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Editorial

Welcome to the Summer Edition of our Newsletter, publication of which coincides with the firm's twenty-fifth anniversary.

Palmer's came into being on 1st August 1983 with four partners and six other fee earners in attendance.

In the ensuing twenty-five years, the firm has grown to its current complement of ten partners, a retired-partner consultant, twenty-four other fee earners and seven trainee solicitors, making the firm one of the largest in South Essex and provider of a wide range of services, to both commercial and private clients.

Recent developments include the award of the Lexcel quality mark; entry into the Legal 500, an award (for the second year running) at the LawCareers.Net Training & Recruitment Awards and the introduction of our new livery.

The partners take this opportunity of thanking our many clients for their instructions, our many contacts for valuable client recommendations and (last but certainly not least) our many, loyal staff members, who have contributed so much to make Palmer's the market leader it is today.

We all look forward to another twenty-five years of successful growth.



A New Fair Deal For Consumers?



The Consumer Protection from Unfair Trading Regulations 2008 came into force on 26th May 2008, prohibiting unfair commercial practices.

There may be criminal sanctions against traders and company directors who breach them.

Unfair commercial practices fall into one of two camps:

First, those which will be deemed unfair, if they cause consumers to take a different decision from that which they would have taken, had the practices not been unfair.

These include conduct which:

- falls below a minimum standard of honest market practice and good faith
- is misleading (such as false or deceptive messages or leaving out important information)
- relies on aggressive sales techniques, such as harassment, coercion or undue influence

Second, thirty-one specific practices that will always be deemed unfair.

Three examples are highlighted here, to illustrate the breadth of the Regulations:

- Closing-Down Sales - claiming that the trader is about to cease trading or to move premises when he or she has no intention of doing so;
- Pyramid Schemes - establishing, operating or promoting pyramid promotional schemes, where the consumer pays money in return for the opportunity to earn commission, to be derived primarily from the introduction of other consumers into the scheme, rather than from the sale or consumption of products themselves.
- Pestering the Consumer - making persistent and unwanted solicitations by telephone, fax, email or other remote media, except in circumstances and to the extent justified to enforce a contract obligation e.g. the payment of money properly owed.

The Office of Fair Trading has published interim guidance on the Regulations. This can be viewed at www.offt.gov.uk/shared_offt/business_leaflets/530162/oft931int.pdf.

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Negotiate Or Litigate?



“Mediation is a misunderstood form of dispute resolution, but one which has a high success rate...”

Clive Tant is the Partner responsible for Palmer's Dispute Resolution Team. He is a trained Mediator and is accredited with The Chartered Institute of Arbitrators.
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I have been involved with commercial litigation since Palmer's was formed, nearly twenty-five years ago. There has, during that period, been a dramatic change in the dispute environment.

Litigation has always been considered by businesses to be a potentially expensive way to achieve a remedy. This remains the case today.

The introduction of new Civil Procedure Rules in 1998 eased the burden on the court system, reduced trial waiting lists and improved procedure but it has resulted in the deliberate 'front-loading' of costs, by requiring parties to a court case to ascertain and disclose facts and evidence before proceedings are commenced.

Although this creates increased costs early on, it does mean that parties are more aware (and therefore better able) to make informed decisions about settlement.

The courts are now involved in active case management - it may therefore be expected that a judge will actively encourage parties to attempt mediation before an action proceeds. Indeed, there are pre-action protocols which require parties to consider how a dispute may be resolved before they litigate.

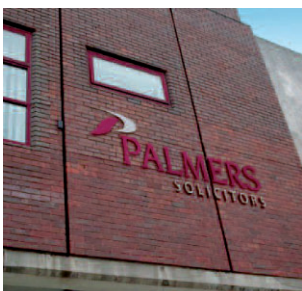
Mediation is a misunderstood form of dispute resolution, but one which has a high success rate. It is not a panacea for all disputes - sometimes a court ruling is still required. It is however a solution which may lead to compromise, where both parties will be better off than if they litigate a dispute to a bitter (and often uncertain) end.

There may be contractual obligation to follow a dispute resolution procedure, entailing direct discussion and escalating to mediation and arbitration, before or in place of litigation. Failure to observe contractual or judicial procedures may be costly and frustrating - particularly for the party which would otherwise be successful.

The message is that businesses need to be more prepared than ever to negotiate settlement, even if litigation is chosen to recover a loss or to pursue a dispute.

Because of the development and interaction of mediation, resolution of commercial disputes is more complex than before, both strategically and tactically. It is sensible, therefore, to take stock of the position generally before any negotiation is undertaken.

Palmer's are hosting a seminar relating to business in the 21st century in November. Please visit www.palmerslaw.co.uk or email ESmith@palmerslaw.co.uk for further information.





