

Pictons Commercial

Welcome to the Summer edition of Pictons Commercial, the legal briefing produced by Pictons' Commercial Department to provide information to its clients, contacts and businesses generally in the northern home counties. If you have any questions, please feel free to contact the individuals listed in this newsletter or your usual contact within Pictons.

M1 KNOWLEDGE EXCHANGE

The M1 Knowledge Exchange is the University of Luton's initiative, in collaboration with Cranfield University, to support small and medium-sized enterprises (SMEs) in the Engineering, Technology and Manufacturing sectors within Bedfordshire and surrounding counties.

Pictons is proud to be supporting this initiative by offering advice and assistance to the collaboration.

The University was one of only 22 national centres for Knowledge Exchange activity, chosen by the Government for its proven strong links with businesses and the community.

How can the M1 Knowledge Exchange help your firm?

By leveraging combined resources of the Universities of Luton and Cranfield, in terms of expertise, training, research and development.

For more information, please contact **Sue Whittaker**:

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Unfair Prejudice

The Companies Act 1985 seeks to protect shareholders in a number of important ways. One of the key provisions of the Act (s459) allows a shareholder to apply to the court for an order on the ground that he has suffered unfair prejudice. Crucially, the prejudice must have arisen either from the way in which the company's affairs were being conducted or from an actual or proposed act or omission by the company and must have affected the interests of at least one shareholder of the company concerned.

Having proved unfair prejudice, a number of reliefs are then available to the aggrieved shareholder(s). The interesting issue, which arose in **Grace v Biagioli (2005)**, was whether the relief ordered was appropriate to the circumstances. In this case, Mr Grace and his 3 fellow shareholders (the respondents) had each held 25% of the shares in a company called Baglioni, as well as being directors of that company. A dividend of £80,000 had been declared for 2002 at an AGM of the company. Mr Grace then fell out with the respondents over his conduct in dealings with an associated French company. He had, effectively, put himself in a position of actual or potential conflict with his duties as a director and, following this, the respondents decided that, instead of paying the declared dividend, profits would be distributed by way of management fees to them alone, excluding Mr Grace (who was also removed as a director).

Mr Grace petitioned under s459 for an order requiring the respondents to buy his shares in Baglioni at a price to be decided by the courts. Initially, the first instance judge agreed that Mr Grace had suffered unfair prejudice, but only in relation to the failure by the respondents to pay him the promised dividend and not in relation

to his removal as director (which was considered justified given his behaviour). Rather than making an order that Mr Grace's shares be purchased by the respondents, the judge decided that the company simply pays Mr Grace his share of the 2002 dividend. Not happy with this decision and insistent upon a purchase order for his shares, Mr Grace appealed to the Court of Appeal.

The Court allowed his appeal and emphasised the need to look at the broad range of possible remedies available in unfair prejudice cases, stressing that a key factor to be considered was the likelihood of the unfairly prejudicial conduct recurring in the future. Given that there was some evidence of changes in trading arrangements within the group of companies (of which Baglioni formed a part) thereby reducing profits available for future distribution as dividends, there was a high likelihood of similar unfairly prejudicial conduct recurring in the future. The Court therefore decided that only an order for the respondents to purchase Mr Grace's shares in the company would be appropriate relief in the circumstances. Having decided upon a purchase order, the Court then referred the case to a judge in the High Court to determine the price at which those shares would be purchased.



WEEE Directive (Waste Electrical and Electronic Equipment Directive)

This Directive may have a laughable acronym but has far-reaching implications for industries caught by its provisions. Its aims are laudable, to:

- Reduce the amount of Waste Electrical and Electronic Equipment (WEEE) disposed of to landfill;
- Promote the separate collection, treatment and recycling of electrical and electronic equipment (EEE); and
- Introduce the concept of “producer responsibility” making a “producer” responsible for the whole life cycle of WEEE, from manufacture to final disposal and recovery.

A “producer” is broadly defined as including any business that either manufactures, brands or imports EEE, sells EEE or stores, treats or dismantles WEEE within the EU.

The Directive has a number of key effects, which include the following:

- EEE will need to be marked with a “crossed out wheellie bin” symbol (for example on packaging, instructions or the warranty relating to the product);
- Collection targets will be introduced for WEEE from private households, although it is likely that the general public can still dispose of WEEE with domestic waste;
- A register of EEE producers must be maintained with the Environment Agency;
- Distributors and retailers must provide free WEEE collection (i.e. at their own cost) at the customers’ convenience and on a one-to-one basis;
- Separately collected WEEE must be treated at an authorised treatment facility unless the appliance is to be reused as a whole;
- There will be new recycling and recovery targets for various WEEE categories;
- New provisions will apply to those companies within the waste management industry;
- The costs of business EEE will either be borne by the producer (as defined) or the end business depending upon the date the EEE was placed on the market.

The Directive regulations are yet to become law in the UK due to the far reaching and, as yet, undecided practical implications of introducing them. The proposed revised target date is now January 2007.

Together with the Restrictions of the use of certain Hazardous Substances in electrical and electronic equipment Directive (RoHS) (which became law on 1 July 2006), a wide range of EEE will be covered by legislation, including household appliances, IT/ telecommunications equipment, TVs, videos, hi fis and other consumer equipment.

The Environment Agency has stated that:

“In the absence of UK regulations and the Government’s accompanying guidance, the Environment Agency is currently unable to offer guidance on whether particular products will fall within the scope of UK Regulations”

Please contact **Funke Abimbola** regarding any queries relating to the WEEE, RoHS Directives or other environmental law issues, as well as commercial law matters.



CONTACT US

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