

6 month restriction on approaching clients did not need to be limited to customers with whom the employee had contact

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In *Coppage and another v. Safetynet Security Limited* a post-termination restriction purporting to prevent an employee for six months after his employment ended from soliciting all customers of the business during his employment was reasonable, and therefore enforceable, despite not being limited to those who were customers for a limited period of time before termination and with whom he had contact.

Failure to limit restrictions in this way is often a “killer blow” rendering the restriction too wide and therefore unenforceable. Not so in this case. The Court of Appeal, considering the facts, felt that the relatively short restriction (six months) was reasonable and proportionate and the employee was ordered to pay damages of £50,000 as a result of his breach.

Detail

Mr Coppage commenced employment with Safetynet Security Limited in 2009. In 2010, he was promoted to director and entered into a new contract of employment. That contract included a post-termination restriction which sought to prevent Mr Coppage from soliciting customers of Safetynet (where the term “customer” included all customers of Safetynet during Mr Coppage’s employment and not just those who had been customers shortly before termination and with whom he had dealt).

Two years after his promotion, Mr Coppage resigned from his employment and appeared to induce a colleague to do the same.

Mr Coppage's colleague set up a competitive business with Mr Coppage apparently, but not officially, at the helm.

Mr Coppage made 135 calls and sent 175 texts to customers following his resignation allegedly enticing them to transfer their business to the new company. Five customers did so. The Court held that this was in breach of his non-solicitation clause and Mr Coppage's fiduciary duties, and awarded damages of £50,000.

Mr Coppage appealed to the Court of Appeal, arguing that the failure to limit his restriction to customers with whom he had dealt during a limited period of time before his termination rendered the restriction unreasonable and unenforceable. The Court of Appeal dismissed this argument. It was satisfied that the restriction was reasonable and necessary to protect Safetynet's legitimate interests. The fact that Mr Coppage's restriction was, in the Court's view, short (six months) was particularly relevant.

We suspect the fact that Mr Coppage had launched such a ferocious attack on his former employer's business would also have weighed heavily in the Court's mind. It is still safer to limit the customers that an employee should not approach to those with whom the employee has had recent material contact but this case shows that if that is not done, all is far from necessarily lost.

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