

# RightFocus

*Focussing on Legal Issues important to You*

**Welcome** to the February 2008 issue of RightFocus, Reynolds Parry Jones newsletter.

RightFocus aims to keep both our private and commercial clients up to date with the most important legal developments affecting them.

This issue's articles include:

- Which regulators do what?
- Need help with employment regulations?
- New corporate manslaughter legislation
- The dangers of employing illegal workers
- When stress leads to dismissal
- Banks deaf to small business leads?
- New pensions regime on the way
- Beware the 'buyer's market' for jobseekers
- Don't take everything at face value
- If there are any topics you would like to see covered in future issues then do let us know.

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## Which regulators do what?

In our increasingly regulated business landscape, a vast range of bodies and agencies have significant powers to punish organisations that break the rules. Who are the main regulators – and what are they for?

### Companies Investigation Branch (CIB)

With broad powers to investigate fraud, serious misconduct or irregularities in a company's business, this arm of the Department for Business, Enterprise and Regulatory Reform has the power to bring about proceedings that may result in fines or imprisonment. It can also wind up companies and prosecute company officials. Any business under CIB investigation should get legal advice as quickly as possible.

### Environment Agency (EA)

Responsible for monitoring pollution control and waste management, the EA takes a collaborative approach to solving problems and views offers of co-operation in a favourable light. However, it levied fines in 2006 amounting to £3.5 million, or nearly £12,000 per offender.

### Health & Safety Executive (HSE)

The HSE works with local authorities to ensure businesses properly implement workplace safety regulations. With the onus of proof placed on businesses to prove that they have not transgressed regulations, it has an extremely high conviction rate of 98%.

### Information Commissioner

The powers of Information Commissioner Richard Thomas, who is responsible for enforcing data protection laws, are set to become significantly stronger if Parliament ratifies his request for

making the careless use of personal information a criminal offence. New powers are expected to include stronger penalties, including larger fines, for those caught breaking the Data Protection Act and the ability to inspect and audit organisations to ensure they are complying with the law.

### Office of Fair Trading (OFT)

The OFT targets businesses that abuse their market position or form cartels that damage consumer interests. It also investigates mergers that may reduce the competitive nature of a market. While its' activities generate many millions in fines (for example, in 2007 it fined BA over £120 million) its primary role is seen as preventative. It is believed that high profile cases can result in the abandonment of other merger or cartel plans.

### Serious Fraud Office (SFO)

There is no right to silence when faced with the SFO, the body referred to by organisations like the Police, HM Revenue & Customs (HMRC) or the Financial Services Authority (FSA) to investigate major alleged frauds (£1 million or more). It's unlikely that you'll come across them as they tried fewer than 170 defendants in 2006. Successful prosecutions can result in long prison sentences and hefty confiscations.

Of course, these are far from the only regulatory bodies. The EU is the largest of all, and organisations like Ofcom, the Pensions Regulator, the FSA and HMRC all have major roles to play in ensuring that British business plays by the rules!

Contact our team if you have any doubts about where your business stands with any regulator.



## Need help with employment regulations?

The burden of employment law on small businesses is now so great that nearly a third (32%) of businesses with no employees have chosen not to employ anyone at all rather than expose themselves to its complexities.

This is one finding of a survey by the Federation of Small Businesses (FSB), which found that dismissal and grievance rules are seen as the most problematic area of legislation, cited by 65% of respondents. Parental, paternity and maternity pay (52%) and leave (34%) are the two next most unpopular areas, followed by redundancy (31%) and working time regulations (27%).

According to the FSB, the growth over the last decade in EU and UK employment legislation is a cause for concern. As it says, "The FSB strongly supports a mutually ethical relationship between employer and employee, but has concerns that if the legislative pendulum swings too far in favour of the employee, that same legislation will cause the opposite effect of what it set out to achieve."

Many small businesses, however, find that the ongoing support of our specialist employment lawyers eases the burden significantly.

## New corporate manslaughter legislation

A new law that comes into force on 6 April addresses a key loophole in UK corporate manslaughter legislation (called 'corporate culpable homicide' in Scotland).

Currently, a business can only be found guilty of causing a death if a so-called 'directing mind' at the top of the organisation (such as a director) is also found to be personally responsible. The new law amends this to find an organisation guilty of the offence if the way the organisation is managed or organised causes a death, amounting to a gross breach of its duty of care.

This change is designed to provide a more effective means of accountability for serious management failings, and to support well managed organisations by targeting others that cut costs by taking unjustifiable risks.

