

# The Courts cannot re-write badly drafted contracts

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An employment contract had been poorly thought through so that on a literal interpretation of the post termination non-compete restrictions within it, no protection was given to the employer. The Court of Appeal held that words could not be added to protect the employer's interests in a badly struck deal.

Prophet plc develops computer software. Mr Huggett worked at Prophet as a sales manager. His role was to develop new business and manage accounts. His employment contract contained a non-compete restriction which prevented him from working for a competing business for 12 months. However, the clause was worded so that it would only apply to stop Mr Huggett working for businesses selling Prophet's products. No other business sold Prophet's products but competitors did make similar products which competed with Prophet for market share. Therefore, on a literal interpretation, the non-compete restrictions were useless.

Mr Huggett was head-hunted by one such rival firm and Prophet brought proceedings against him to prevent him working for them for 12 months (as per his employment contract).

Normally, if the literal meaning of a contract is unclear or absurd, the court will read the contract (adding words if necessary) to give it the commercial effect that a well informed observer would have understood the parties making the contract to have intended. On this basis, as we reported earlier this year, at first instance, the High Court read in the words "or similar to" Prophet's products when defining a competitor. However, the Court of Appeal overturned this decision. It held that on this occasion the draftsman had chosen the wording of the contract with care but had failed to think about the practical benefit for Prophet. In other words, it was not that Prophet's lawyer had used the wrong words so much that the company had struck a bad bargain. In these circumstances, it was not appropriate for the court to reword the contract.

*Prophet plc v Huggett [2014] EWCA Civ 1013*

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