Fighting farmers unable to make hay

Will Restrictive Covenants be upheld where junior employees are initially employed on agreements without restrictive covenants, but then later asked to sign six-month restrictive covenants? Yes, said the court in a recent case which is in some ways surprising, but may be useful for employers seeking to uphold restrictive covenants in more junior contracts.

In order for a promise to be binding you have to provide something valuable in return. Legally this is called “consideration”. This can be especially important with restrictive covenants. Not a problem if they are in a contract when you take someone on, but if part way through their employment you ask employees to sign new agreements with restrictive covenants, the employees may later on try to say that these restrictions are not enforceable. This has been an issue which has troubled the courts for hundreds of years.

However, recently it did not help some trainee advisers to farmers to make hay!

The case of *Pickwell v Procam* involved two trainee agronomists, Mr Pickwell and Ms Nichols who were learning to advise farmers on the purchase and use of agricultural chemicals. They each received a written offer of employment around August/September 2009 which they each accepted a couple of weeks after receipt and signed a document accepting that offer. The salaries of the two individuals were £23,000 and £18,000 respectively when they started working. On 14 December 2009 Mr Pickwell signed a contract containing restrictive covenants of 6 months’ duration. He qualified as an agronomist on 2 July 2010 and worked under the supervision of a qualified agronomist until July 2011.

Ms Nichols signed her contract containing the restrictive covenants on 21 March 2013. She duly qualified in July 2013 and worked under supervision until July 2014.

Mr Pickwell’s salary increased to £41,820 on qualification and Ms Nichols’s salary increased to £30,000.

These were not big salaries and considering that the two individuals were trainees when they signed the contract containing the restrictive covenants and they had already been working beforehand you might have thought they have a chance in this case. However, the judge formed the view that the fact the employer would very likely have dismissed the employees if they did not sign the new contracts they were asked to sign was the “something valuable in return” which was required. This is therefore a useful case to refer to if you need to hold more junior employees to contracts or if you want to ask employees to sign new agreements with

restrictive covenants. A note of caution must be added. Cases like this often turn on their facts, so this case cannot be relied upon to help every time you might want to ask employees to sign new agreements containing restrictive covenants.

Another unusual feature of the case was the fact that the individuals went to court first to ask the court if the covenants were enforceable, before going to work for a competitor. It is worth remembering that whilst this does not happen very often it is possible for employees to do this.