Totting-up, Disqualification And Hardship



‘For many motorists, the threat of compulsory disqualification from driving for at least six months will be terrifying. Sometimes, however, there may be a way out...’

In the age of the speed camera, more and more drivers are finding that they are at risk of disqualification under the “totting-up” provisions of the Road Traffic Act 1988.

Every time a motorist commits an endorsable offence, not only is he likely to be fined and ordered to pay costs, but he will also have his driving licence endorsed.

In relation to matters of excess speed, for example, an endorsement may result in the imposition of between three and six penalty points.

In relation to matters such as driving without due care and attention, between three and nine penalty points may be imposed.

Typically, those who are caught by speed cameras and receive an “offer” of a fixed penalty will receive only three penalty points, together with a fixed penalty of £60.00.

Many who consider themselves to be safe and responsible drivers now find themselves in danger of disqualification through totting-up.

The 1988 Act provides that if twelve or more penalty points are accumulated within a period of three years, the Court must disqualify for not less than six months.

The minimum period of disqualification of six months is increased to one year (or even two) in certain circumstances.

For many motorists, the threat of compulsory disqualification from driving for at least six months will be terrifying. Sometimes, however, there may be a way out.

If the Court finds that “exceptional hardship” will be caused to a driver, it may exercise discretion, either not to disqualify at all or to disqualify for a period of less than six months. This is a means by which a driver facing potential disaster may yet avoid disqualification.

For the Court to find “exceptional hardship”, it must not only hear evidence on oath from the driver but must also be persuaded that the hardship caused will be exceptional and not merely an inconvenience.

Loss of employment is not automatically “exceptional hardship” - many drivers who depend upon their licences for a living, whether as couriers, delivery drivers or otherwise, come away from the Court disappointed and shocked to find that the loss of their jobs and, therefore, their livelihoods was not considered by the Court sufficiently “exceptional”.

Even if the Court is persuaded that “exceptional hardship” would be caused by disqualification, it does not have to exercise its power to suspend disqualification; it has a discretion, whether to do so or not, and may decide that, in all the circumstances of the case, it does not wish to suspend disqualification and will allow the law to take its ordinary course.

The Court must be persuaded in all cases that it is right and proper to exercise its discretion, so as not to disqualify.

The Act provides that, when exercising discretion, the Court may decide either not to impose disqualification at all or to impose disqualification for a shorter period of time than the minimum six months.

Anyone appearing before the Court, in circumstances where exercise of the Court’s discretion may be appropriate, is advised to prepare his claim for lenience in the fullest manner possible, for when he comes before the Court it is likely that no adjournment will be agreed and that the case will proceed there and then.

Jeremy Sirrell is a partner at the Basildon office specialising in road traffic offences and criminal law. Contact: JSirrell@palmerslaw.co.uk

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If you would prefer to receive this newsletter by e-mail then please contact Emily Smith with your details at: ESmith@palmerslaw.co.uk

Also, if we have not addressed this correctly, please advise correct details.

Third Party Discrimination Loophole Is Closed



The Employment Appeal Tribunal delivered a surprising judgment, back in 1996, finding that two waitresses were entitled to succeed in claims of racial discrimination against the hotel at which they worked, arising from treatment to which they were subjected during a comedian's stage act.

Having raised concerns with their manager, they were nevertheless required to go back into the room where the comedian was performing and to continue their duties.

In 2001, the House of Lords indicated that the EAT decision had been wrong - the employer had not acted in a racially discriminatory manner towards the claimants, even if the comedian had done so.

Under new Regulations, which came into effect on 6th April 2008 (implementing the European Equal Treatment Directive), employers may in the future be liable to their employees for third party acts of harassment.

Such liability will arise if:

- the employer knows that the employee has been subjected to harassment by a third party on at least two occasions, and
- the employer has failed to take such steps as would have been reasonably practicable to prevent the harassment from re-occurring

The Regulations make it clear that it is immaterial whether the third party is, on each occasion, the same or a different person.

Quite what is "reasonably practicable", to prevent a third party from committing acts of harassment, is not made clear in the Regulations.

Employers will need to give careful consideration to what they can do, to protect both their employees and themselves, and will be well advised to adopt new procedures for dealing with situations where such complaints are raised by employees - hesitation may allow further acts of harassment to take place, with resulting adverse consequences for the employer.

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FINANCIAL SERVICES

The firm is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide. We may otherwise refer you to someone who is authorised by the Financial Services Authority.

The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000 but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The Solicitors Regulation Authority is the independent regulatory body of the Law Society and the Legal Complaints Service is the independent complaints handling body of the Law Society.

The information given in this newsletter was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.