

# **Employer not liable for an employee's practical joke on a colleague which caused hearing loss**

In the recent case of Chell v Tarmac Cement and Lime, the Court of Appeal said that an employer was not liable for an employee's practical joke which injured a contractor working at its site.

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# **BDBF acts in Landmark Disability Discrimination Case**

BDBF will be in the Court of Appeal on Tuesday this week, acting for the Claimant in a disability discrimination case. Chris Milson of Cloisters Chambers will appear as counsel.

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# **Company was entitled to terminate its relationship**

## **with a contractor without giving notice despite being in breach of contract itself**

A recent High Court decision demonstrates that where a Company has breached the express or implied terms of the contract, if the response or reaction from the other party itself amounts to a breach, the Company may still be able to rely on the other party's breach and terminate the contract with immediate effect.

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## **How can an employer give an opinionated reference?**

The High Court has clarified the scope of an employer's duty when giving a reference in respect of a former employee.

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## **Morrison's held vicariously liable for its employee's data protection breach**

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Morrisons, the supermarket chain, has been held liable for a disgruntled employee's wilful breach of data protection legislation.

Mr Skelton was employed by Morrisons as a senior IT internal auditor. This role gave him access to sensitive personal data relating to the company's staff. He also sold a legal slimming drug on the internet in his spare time. In summer 2013, Morrisons subjected Mr Skelton to a disciplinary procedure on the basis that his use of the company's post room to send the slimming drug had caused alarm when fellow employees thought it was an illicit substance. Mr Skelton remained in his role despite this.

In November 2013, Mr Skelton was asked to send sensitive payroll-related employee data to KPMG (Morrisons' external auditors). Mr Skelton downloaded the encrypted data on to his

work computer before copying it on to a new USB stick for KPMG. He then made a copy for himself on a personal USB stick. In January 2014, using the files he had uploaded to his USB stick, he posted personal details of 100,000 Morrisons employees on to a file sharing website.

In March 2014, Mr Skelton was arrested and charged with fraud, computer misuse offences and data protection offences. He was convicted and sentenced to eight years' imprisonment.

A group claim was brought against Morrisons by a number of the workers whose personal data had been shared online by Mr Skelton. They argued that not only was Morrisons liable itself for the data breach, but it was also vicariously liable for Mr Skelton's breaches in its capacity as his employer.

The High Court held that Morrisons was not liable itself for breaches of data protection legislation, as it had not been the controller of the data once it left its servers. However, it held that Morrisons was vicariously liable for Mr Skelton's breaches despite his actions seemingly having been deliberate and motivated by spite. There was held to be a sufficient connection between Mr Skelton's actions and his employment with Morrisons, given that his access to the data was obtained through his job – indeed, Morrisons had entrusted him with the data as part of his role, and in doing so, it took the risk that he would misuse it. It was Mr Skelton's duty to disclose the data and he did so, albeit in an unauthorised way. Mr Skelton's motive was not relevant to the finding of vicarious liability.

This judgment appears to be heavily motivated by the policy consideration of ensuring that victims of data protection breaches have a means of redress. Indeed, the High Court acknowledged that Morrisons had a number of appropriate measures in place to protect the data on its servers from misuse, but held it liable in any event.

Various claimants v WM Morrisons Supermarket plc [2017] EWHC 3113

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## **Employer given £2 in damages for misuse of confidential information**

An employer has been awarded only £2 for its former employees' breaches of their confidentiality duties, rather than the £15 million it claimed.

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## **Southern Rail fails to obtain injunction to prevent strike**

Southern Rail's parent company has failed in an attempt to obtain an injunction preventing strikes led by ASLEF.

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# **Is an employer liable for an assault at the Christmas after-party?**

An employer was found not to be liable for an employee's serious injury caused by an assault during drinks held after the office Christmas party.

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# **Confidential information on defendants' computers ordered to be destroyed**

The High Court has passed an injunction requiring that confidential information be deleted from the computers of the ex-employee and his new employer.

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# **Leak to The Sun newspaper did not breach Naval Commander's privacy**

A Naval Commander's right to privacy was not breached by a former colleague leaking to The Sun newspaper details surrounding his removal from office.

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## **When can employers get “negotiation damages” from a former employee?**

Damages for breaches of post termination restrictions may reflect the price agreed in a negotiation to free the employee from restrictions.

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## **When can a contract be varied orally?**

A court has held that a contract could be varied by an oral agreement between the parties, despite the earlier contract containing a clause to the effect that all subsequent variations must be in writing.