

CONSULTANT HELD SUBJECT TO IMPLIED DUTY OF CONFIDENCE

In the recent case of *Vestergaard Frandsen A/S and others v Bestnet Europe and others*, the High Court has held that a consultant can be subject to the same implied obligations of confidentiality as an employee.

In this case, the consultant had been engaged by Vestergaard to develop its products. As a result he was privy to confidential technical information which he subsequently used to develop a similar product with one of Vestergaard's competitors.

The High Court held that the confidential information amounted to a "trade secret", the effect being that the consultant was prevented from using it with a competitor after the termination of his relationship with Vestergaard.

➤ Practical Tips

It is well established that employees are prevented from using "trade secrets" after the termination of the employment relationship. In this case, the High Court extended that duty to a consultant whose role was held to be analogous to an employee.

However, businesses should consider this ruling with caution as the Court was keen to point out that this would not apply to all consultants.

Businesses are still advised to ensure that consultants (as with employees) sign up to properly drafted confidentiality provisions contained within a formal agreement, with a view to avoiding scenarios like this case happening in the first place.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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