order excludes the definition of "agricultural produce" from the Act, and omits the exception in Section 1(4) of the Act.

On the face of it, the effect of the Order is that agricultural produce will now be treated in exactly the same way as other produce, and farmers who sell produce or supply it to others to sell will be liable in the event that there is a defect.

The effect of this important change is that farmers should not be lulled into a false sense of security by the bucolic atmosphere of farmers' markets or farm shops. Just as consumers are increasingly aware of where their food comes from, so they are increasingly aware of their legal rights and very likely to rely on them. In the event that a farmer's produce is defective in some way, such that personal injury or damage to property is caused, then the farmer will be liable. Whilst of course it is to be hoped that such a situation never arises, farmers selling produce direct to the public or supplying produce to shops for sale direct to the public should be prepared. This means that farmers should check their public liability insurance to ensure that it covers such a situation. If it doesn't, then it should be amended immediately.

For more information on this topic please contact Matthew Atkins on 01473 406211 or matthew-atkins@birketts.co.uk



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Redundancy case law

Some practical tips

Many commercial employers continue to make redundancies as a result of the challenging economic climate. In this article we consider two established redundancy cases and, in particular, we look at their practical effects for organisations facing redundancy situations today.

Murray v Foyle Meats, [1999] ICR 827

Foyle Meats Limited were slaughterers and employed Mr Murray as a 'meat plant operative'. Mr Murray normally worked in the company's slaughter hall, but under his contract of employment he could be required to work elsewhere and occasionally did so. Employees who worked in other parts of the factory were engaged on similar terms.

Following a decline in business, the company decided to reduce the number of 'killing lines' in the slaughter hall from two to one, meaning fewer employees were required. In consultation with the union, the company formulated criteria for deciding which of the employees in the slaughter hall should be dismissed. Mr Murray was selected for redundancy and subsequently dismissed.

Mr Murray brought a claim for unfair dismissal claiming that his job was not genuinely redundant because, under the terms of his contract, he could be required to do other activities outside of the slaughter hall and there was still a requirement for those activities to be carried out.

Before this case, there was some confusion about how to determine if there was a genuine redundancy situation. Some suggested that an employer should ask whether there has been a decrease in the function **actually done** by the employee (the function test). An alternative view suggested there had to be a decrease in the whole **range of functions** that the employee could contractually be required to do (the contract test).

The House of Lords said both the function test and the contract test "missed the point". To determine if there is a genuine redundancy situation, the following simple questions should be addressed:

- Was there a reduction in work of a particular kind (i.e. slaughter work)?
- Did that particular reduction in work cause the dismissal to occur?

When this approach was applied to the facts, it was held that "yes" there was undoubtedly a reduction in slaughter work and "yes" this reduction led to the employee's dismissal. Mr Murray's dismissal was therefore by reason of a genuine redundancy situation.

Practical tips

In assessing whether there is a genuine redundancy situation:

- follow the two step test set out by the House of Lords;
- don't be distracted by the range of tasks that the employee could be required to carry out under his contract.

Home Office v Evans, [2008] IRLR 59

On the closure of a workplace or business, a redundancy situation is likely to arise in respect of any employees who work at the site. Where the affected employees have an express mobility clause in their contract of employment, should the employer be able to require the employees to move to a different site where work is available? Can the employer 'dodge' redundancies in this way?

Mr Evans and Mr Laidlaw (the claimants) were Immigration Officers, classified as mobile members of staff, based at the Waterloo International Terminal. The Staff Handbook stated that mobile members of staff were "*liable to be transferred to any Civil Service post.*"

There was a redundancy procedure which applied to both claimants. The Home Office sought to enforce the claimants' mobility obligations on the imminent closure of immigration control at Waterloo.

On 13 May 2004 the closure of the Waterloo office was announced and a letter issued to all Waterloo staff stating that there was no longer a need for immigration officers to be based at Waterloo and that it wanted to engage with staff individually to offer alternative employment elsewhere in the Immigration Service.

On 13 August 2004 the Home Office informed the claimants that they would be transferred to Heathrow.

The Court of Appeal held that, from the announcement of the decision to close the Waterloo office, the Home Office had made it clear to the claimants that it was invoking the mobility obligations and would not be following the redundancy procedure. The Court held that there was nothing

preventing the Home Office from invoking its contractual right to enforce the mobility obligation in the circumstances and it was not required to go through a redundancy consultation process.

Practical tips

Where there is a contractual mobility clause, an employer can exercise it even in a redundancy situation.

This means an employer can move a potentially redundant employee to different place of work where work is available.

By avoiding redundancies in this way, significant cost savings could be made.

An employer must make it clear that it intends to invoke the mobility clause, rather than go through a redundancy exercise.

The employer will however, need to operate the clause 'reasonably'. This will require the employer to give reasonable notice of the intended change in workplace. The further the move, the greater the length of notice that should be given.

