

Road Transport Briefing

May 2010

Birketts' News

Birketts LLP appointed to RHA Panel



We are delighted to confirm that we have recently been appointed to the RHA panel of solicitors in the Eastern and Southern area. This appointment further cements our road transport law practice; particularly in the areas of Public Inquiries before the Traffic Commissioner and Magistrates' Court defence.

For further details please contact our in-house Barrister Laura Thomas on laura-thomas@birketts.co.uk or 01473 299173.

Birketts at Multimodal 2010

For the first time, Birketts had a stand at the Multimodal exhibition at the NEC in Birmingham last month. We were part of the Port of Felixstowe/Haven Gateway stand and enjoyed a busy three days meeting up with contacts from the major ports, shipping lines, rail operators, road hauliers, and logistics providers.

Many thanks to all who took the time to visit our stand. We are pleased to announce that our Multimodal Conference Prize Winner is Mr Bob Montague from Berkshire.

If you have any news or success stories coming out of Multimodal 2010, please let us know.

Legal Update

Need an economic lifeline? The recent case of *Bateman & others v Asda Stores Ltd*, potentially increases an employer's ability to vary an employee's contract.

With continuing tough trading conditions in the sector, workforce cuts are still very much on the agenda. Ordinarily, an employer cannot unilaterally change the contract of any of its employees (for example to reduce pay or working hours without their consent) or it will be at risk of costly Tribunal claims.

However, it was recently held in the Employment Appeal Tribunal that Asda was entitled to rely upon a statement in a staff handbook allowing it to 'review, revise, amend or replace' (i.e. vary) the terms of the contracts of its employees unilaterally (commonly known as a "flexibility clause"). Asda changed the pay

structure of 8,700 of its employees without first obtaining their consent. It was held that Asda's "clear and unambiguous" clause allowing it to change contract terms, and the fact that Asda had consulted with its employees prior to changing their terms so as not to breach the mutual duty of trust and confidence, allowed it to vary contract terms without consent, even though there was resultant financial loss to the employees.

Following the Asda case above, there is increased scope for an employer to alter contracts and it is therefore sensible to include a clause permitting variation.

What must the clause say to be effective?

- The clause itself must be clear and unambiguous;
- The employer must comply with the terms of the clause;
- The employer must act reasonably in altering terms, and must not act unfairly or arbitrarily;
- The employer must ensure that it does not breach the implied term of trust and confidence in effecting any contractual changes.

It appears therefore that, with the correct flexibility clause, employers will be in a better position to seek to vary the contractual terms of its employees in order to make cost savings. It should be remembered that such a clause will not allow an employer to vary employment contracts at will, and that employers should follow a fair

For further information about this article or any other employment law issues, please contact Catherine Johnson on catherine-johnson@birketts.co.uk or 01473 299174.

Operator Licence undertakings; ignore at your peril!

When was the last time you thought about the undertakings in your O Licence? Did you even know that you had any?

It is surprising how many operators do not know what they signed up for when getting that all-important O Licence. That's not to say that operators are necessarily disregarding safety or not caring about their duties, it can often be those smaller issues such as remembering to inform the Traffic Commissioner if you get a new Transport Manager or if a Director changes.

The problem is that a failure to comply with your undertakings can have a disastrous effect on your business. The Traffic Commissioner can curtail, suspend or revoke your licence which could mean the end of your operation.

This important issue will be explored in our forthcoming Transport Seminar (please see details below).

The Importance of Terms and Conditions

Our money saving tip - simply add the words, "All business transacted on [..... Terms] which include limits and exclusions of liability. Copies available on request." at the bottom of all letters, quotes and other company stationary. It is important that this goes to your customer BEFORE you conclude a deal. If you only have these words on your invoices, it may not be enough.

Why?

Most of the time contractual terms are unimportant. The business goes to plan, payments are made and everyone is happy. However, when things go wrong, for whatever reason, the importance of contractual terms cannot be stressed enough. The contract records what has been promised, will set out either side's rights and obligations and, in most cases, will also include limits and exclusions of liability. In road transport, the contract should also contain important provisions allowing you to exercise a lien for force payment.

Which terms?

Sometimes you may agree a bespoke contract with a major or important customer. However, in many cases, companies who are members of a trade association will simply want to rely on the standard terms produced by that trade association.

An example?

The RHA terms are well used in the industry. These terms have recently been updated and give significant new protections particularly in relation to recovering debts by exercising a lien over goods you are carrying.

If you are still using the RHA 1998 terms, you will be at a real disadvantage, so it is worth updating your stationery.

What else can I do?

It is even better if your customers sign a letter confirming that they agree the terms. It is also sensible to write to every one of your customers once a year and send them a copy of the terms you are using (remembering to use registered post).

For further information about contractual terms and conditions, claims or liens, please contact Alex Davey on alex-davey@birketts.co.uk or 01473 406241.

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Birketts' Seminar

VOSA stops...the Traffic Commissioner calls!

Tuesday 22 June 2010
Trinity Park, Suffolk Showground, Ipswich
Registration and breakfast - 7:45 am
Seminar start - 8:30 am

We are delighted to confirm that the Traffic Commissioner for the Eastern Traffic Area, Mr Richard Turfitt, will be speaking at our seminar next month. Joining him will be a Senior Traffic Examiner from VOSA, and Peter Butler, Area Manager from the Road Haulage Association.

The seminar will cover the role of the Traffic Commissioner and VOSA, Operator Licences and undertakings, particular compliance issues such as drivers hours and the importance of audits...the essentials for every operator.

To book your place, please contact Michelle Nichols on 01473 406239 or michelle-nichols@birketts.co.uk.

Limited places available - please book early.

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