



SEDGWICK LEGAL

Can I prevent an ex-employee taking my customers or other trade secrets and connections when he/she leaves?

The simple answer is yes, but within reason.

When an employer puts post-termination restrictions in an employee's contract of employment and then wants to enforce them when the employee leaves, the court has to perform a balancing act. On the one hand the employer has a right to protect his business going forward, but on the other hand the employee has a right to earn a living.

A restrictive covenant will only be enforceable if it is no wider than reasonably necessary to protect legitimate proprietary interests such as trade secrets, trade connections, suppliers and other employees with specialist knowledge of the business. When drafting restrictive covenants it is necessary to understand the interests that are to be protected and to work out what restrictions with regard to the length of the restriction and the geographical area that it applies to will be accepted by the court.

The court will consider how close the relationship is between the business owner and his customers, as well as the type of business involved.

What if there is a mistake made in drafting the restrictions, can the court alter the wording? Again the answer is yes, but it is unusual for the court to do this. An exception was in the case of *Prophet v Huggett* when the former employer applied for an injunction to prevent Mr Huggett working for a rival company. Unfortunately the restrictive covenant was phrased so that Mr Huggett was only prevented from working on software produced by his former employer. Since no other company would be working on that software it seemed that Mr Huggett had found a loophole. However, the judge was prepared to amend the restriction with the words "or similar products" which effectively closed the loophole. The transcript of the case makes it clear that the judge didn't trust Mr Huggett and there are various references by the judge to his dishonest evidence. In the circumstances, and given the case hasn't gone as far as the Court of Appeal, it would be wrong, to place too much reliance on it. However, it is worth noting.

If you're concerned whether your post-termination restrictions are enforceable contact Roger Dennerly at roger.dennerly@sedgwick-legal.co.uk or call **0161 653 5299**. Roger Dennerly is currently offering a free check of all the post-termination restrictions you have with your employees and he will report back to you as to whether they are enforceable, or not.

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