High Court upholds a one year non-compete restriction against a solicitor

[et_pb_section fb_built="1" _builder_version="3.0.100" background_image="http://davidk423.sg-host.com/wp-content/uploads/2017/09/bdbf_final-stages-1-4-1.jpg" custom_padding="|||" global_module="2165" saved_tabs="all" global_colors_info="{}"][et_pb_row _builder_version="4.7.4" min_height="66.4px" custom_padding="50px|||false|false" global_colors_info="{}"][et_pb_column type="4_4" _builder_version="3.25" custom_padding="|||" global_colors_info="{}" custom_padding__hover="|||"][et_pb_text _builder_version="4.7.4" _dynamic_attributes="content" text_font="|700|||||||" text_font_size="27px" background_layout="dark" custom_margin="0px|||" custom_padding="0px|||" global_colors_info="{}"]@ET-DC@eyJkeW5hbWljIjp0cnVlLCJjb250ZW50IjoicG9zdF90aXRsZSIsInNldHRpbmdzIjp7ImJlZm9yZSI6IiIsImFmdGVyIjoiIn19@[/et_pb_text][et_pb_text _builder_version="4.14.7" _dynamic_attributes="content" _module_preset="default" text_text_color="#FFFFFF" global_colors_info="{}"]@ET-DC@eyJkeW5hbWljIjp0cnVlLCJjb250ZW50IjoicG9zdF9kYXRlIiwic2V0dGluZ3MiOnsiYmVmb3JlIjoiIiwiYWZ0ZXIiOiIiLCJkYXRlX2Zvcm1hdCI6ImRlZmF1bHQiLCJjdXN0b21fZGF0ZV9mb3JtYXQiOiIifX0=@[/et_pb_text][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section fb_built="1" admin_label="section" _builder_version="3.22.3" global_colors_info="{}"][et_pb_row admin_label="row" _builder_version="4.7.4" background_size="initial" background_position="top_left" background_repeat="repeat" global_colors_info="{}"][et_pb_column type="4_4" _builder_version="3.25" custom_padding="|||" global_colors_info="{}"

custom_padding__hover="|||"][et_pb_text _builder_version="4.14.7" text_orientation="justified" hover_enabled="0" use_border_color="off" global_colors_info="{}" sticky_enabled="0"]

In the recent case of Law by Design v Ali the High Court upheld a 1-year non-compete restriction preventing a solicitor from going to work for a competitor

What happened in this case?

Ms Ali joined Law by Design (**LBD**), a boutique employment law firm, as an employee in 2013. She became a shareholder in 2016, at which point she signed a Shareholders' Agreement which contained restrictive covenants. In 2021, she received a substantial pay increase and entered into a Service Agreement which included further post termination restrictions lasting for 12 months. This included a non-compete clause preventing her from being involved in any business which was in competition with the parts of LBD that she had been materially involved with in the 12 months before her employment ended.

In May 2021, she resigned to join a larger national firm as a partner. LBD wrote to her asking that she confirm in writing that that she would abide by her restrictions. She refused, stating that, in her and her new employer's view, the non-compete clause was not enforceable. Ms Ali did agree to abide by the separate non-solicitation and non-dealing restrictions.

LBD applied for an interim injunction to restrain Ms Ali from breaching her obligations. However, the hearing did not go ahead because Ms Ali provided undertakings that she would comply with the covenants the evening before the hearing. She was, however, ordered to pay LBD's wasted costs of £50,000 due to the delay in agreeing to LBD's request.

What was decided by the High Court?

At the final hearing, the High Court held that, while the restrictions in the Shareholders' Agreement were too wide to be enforceable, the non-compete clause in the Service Agreement was enforceable. The Court was satisfied that LBD had a legitimate business interest to protect (including confidential information in the form of client contacts, charge-out rates and training materials) and that the restrictions were no wider than reasonably necessary. In particular:

- Ms Ali could join a business anywhere in England and Wales which did not compete with LBD for the same clients;
- the geographical location was definable by the location of LBD's clients; and
- the 12-month period was considered to be the shelf life of the confidential information and was also the time required to replace Ms Ali.

It was the Court's view that Ms Ali was asking it to release her from a restraint so that she could take up employment with "the very type of competitor in respect of whom the restraint was intended to apply".

What does this mean for employers?

It is surprising that the Court found that LBD was not adequately protected by Ms Ali's ongoing obligations of confidentiality, non-dealing with and non-solicitation of clients, and needed the non-compete restriction. If it were to be appealed, we do think there is a fair chance this decision would be overturned. In any event, as restrictive covenant cases tend to be fact-specific, this is not a decision that will necessarily be repeated

In this case, LBD's position was helped by the fact that it had issued Ms Ali with a Service Agreement when it provided her with a pay rise in 2021. It is prudent for employers to

consider updating employees' contracts at the time of any pay rise or promotion to increase the chances of the restrictive covenants being enforceable. This is because it demonstrates that the restrictions have been considered and that payment is being made in exchange for the employee's acceptance of the new terms.

This decision also demonstrates that employers may be awarded costs not just when they have succeeded in an application for interim relief but also when an employee has delayed unreasonably in responding to an employer's request for undertakings that would avoid the need for an interim hearing.

Law by Design v Ali

If you would like to discuss any issues arising out of this decision please contact Theo Nicou (theonicou@bdbf.co.uk), Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

[/et_pb_text][/et_pb_column][/et_pb_row][/et_pb_section][et_pb_section fb_built="1" _builder_version="3.26.6" global_colors_info="{}"][et_pb_row _builder_version="3.26.6" global_colors_info="{}"][et_pb_column type="4_4" _builder_version="3.26.6" global_colors_info="{}"][/et_pb_column][/et_pb_row][/et_pb_section]