

# 12 month garden leave clause valid

written by BDBF

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In *JM Finn & Co v Holliday*, the High Court granted an injunction to keep an employee on garden leave for his 12 month notice period. They rejected the suggestion that not sending an employee market information whilst on garden leave

was a breach of contract. Whilst 12 months is a long period, the fact that the employee had received a three fold salary increase when agreeing to a 12 month notice period was relevant.

### ***Detail***

Mr Holliday joined JM Finn in 1999 as an investment adviser. In 2008, Mr Holliday signed revised contract terms including a triple salary increase, a 12 month notice period, a garden leave clause and restrictive covenants. In 2013, Mr Holliday got a new job with another stockbroking firm and resigned. When JM Finn instigated his garden leave clause for his notice period, he claimed that JM Finn had committed a repudiatory breach of his contract (by not sending him market knowledge briefing notes) and therefore the garden leave/restrictive covenants were invalid and his employment was terminated with immediate effect.

JM Finn successfully applied for an injunction to enforce the restrictions in Mr Holliday's contract. The High Court said:

1. Mr Holliday's repudiatory breach argument was deployed only to avoid his notice period and garden leave obligations; and
2. In deciding whether to grant the injunction to keep Mr Holliday on garden leave for his 12 month notice period, the judge said that: (i) Mr Holliday agreed to 12 months in 2008; (ii) he had sought legal advice on it and did not argue for a shorter notice period; (iii) it was accompanied by a tripling of his salary; and (iv) a contractor Mr Holliday worked closely with was also on a 12 month notice period.

The Court held that 12 months garden leave was reasonable because JM Finn needed the time to protect its legitimate business interest, which was maintaining a connection with a client base that Mr Holliday had built up over 14 years. The

court found that there was a strong risk that Mr Holliday would be able to 'woo' his former clients if he were allowed earlier contact with them.

In addition, it rejected Mr Holliday's argument that his skills would atrophy whilst on garden leave as he would still be able to maintain his market knowledge.

It also rejected his argument that being placed on garden leave would harm his reputation as this was a common practice.

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