The value of good organisation is therefore more important than ever for every business – if you have any doubts, talk to our experienced company lawyers to make sure your house is in good order.

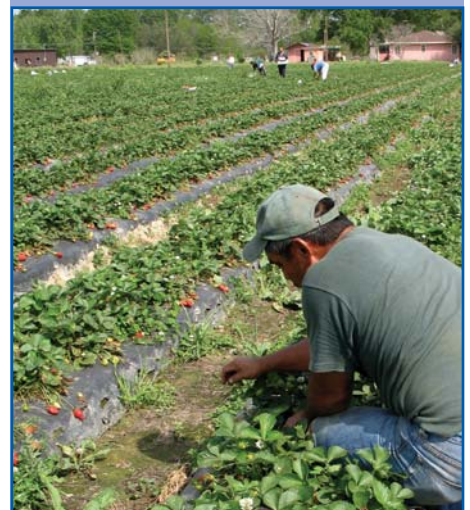
## The dangers of employing illegal workers

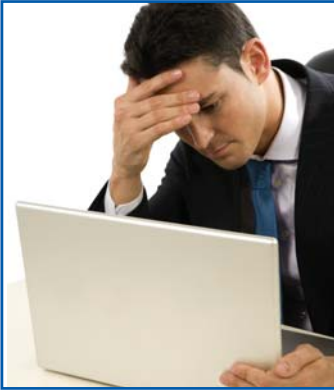
Under new rules that came into effect in February 2008, the employers of illegal workers face large fines. Even unwittingly breaking the rules can result in fines of up to £10,000 per illegal worker and doing so knowingly can attract unlimited fines and a prison sentence.

According to Immigration Minister Liam Byrne, "Illegal working attracts illegal migrants and undercuts British wages. That's why we're determined to shut it down. The message is clear for employers – we will not tolerate illegal working."

The new employment rules are part of a tougher regime that will see an Australian-style points-based system for managing immigration, the roll-out of a so-called 'e-Borders programme' (allowing people to be counted in and out of the country) and the introduction of biometric ID for all foreign nationals who are in the UK for three months or more.

The key challenge for employers will continue to be recognising whether or not a worker is illegal. For initial advice, you can call the Border and Immigration Employers Helpline on 0845 010 6677. If you have reason to suspect that one or more of your employees is an illegal worker and require legal advice before taking action, call our team for a confidential discussion.





## ***When stress leads to dismissal***

In a recent case, the Court of Appeal ruled that even when an employer's conduct leads to an employee's inability to perform their job through work-related stress, their subsequent dismissal on the grounds of that incapacity is not necessarily unfair.

The complicated case in question centred on a Customer Services Officer who worked for a high street bank. It featured a series of claims and counter-claims firstly to an Employment Tribunal and eventually the Employment Appeal Tribunal (EAT).

The EAT decided that the dismissal was fair at the time that it took place. Otherwise, it declared, "employers would be obliged to keep on their books indefinitely employees who were incapable of any useful work." This decision was upheld by the Court of Appeal.

However due to the individual circumstances of the case, employers would be wise not to conclude that its decision absolves them of their duty of care to employees. Every case is unique, and any employer in serious dispute with an employee should seek specialist legal advice before taking any action.

## ***Banks deaf to small business needs?***

A decision by the Competition Commission to lift price controls on the four largest banks serving small and medium-sized businesses is "wholly misguided and needs an urgent review."

This is the opinion of the Federation of Small Businesses (FSB), following the withdrawal of a deal that meant Barclays, HSBC, Lloyds TSB and the Royal Bank of Scotland Group were supposed to offer small businesses free banking, or an account paying interest of at least 2.5 points below base rate on in-credit balances, or both.

FSB Financial Affairs Chairman Mike Cherry commented: "We are very disappointed that the Commission reached this decision – this has been a tumultuous time for small businesses, and this is the latest in a long line of body blows."

This complaint coincides with the review of the legality of bank charges in the High Court by Mr Justice Andrew Smith, whose judgment is expected before Easter.

## **New pensions regime on the way**

Future generations of workers cannot be left struggling to pay for an ageing population. This was the key message from Government, ahead of the second reading of the Pensions Bill 2007.

