



Commercial Litigation Bulletin

**Rollit
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SOLICITORS
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The Human Rights Act

The Human Rights Act 1998 came into effect on 2 October 2000. Depending upon who is commenting on this event, it represents either the most significant legal event since the Bill of Rights in 1688 or nothing more than a re-statement of rights and obligations which already exist in English Law but with a simplified method of enforcing those rights and obligations.

The effect of the Act is to incorporate directly into English Law the European Convention on Human Rights originally ratified by the United Kingdom in 1950. It means that an individual or organisation, who believes that their human rights have been infringed, can bring a claim in the English Courts rather than having to follow a slow and cumbersome path to the European Court in Strasbourg.

The Convention will be incorporated into English Law in two ways; first, by requiring the Courts to interpret legislation "so far as it is possible to do so" in a way which is compatible with the human rights enshrined in the Convention and, secondly, by stating that it is unlawful for a "public authority" to act in a way incompatible with a convention right. Those rights, drafted over 50 years ago, contain fundamental human rights such as the right to life and the right to a fair trial. But it is the scope and breadth applied over the years to the Convention by Judges in Strasbourg (arguably going far beyond the intentions of those who drafted it) which, depending upon your point of view, give grounds for fears or hopes that the Act will bring a significant change to the extent of rights enjoyed under English Law.

Effects on Businesses

The press has concentrated on the effect of the Act on individuals. However, there is no doubt that the Act will impact on businesses as well. From the 2 October, if not before, a company can have "human rights" even though it is not human!

Legal journals are full of commentary as to areas in which the Human Rights Act may have an effect. In the business world these include planning matters, the rights of a landlord to distrain for rent and the whole area of access to justice. The country's most senior Judge, perhaps alarmed at the number of human rights "points" being argued by lawyers, has warned the legal profession to be very careful with the type and number of cases where they seek to invoke the Act.

How the legal profession and its clients react to this warning will determine whether 2 October 2000 was the date on which the floodgates opened, or whether it was a damp squib.

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**DEFECTIVE
BUILDING**
Substantial Damages Claim

Who can be sued and for what?

An employer entered into a contract with a contractor for a building to be erected on property belonging to a third party. The contractor entered into a separate deed with the third party giving the third party direct rights of action against it. There were serious defects. The employer sued the contractor for substantial damages. The House of Lords ruled that the employer could only recover nominal damages because the third party (who ultimately sustained the damages as a result of the defects) had the right to sue the contractor direct in respect of those damages.

Panatown Ltd. v Alfred McAlpine Construction Ltd HL 4 AER 2000 p 97-168

Note: Now that the requirement for and the giving of collateral warranties is very common and where a contract is entered into after 11 May 2000, the provisions of the Contracts (Rights of Third Parties) Act 1999 are in effect, these must be considered as they could have a serious bearing upon the rights between the various parties to such contractual arrangements.

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Late Payment of Commercial Debts (Interest) Act 1998

From the 1 November 2000, contracts for the supply of goods and services made on or after that date between small businesses (being businesses which employ fifty or fewer employees) will have implied a term that simple interest, at a statutory rate will be paid by the buyer on any overdue debt arising from the supply of goods or services. Before 1 November 2000 interest could only be claimed when a small business traded with either a large business or the public sector. As from the 1 November 2002 the right to statutory interest will apply to all businesses and the public sector.

Despite being a very important credit control tool the right to statutory interest is under-used and remains little known. By way of introduction or reminder the basic scheme is as follows:

- Interest will begin to run after any contractually agreed date for payment. If there is no written contract or no agreement as to the date for payment, it will begin to run thirty days after the earlier of the day on which the supply was made and the day on which the buyer has notice of the amount of the debt (presumably, the date it receives the invoice).
- Unless the contract between the buyer and the supplier provides for what the Act describes as a "substantial contractual remedy" for late payment, a buyer cannot seek to exclude the supplier's right to claim statutory interest. The Act specifically provides, however, that, after the debt has fallen due and statutory interest has begun to accrue, the parties remain free to agree whatever terms they wish to settle the debt.

A remedy for late payment of the debt will be regarded as a substantial remedy (and thus a lawful contractual alternative to statutory interest) unless the remedy is insufficient for the purpose of compensating the supplier for late payment or for deterring payment and it would not be fair or reasonable to allow the remedy to be relied on to oust or vary the right to statutory interest that would otherwise apply.

Until the Act is fully in force (i.e. 2002) and until the contrary is proved, the buyer will be assumed to be a large business.

For further information contact George Coyle at Hull on 01482 323239.

INFORMATION

If you have any queries on any commercial disputes please contact:

George Coyle at Hull on (01482) 323239

David Watson at York on (01904) 625790

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice.

The law is stated as at 20 November 2000.

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S O L I C I T O R S

*...acknowledged
as one of the top
firms in the region*

Two recent surveys of the country's leading law practices have once again recognised Rollit Farrell & Bladon as one of the top law firms in the region. In the latest editions of The Legal 500 and Chambers and Partners Directory, the firm has been praised for its strong presence in a number of areas including company and commercial, commercial litigation, commercial property, employment law, intellectual property, planning, social housing, trusts and personal tax and licensing.

The 2000-2001 edition of Chambers and Partners ranks Rollit Farrell & Bladon as the top firm in Hull and the East Riding for commercial litigation and Partner Ralph Gilbert is particularly recommended for his work in this field. In the directory Ralph is praised for his "extremely capable and thorough litigation style" adding that he "thinks heavily about cases, doesn't just manage them but gets to the nitty gritty." Once again Pauline Molyneux is recognised as a leading employment lawyer.

Says Stephen Trynka, Managing Partner of Rollit Farrell & Bladon:

"We are delighted that we have again been recognised as one of the leading law practices in Yorkshire by two of the most authoritative guides to legal practice in the country. Our strategy has been to build a team of excellent lawyers who recognise the needs of the business community and who provide clients with a high quality legal service and it is pleasing to see this strategy bringing rewards."

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