

1. In *Duchy Farm Kennels Limited v Steels* [2020] EWHC 1208 (QB) Alexander Pritchard-Jones appeared in an important case about the effect of breaches of confidentiality clauses contained within settlement agreements.
2. In this case the court was concerned with what consequence if any should fall on a party who breaches the standard confidentiality clause contained within the settlement agreements used to compromise employment disputes.
3. The judge, Mr Justice Cavanagh, described the case as concerning ‘an important issue which, perhaps surprisingly, has never been the subject of an appellate ruling before.’

Background

4. In this case the Respondent had denied breaching the confidentiality agreement. After a trial involving several witnesses he was found to have breached the confidentiality agreement. The judge at first instance however went to find that despite this breach the confidentiality clause was not a condition of the agreement. If it had been a condition the breach would have discharged the Appellant from further obligation under the agreement, which in this case was the obligation to pay money.
5. The judge at first instance instead found that it was an intermediate term and so needed to consider the severity of the breach. finding that the breach was not a fundamental breach and did not go to the root of the contract, and refused the Appellant’s application for relief from further payments.

On appeal

6. On appeal the High Court agreed with the judge at first instance finding that the confidentiality clause was not a condition of the contract. The judge noted that the parties could have stipulated that the confidentiality clause was a condition and specified consequences for breach.
7. the judge went on to consider whether the breach was fundamental and determined that it was not.
8. The judge stated that this is the case ‘flags up the general problem of enforceability of confidentiality clauses in employment settlements.’ The two potential remedies available to a party where the other party has breached the confidentiality clause is either to apply for an injunction or to claim damages.

9. An injunction is of no use if the breach of the confidentiality clause has already taken place.
10. Damages are as the judge found often impossible to quantify.
11. The solution therefore is to preempt and foresee what will happen in the event that one party breaches the confidentiality clause. As the judge found in paragraph 64 of his judgment 'parties can make specific provision in the contract terms for what should happen if there is a breach of confidentiality.' If that level of specificity is undesirable and the contract needs to remain drafted in general terms for whatever reason the parties can specify that the confidentiality clause is a condition, with all the attendant consequences of breach.
12. This case is a timely reminder that lawyers advising parties in settlement proceedings need consider carefully the importance of confidentiality to the parties and what consequences should flow from any breach of that confidentiality. Without specified consequences an innocent party cannot be sure there will be any consequence if the other side breaches the agreement.



Alexander Pritchard-Jones