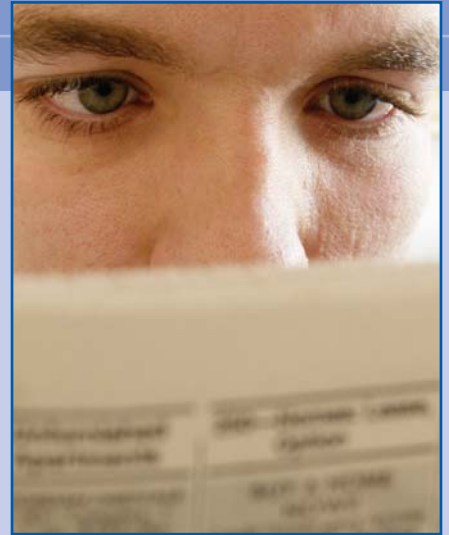
A main proposal of the bill is the automatic enrolment of all eligible employees into either a qualified workplace scheme or personal accounts, with employer contributions of a minimum three per cent and employee contributions of four per cent.

In this way, it is hoped to overcome the inertia that currently sees just four workers in every 10 saving into a private pension scheme. Under the new scheme, the minimum employer contribution and tax relief will mean individuals' contributions are matched pound for pound.

While the Government emphasised the responsibility that an individual has for saving towards his or her own future, in time the new regime will place an additional responsibility on employers too – and many will seek to have their systems in place before the Act is implemented.

Any business seeking an independent review of their current employee benefit arrangements would be well advised to talk through their plans with a legal employment specialist.





## Beware the 'buyer's market' for jobseekers

Potentially bad news for the nation's employers was contained in a recent research report from online recruitment firm [jobsite.co.uk](http://jobsite.co.uk), which found that over 40% of UK workers were planning to look for a new job in early 2008.

The poll was conducted among 1500 people, and showed that of those actively looking for new work over 60% intended to spend over two hours a day on their job hunt – with four in 10 planning to do so during working hours.

While this could be seen as one of those 'well-they-would-say-that' reports, it certainly holds some significance in times of generally high employment. After all, employment is like any other market and a scarcity of well-qualified, able individuals without work makes it a buyer's market for anyone who fancies a change.

According to jobsite CEO Keith Potts, "The New Year is often seen as a good time to make changes and start afresh – it's perhaps unsurprising that people then decide to start looking for something more fulfilling."

The businesses most at risk of losing key employees are likely to be those that cannot meet staff expectations for financial rewards, conditions and emotional fulfilment. While this final aspect is largely dictated by the nature of your business, most employers are able to take straightforward steps to ensure that they can compete to attract and retain the best available staff.

A little research into the pay and conditions offered by other local employers is a strong starting point for creating an attractive package. The help of a specialist employment lawyer can also be vital in providing the range of benefits and contractual security that discerning employees are looking for.

## Don't take everything at face value

Two recent high-profile instances of very public 'economy with the truth' have emphasised the importance of ensuring that promotional claims are honest, legal and true.

First, celebrity endorsement of a computer-based 'brain-training' game has been criticised in a report from Sense About Science, a UK charity committed to giving the public the truth about popular misinterpretation of scientific subjects.

While one global movie star praised the game in a television advert for helping keep her "mind feeling young", Dr Jason Braithwaite, a cognitive neuroscientist at the University of Birmingham, said: "There is no conclusive evidence showing that the continued use of these devices is linked to any measurable and general improvements in cognition."

Meanwhile, a supposed academic institution calling itself 'The Irish International University' persuaded well-known businesswoman Mary Chapman, the first CEO of Investors in People UK, to award worthless degree certificates at a ceremony in Oxford.

She has now severed all connections with the organisation on finding that it had exploited a loophole in Irish law that allows businesses to register the word 'university' in their name.

All of which goes to show that you cannot be too careful about what or who you believe. Any business keen to avoid the potential embarrassment or damage to their reputation from making a misleading claim, is welcome to seek advice from our team.

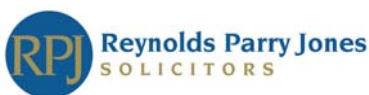
### Reynolds Parry Jones

Reynolds Parry Jones is a long-established quality firm, founded in the nineteenth century. It is a general practice offering a full range of legal services to the whole community.

Whether providing advice on corporate or commercial issues to organisations or advice on making a will or selling a house to individuals, we guarantee our clients an efficient and competent service that is good value for money.

### LawNet

As a member of LawNet, the UK's pre-eminent group of law firms, Reynolds Parry Jones are ISO accredited and offer our clients services of the highest quality. Being part of a nationwide network of specialist solicitors offers us access to a range of expertise usually only found in the largest, most expensive firms.



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