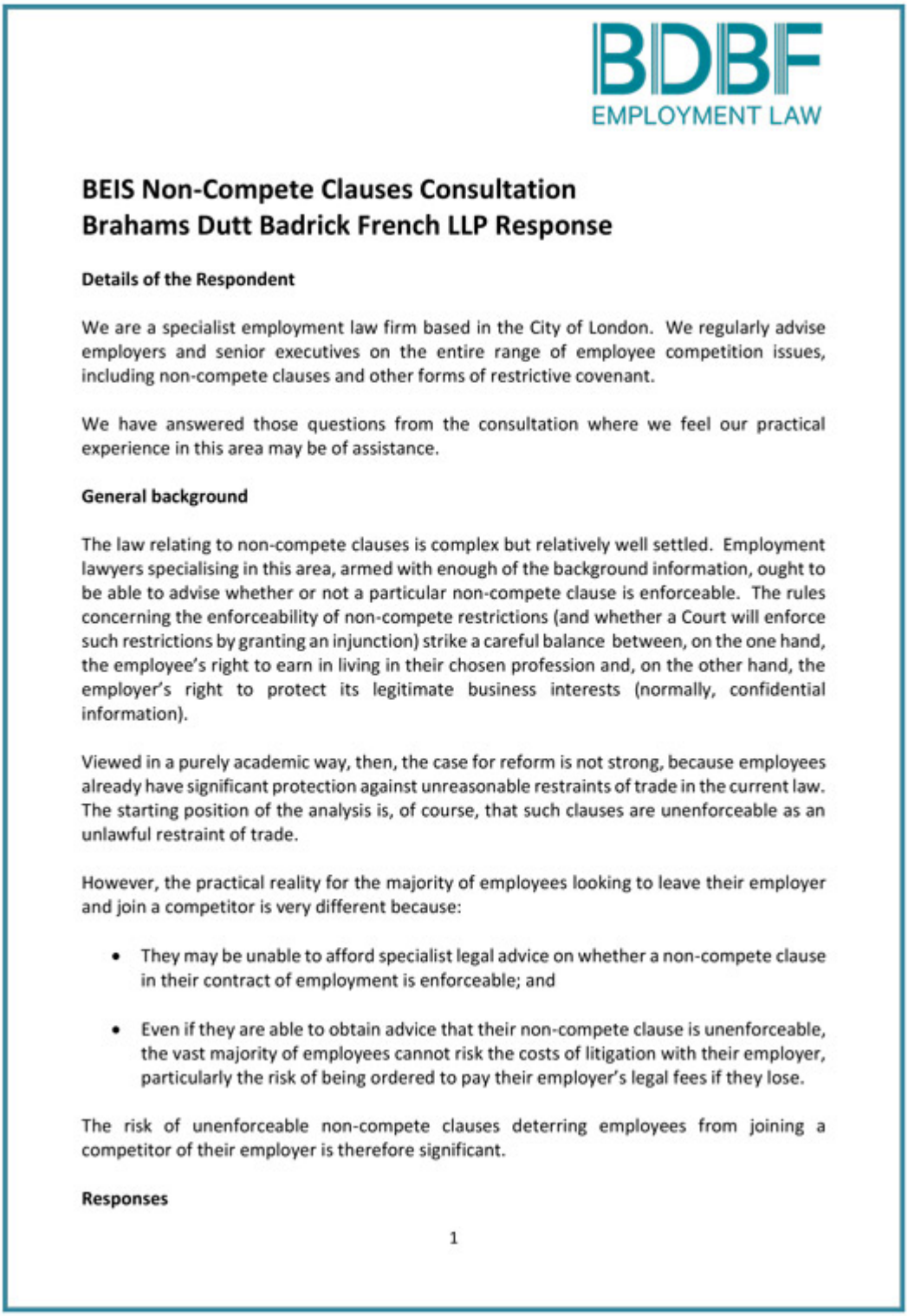
Non-Compete Clauses Consultation – BDBF Response

Employment Law News

Non-Compete Clauses Consultation – BDBF Response

As mentioned at our recent webinar, the government has launched a consultation about regulating the use of non-compete restrictions in employment contracts. Views are being sought on requiring employers to pay compensation for the duration of non-compete restrictions, or banning their use altogether. As recognised experts in this field, BDBF has responded to the consultation. In short, our view is that a requirement to pay compensation is a fair way of deterring inappropriate use of non-compete clauses, but that an outright ban is a step too far. You can read our full response below.

Please view the PDF by clicking the image below:



BDBF
EMPLOYMENT LAW

BEIS Non-Compete Clauses Consultation
Brahams Dutt Badrick French LLP Response

Details of the Respondent

We are a specialist employment law firm based in the City of London. We regularly advise employers and senior executives on the entire range of employee competition issues, including non-compete clauses and other forms of restrictive covenant.

We have answered those questions from the consultation where we feel our practical experience in this area may be of assistance.

General background

The law relating to non-compete clauses is complex but relatively well settled. Employment lawyers specialising in this area, armed with enough of the background information, ought to be able to advise whether or not a particular non-compete clause is enforceable. The rules concerning the enforceability of non-compete restrictions (and whether a Court will enforce such restrictions by granting an injunction) strike a careful balance between, on the one hand, the employee's right to earn in living in their chosen profession and, on the other hand, the employer's right to protect its legitimate business interests (normally, confidential information).

Viewed in a purely academic way, then, the case for reform is not strong, because employees already have significant protection against unreasonable restraints of trade in the current law. The starting position of the analysis is, of course, that such clauses are unenforceable as an unlawful restraint of trade.

However, the practical reality for the majority of employees looking to leave their employer and join a competitor is very different because:

- They may be unable to afford specialist legal advice on whether a non-compete clause in their contract of employment is enforceable; and
- Even if they are able to obtain advice that their non-compete clause is unenforceable, the vast majority of employees cannot risk the costs of litigation with their employer, particularly the risk of being ordered to pay their employer's legal fees if they lose.

The risk of unenforceable non-compete clauses deterring employees from joining a competitor of their employer is therefore significant.

Responses

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If you or your business needs advice on non-compete clauses or other restrictive covenants please contact Tom McLaughlin (tommclaughlin@bdbf.co.uk) or your usual BDBF contact.