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**Employee Business Protection**

**United Kingdom**

**Summary**

During employment UK employees owe duties of confidentiality and loyalty, and so UK employers enjoy relatively strong business protection.

After employment ends, however, employees are generally free to work elsewhere, and even to solicit customers, clients and colleagues. The starting point with regard to contractual restrictions on a former employee's activities, such as non-compete clauses, is that they are void for being an unlawful restraint of trade. However, the Courts will enforce such restrictions provided they go no further than necessary to protect the employer's legitimate business interests.

**Restrictions during employment**

All employment contracts include an implied term that the employee will serve their employer loyally and in good faith. This means that, during their employment, employees:

- cannot compete with their employer;
- must not disclose confidential information; and
- must not solicit clients or colleagues.

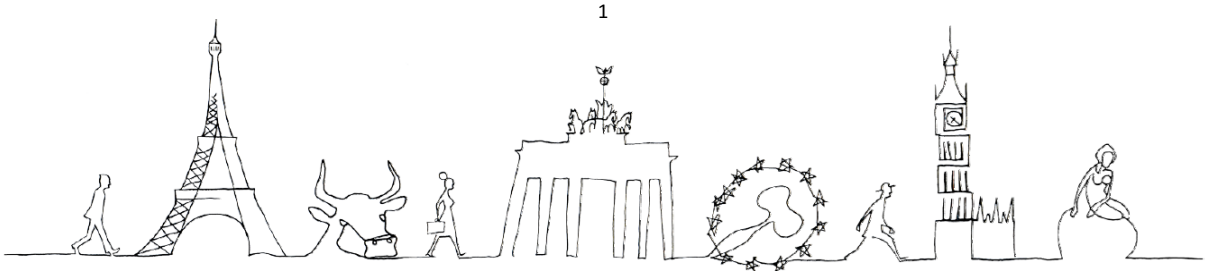
Employers can, and should, further protect their business by including express terms in their employment contracts. For example, stating that the employee cannot work elsewhere without written consent, and including detailed provisions to protect their confidential information and intellectual property.

Directors and senior managers may be subject to additional fiduciary duties, which provide greater protection for employers.

Employees are not entitled to additional pay for these restrictions. If an employee competes with their employer during their employment this is likely to justify their dismissal without notice. After their employment ends, it may also be possible to get a 'springboard' injunction, preventing the employee from benefiting from any wrongdoing during their employment, for example, their misuse of confidential information.

**Restrictions after employment**





In contrast, generally speaking employees are free to work elsewhere, and even to solicit customers, clients and colleagues, after their employment ends.

The only implied duty after the employment relationship has ended is that they must not use or disclose the employer's trade secrets (for example, the Coca-Cola recipe). This only offers very limited protection: it does not extend to 'mere' confidential information, and does not prevent the employee from competing.

Employers and employees can, however, agree additional protections. These can be set out in the employment contract or a separate agreement. It is not necessary (indeed, it would be very unusual) for employees to be paid for any post-termination restrictions. It would also be very unusual to include a liquidated damages clause, as this would suggest damages were an adequate remedy, which would in turn prevent the employer from being able to obtain an injunction.

If an employer fundamentally breaches the employee's contract – for example, by failing to give proper notice – it will be prevented from relying on any post-termination restrictions.

**Scope**

Post-termination restrictions will only be enforced by the courts if they go no further than strictly necessary to protect the employer's legitimate business interests. In the event of a dispute, employers first need to show that they have a legitimate business interest to protect – for example, confidential information, goodwill, or a stable workforce. They then need to show that the restrictions go no further than necessary to protect those interests. All restrictions need to be limited in terms of their duration; while there is no specific time limit, if the restriction lasts longer than necessary, it will fail: the Courts cannot impose a shorter period instead. Twelve months is generally the maximum period, and even then this is generally only appropriate for very senior employees.

**Enforcement mechanism**

The principal enforcement mechanism for post-termination restrictions is an injunction, to enforce the restrictions and prevent the employee from competing. The employer may also be able to bring a claim for damages.

**Types of restriction**

There are four main types of restrictive covenant in the UK:

1. **Non-Compete.** This is the most draconian restriction. It seeks to prevent the employee from working for a competitor, or setting up in competition, for a defined period. It is often limited by territory – for example, within X miles of the former employer – but for senior, international roles this may not be necessary. As they are the most onerous restrictions, non-compete clauses are often shorter than other restrictions.

2. **Non-Solicitation of Customers and Clients.** These restrictions are often easier to enforce than a blanket non-compete, as the employee is free to join a competitor – provided he does not try to solicit his former employer's clients. They do, however, still need to be carefully drafted,



to ensure they go no further than necessary – for example, by limiting them to clients with whom the employee had personal dealings.

3. **Non-Dealing with Customers and Clients.** A key issue with non-solicitation clauses is that it can be difficult to prove the employee actively "solicited" his former employer's clients. This can be addressed by a restriction on *dealing* with clients, which applies irrespective of whether the former employee contacted the client.

4. **Non-Poaching of Staff**. It is relatively common to include a restriction preventing an employee from poaching key colleagues. Again, these clauses need to be carefully drafted, and should generally be limited to senior staff, with whom the employee had dealt with personally.

*This material is for general information only and is not intended to provide legal advice.*

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