BusinessUpdate

WALL JAMES CHAPPELL SOLICITORS

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Firm News

Manufacturing plays a key role in the economy of the West Midlands, so who could be better to speak at the re-launch of Business XChange held on earlier in the year at Dudley Kingswinford RFC, than Cecil Duckworth OBE, founder of Worcester Boilers and self-made multi-millionaire.

Wall James Chappell are a founding sponsor of The Business Xchange, a non-profit making local business group based in the West Midlands, the main purpose of which is to assist local manufacturing and small businesses with support and advice by exchanging skills, ideas and services.

The event provided an ideal forum for manufacturers and small businesses to meet informally and share opportunities. The firm hopes that people who attend may, for example, find a supplier for their company locally, cutting time and cost, things which are vital in modern manufacturing methods.

Margot James, MP for Stourbridge and successful businesswoman in her own right, will be speaking at the next Business Xchange event on 20th April. For further information contact Philip Chapman (p.chapman@wjclaw.co.uk)

The Business Xchange sponsors

Cecil Duckworth OBE

Kathy Leather (Commercial Director of Worcester Warriors rugby club)

Fines for data protection breaches

Businesses need to be aware that the Information Commissioner can and has imposed monetary penalties on organisations for serious breaches of the Data Protection Act 1998.

The fines in the following two instances were imposed "despite both organisations voluntarily notifying the Commissioner of the breaches".

A **£100,000** fine was imposed on Hertfordshire County Council for two serious incidents where employees in the childcare litigation unit faxed highly sensitive personal information to the wrong recipients. The first misdirected fax was meant for a barrister's chambers but was sent instead to a member of the public. The Commissioner decided that the council had taken insufficient steps to reduce the likelihood of another breach occurring.

A **£60,000** fine was imposed on an employment services company for the loss of an unencrypted laptop containing personal information on 24,000 people who used community legal advice centres in Hull and Leicester. The laptop was issued to an employee who worked from home. It was stolen shortly afterward and an unsuccessful attempt was made to access the information stored on the laptop.

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The Commissioner has the power to fine a business up to **£500,000** if it has committed a serious contravention of the principles set out in the legislation which is likely to cause substantial damage or distress.

The Commissioner must be satisfied that the contravention was deliberate or the business knew, or ought to have known, that there was a risk that a contravention would occur which was likely to cause substantial damage or distress but failed to take reasonable steps to prevent it.

To manage this risk a business should ensure that it can provide evidence it recognised the risks of handling personal data and has taken action to address the issue. Implement and enforce appropriate policies, practices and procedures to avoid potential data protection breaches within the business (for example, encrypting data on laptop. Pay particular attention to data protection issues where personal data of large numbers of individuals or sensitive data is concerned.

Businesses may also implement guidance or codes of practice published by the Commissioner or other regulatory bodies which may be relevant to potential data protection breaches within the business. It is also recommended that any known issues do not remain unresolved (for example, rectify any problems with your IT systems as soon as possible).

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Philip specialises in company commercial law with a particular focus on transactional work and general commercial advice.

"A rose by any other name..."

Since 1st October 2009 any business name in the United Kingdom has to comply with **new rules**. The rules do not apply to a business name which existed on that date (if it was already lawful under the Business Names Act 1985) until any new owners have owned it for a year.

Each and every failure to comply with the rules is subject to a fine of up to £1,000 and, for continued contravention, a daily default **fine** not exceeding £100.

"Banned words, expressions or other indications" are those

(a) suggesting connection with the government or a local or public authority (unless the Business Secretary gives permission and any body affected indicates it does not object, although this approval may be later withdrawn if required by "overriding considerations of public policy"), or
(b) to be listed in regulations because they
(i) are associated with a particular type of company or form of organisation (so, for example, "Limited" can be used only by a registered company); or
(ii) are similar to words, expressions or other indications associated with a particular type of company or form of organisation (such as "insurance"); or
(iii) are in a specified name (such as members of royalty); or
(iv) are of any other type specified (such as "Great Britain"); or
(v) give so misleading an indication of the nature of the activities of the business as to be likely to cause harm to the public.

A **sole trader** can use a name consisting of his surname (with or without his or her forename or initial or recognised abbreviation of a name) and a **partnership** can use a name consisting of the surnames (with or without a forename or initial or abbreviation) of all the partners, or, where two or more individual partners have the same surname, the addition of "s" at the end of that surname. There can in either case be an addition merely indicating that the business is carried on in succession to a former owner of the business.

If any other business name is used by a sole trader or partnership, then the **name** of the sole trader or of each partner (except if there are more than 20 partners, in which case the document has to state at which principal place of business a list of partners can be inspected during office hours) and an **address for service** of documents on the business has to be stated legibly on
(a) business letters,
(b) written orders for goods or services to be supplied to the business,
(c) invoices and receipts issued in the course of the business, and
(d) written demands for payment of debts arising in the course of the business,
and must immediately be given in writing to any person with whom anything is done in the course of business who asks for it.