For more information on this topic please contact Tom Wagstaff on 01603 756462 or tom-wagstaff@birketts.co.uk.

by
Tom Wagstaff
Associate



Licensing the countryside?

by
Brian Hardie
Consultant



The gloomy economic outlook brings mixed fortunes for those involved in retail. Undoubtedly the shares of the budget supermarkets are rising faster than the higher end stores. But could this nevertheless be the time for food halls, farmers' markets, farm shops and artisan production?

More and more of us will be dispensing with overseas holidays this year and seeking out the hidden delights of the British countryside. Currency values also mean that Britain is more attractive to visitors. Could this mean a real opportunity to entice a greater proportion of the public to support local and rurally based retailing?

Such retail units are becoming more and more sophisticated with a widening retail offering of a broad range of meats, fish, vegetables, fruit and prepared foods. Just as local food has expanded, so has the market in locally produced alcohol. In East Anglia, for example, we have England's only whisky distillery, vineyards, mead and cider producers and many micro breweries all producing niche products of exceptionally high quality. We should also not forget the major players including national brands such as Greene King, Adnams and Woodfordes. With the reported increase in UK tourism, all these locally produced products are attractive to visitors.

Of course, in order to retail alcohol lawfully, there are a few hoops to go through first, not least of which is to become licensed. Since the introduction of the Licensing Act 2003, the good news is that you can be rather more flexible in providing exactly what you want, and when, to your customers. So, for example, in a farm shop, you could apply to authorise sale of alcohol not just for off

sales, but also for consumption on the premises if you wished to run a sampling or tasting session where you were charging an entry fee.

Licensing has now been split between obtaining a premises licence which potentially authorises the site to be able to sell alcohol, (or offer late night refreshment or have regulated entertainment), and a personal licence for the person in day to day control of that operation, known as the designated premises supervisor.

The premises licence is obtained from the licensing authority, being the local council, and service of a potentially fairly complicated form is made to them as well as seven other authorities including police and environmental health. A floor plan has to be submitted as well as an operating schedule detailing how you will support the licensing objectives. The application has to be advertised by displaying a notice on the site as well as an advert in a local newspaper, and 28 days is given to allow for any representations to be received. If there are none, the licence is granted. If there are any which cannot be agreed, then the matter is heard by the council at a hearing at a later date.

The personal licence requires the holder to complete a one day training course on licensing and obtain the qualification by passing a short exam, completion of a couple of forms and applying for a Basic Disclosure from the Criminal Records Bureau. No practical experience of the licensed trade is therefore necessary before making your application.

There is, of course, a cost to making an application but once issued, apart from an annual fee, the premises licence is granted in perpetuity and is capable of considerably expanding your retail offer.

Whilst it is true that there is no offence if you give alcohol away without charge, be warned that if the supply is bundled with other activities, it may well be construed to be a sale by the relevant authorities and if found guilty, offenders would be subject to a large fine of up to £20k and/or six months' imprisonment.

For more information on this topic please contact Brian Hardie on 01603 756426 or brian-hardie@birketts.co.uk.



Easy as pie?

Health and safety in the food industry



by
Laura Thomas
Employed
Barrister



According to the Health and Safety Executive (HSE), almost a quarter of all manufacturing injuries still occur in the food industry. In the ten year period from April 1998 to March 2008 nearly 89,000 workers in the food and drink industries suffered an injury reportable to the HSE and there were 37 fatal injuries (excluding contractors). The combined injury rate for food and drink industries is among the highest of manufacturing injury rates. Indeed the overall injury rate is 1.6 times the average for manufacturing industries generally and also 1.6 times that of the construction industry.

We have defended a number of food manufacturers for health and safety breaches and have found that sentences are dramatically increasing; with fines of over £100,000 in cases not involving a fatality. It is certainly time to take health and safety extremely seriously in the food industry; particularly in this difficult economic climate.

Where to start?

We are seeing a recurrence of the same issues being raised. Our top three are:

- guarding of machinery;
- migrant workers (translation issues);
- lack of training and Risk Assessments.

We therefore advise taking some time to consider working practices in your business and have regard to the following:

- Are you aware of the standards you need to meet - law, guidance and best practice?
- Do you need to increase training for workers? Is their training up to date?
- Do you promote a positive health and safety culture?
- Are you getting paperwork to those doing the jobs and ensuring they use it?
- Is your machinery safe, guarded and appropriately maintained?

- Do your workers have the correct Personal Protective Equipment and safety equipment?
- Do your workers understand what is being asked of them? Are there any language barriers?
- Are you being proactive? If not; produce an 'Action Plan' for improvement and monitor it.
- How is your paperwork? Are your risk assessments worth the paper they are written on? Is your health and safety policy practical and informative?

We say that the cornerstone for health and safety compliance is:

'Say what you do, do what you say and have the paperwork to prove it.'

For more information on this topic please contact **Laura Thomas** on **01473 299173** or **laura-thomas@birketts.co.uk**.



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