

Repeating a restrictive covenant in an undertaking

The High Court held that it was not proportionate to order an injunction against the former employees of Capgemini to enforce their post-termination restrictions. The restrictions, if enforced, would have prevented the employees from working for a competitor of Capgemini who had been awarded the contract that Capgemini had lost. The court, with a view to the fact that there was no prospect of Capgemini regaining the contract and the pending expiry of the restrictive covenants, held that damages were an adequate remedy and refused to grant the injunction.

Court order allows imaging and inspection of ex-employees' computers

The High Court granted an order allowing an employer to appoint a computer expert to inspect and take images of the computers of two former employees after information came to light in the course of tribunal proceedings that, in breach of their employment contracts, the employees had misused confidential information belonging to their employer during their employment.

Court overlooks drafting error to enforce restrictive covenant

In *Prophet plc v Huggett* [2014] EWHC 615, the High Court overlooked a drafting error to enforce a 12 month restrictive covenant which, if interpreted literally, would have been unenforceable. The clause restricted the employee from being engaged or employed in connection with products he was involved with during his employment. As these exact same products would not be sold by a competitor, the clause was effectively useless but the court treated this as a drafting error adopting what it believed to be the true intentions of the parties to cover products similar to those that the employee had dealt with whilst employed.

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

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.

12 month garden leave clause valid

In *JM Finn & Co v Holliday*, the High Court granted an injunction to keep an employee on garden leave for his 12 month notice period. They rejected the suggestion that not sending an employee market information whilst on garden leave was a breach of contract. Whilst 12 months is a long period, the fact that the employee had received a three fold salary increase when agreeing to a 12 month notice period was relevant.