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In addition, in any premises where the business is carried on, and to which customers or suppliers of goods or services to the business have access, there must be a **notice** (displayed in a prominent position, so that it may easily be read) containing the information required.

Any contract made by a business which has failed to supply this information cannot be enforced through the Court (unless the Court thinks this would be unfair) if the Defendant argues that he has as a consequence been unable to pursue his own claim against the business or has lost out financially.

A **company** cannot register or change its name to one which is offensive or similar to another one. "Similar" means, for example, adding "co.uk", or using "Four" instead of "4" or "For". The Company must also display the name and address for service before being sure of enforcing breaches of contract in the Courts and must specify the type of company it is (e.g. by using "Limited").

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John provides legal advice to clients regarding both their commercial property and commercial needs.

Assignment of a lease—Landlords, act reasonably!

Once a landlord receives an application from a tenant asking for consent to assign the Lease, pursuant to the Lease terms, the Landlord and Tenant Act 1988 imposes certain obligations on the landlord. Where consent cannot be unreasonably withheld, which is usually the case in respect of an application for consent to assign, a landlord is to:-

1. Give consent within a reasonable time, except where it is reasonable for him not to give consent.

2. Serve on the tenant written notice of his decision within a reasonable time including specifying any conditions that must be met before the consent is granted. If consent is refused, the landlord must set out its reasons, which must be reasonable.

3. Pass on the application for consent, within a reasonable time, to anyone else from whom the landlord understands consent is required, for example, a superior landlord or lender.

The landlord would be in breach of his duties if the application is not dealt with within a reasonable amount of time. A landlord is entitled to request references from the proposed assignee and to ask for copies of accounts. The Commercial Lease Code 2007 suggests that landlords should normally request any additional information within 5 working days of receiving the application and that generally time stops when the landlord makes such a request and restarts on receipt of the answer.

The question as to what constitutes a reasonable amount of time has been the subject of some recent court cases, following which current opinion is that a reasonable time to respond to an application is likely to be measured in weeks rather than days and even in complicated cases is to be measured in weeks rather than months.

If a tenant can show that a landlord has unreasonably withheld consent he can:-

1. Proceed without consent on the basis that it has been unreasonably withheld by the landlord and therefore would not constitute a breach of the terms of the Lease.

2. Apply to the Court for a declaration that the landlord has unreasonably withheld consent.

3. Sue the landlord for damages for breach of its statutory duty pursuant to Section 1 of the Landlord and Tenant Act 1988.

It is important for both tenants and landlords to appreciate that there are very strict rules and time limits relating to applications for consent for assignment.

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Ruth handles a range of commercial property work for developers, industrial retail and other sectors.

Property—repairing obligations

Traditionally, most leases have been granted on a full repairing basis meaning that the tenant is responsible for maintaining and keeping the Premises in good repair. Depending on how the Lease is drafted this can extend to putting the Premises into a better state of condition than they were at completion or even rebuilding

"It is essential that the lease contains a clear definition of the Premises to which the repairing obligations relate". Generally, on a lease of the whole of a building, the tenant is responsible for everything including the interior, exterior and structure, including the roof. Alternatively, on a lease of part, for example, of a shop in a shopping centre, it is likely that the repairing obligations for which the tenant itself would be responsible for would only relate to the inside of the premises although, it is likely that the tenant would have to contribute towards the costs of maintaining the exterior and main structure through the service charge.

A full repairing obligation can be an expensive and rather onerous obligation for a tenant to agree to. For a relatively short term lease for example, 5 years or less, it is desirable, from a tenant's point of view, for the repairing obligations to be qualified by reference to a photographic Schedule of Condition so that the tenant is under no obligation to keep the premises in any better state than they were at the commencement of the term. The question as to whether the landlord would agree to any qualification depends on the relative bargaining powers of each party, the length of the term and the physical condition, age and type of premises.

"If a landlord is insisting on a full repairing lease then it is essential for a tenant to arrange for a full survey to be undertaken" so that they are aware of the condition of the Premises and have an idea of any potential liability for repairs. Depending on what the survey reveals this will give the tenant an opportunity to try to negotiate either a reduction in the rent or a qualification of the repairing obligations.

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CLIENT NEWS

The company commercial department has recently acted for US corporation, **Freewaters LLC**, in their joint venture arrangements to enter the European market. Freewaters are a premium casual footwear brand.

The commercial department has also successfully completed the negotiation of an **intellectual property joint venture** relating to the patent rights over new engine technology.

The commercial property department acted for the new landlords of **The Forrester's Arms** in Wollaston, an historic and popular Black Country real ale pub.

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