

## BUSINESS LAW

## In sickness and in health

Simon Quantrill, managing partner at Quantrills in Ipswich, warns of the importance of having sufficient medical evidence before dismissing an employee on health grounds



BEFORE dismissing, the employer must ensure they take into account all relevant and available information.

The following case highlights the importance of obtaining sufficient medical evidence before dismissing.

To do otherwise may invariably be expected to lead to a finding of unfair dismissal.

In First West Yorkshire Ltd v/a First Leeds v Haigh, the Employment Appeal Tribunal (EAT) held that a reasonable employer should consider if an employee should benefit from an ill health retirement scheme before it dismisses for long-term sickness.

Here, Mr Haigh was a bus driver and suffered a stroke.

He was away from work for a long time. The employer considered that Mr Haigh's incapacity was not permanent so therefore not entitled to his pension.

They went on to dismiss him for reason of incapability due to ill health.

The EAT upheld the employment tribunal's decision that Mr Haigh had been unfairly dismissed.

The dismissal was unfair because First Leeds gave insufficient consideration to the medical evidence and made a decision to dismiss before reaching a fair decision about Mr Haigh's entitlement to an ill health retirement.

For the employer there was a further unhelpful consequence of their actions.

During the tribunal hearing they argued that even if they had obtained the appropriate medical evidence they would have dismissed in any event because they wanted to avoid the cost of granting Mr Haigh an ill health retirement pension.

The EAT held that as a consequence the failure to obtain the medical evidence was more than just a simple procedural failure.

It was more fundamental and therefore it was not open to the employer to argue that the amount of compensation should be reduced to reflect their argument that Mr Haigh would have been dismissed in any event.

The EAT stressed that if a valuable contractual benefit is given to an employee then the employer should not act so as to hinder an employee's ability to claim it.

This is what happened in this case, resulting in Mr Haigh being able to recover full compensation.

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## BUSINESSEAST

## Profile

## BUSINESSEAST

# Potions made in England

As established names in the health and beauty market increasingly move production to the Far East, Julie Foster of Martlesham-based Potions & Possibilities sticks to her 'Made in England' ethical guns and fights back through diversification. She talks to Kate McNally.

WHEN Julie Foster set up her aromatherapy products business Potions & Possibilities 11 years ago, the possibilities for her upmarket range of fragrant potions appeared endless. Based in Suffolk, her overheads were lower than most of her competitors – Molton Brown, Crabtree & Evelyn – and her products were being snapped up by smart department stores across the UK.

Then the Far East factor came into play. Having already decimated much of the UK's larger manufacturing operations over the years, cheaper Far East production is now catching up with the smaller cottage industries too, including those in the health and beauty products market.

Julie estimates she has lost £200,000 over the last two years simply from walking away from department store business which, she says, she can no longer supply with any profit margin. Two Christmases ago she employed 12 people to carry out the fine decorative work on her products' beautiful packaging, for Christmas 2007 she needed just two.

"Three years ago, the average beauty gift set in the front of say Debenhams was £19.99. Now it will be £9.99," she explains.

"I was getting £8.75 per set, and on the volumes we were doing, I made a small profit on that. Now we're competing with products brought in from China and retailers have lowered their price point for suppliers to around £3.50/£4, which means you have got to make the product and build in profit for around £2/£2.50. That's not possible in this country."

What frustrates Julie even more is that many of her competitors in this country have moved production abroad but continue to display a Made in England label. It is only when you read the tiny print on the back of the packaging, that it states "Designed in UK, Made in China" or "Designed in UK, Made in China".

"I do think people should be aware of this," says Julie. "Our plastic bottles are from a company in Beccles. We know they are tested to make sure the molecules of the plastic aren't ingested into the product so there is no risk from the plastic bottle. How do I know the same testing goes on with bottles sourced abroad?"

"There is the long distance to market as well, which means all the stabilisers and chemicals, not to mention anti-bacterial and anti-fungal agents, all have to be a lot higher.

"The product could have been made as long as two years ago – it's in the warehouse for six months, then it takes six months to get here and another six months to get distributed on to our shelves. Whereas our route to market is less than three months. Regardless of chemistry issues, the amount of anything we have to put in to stabilise the product is minuscule."

Julie is hopeful that in the longer term,



the UK public will become as discerning about trade miles for all goods as they are now for food, and that fair trade issues will move higher up the public agenda.

As she says, if you can produce and make a profit on these items for £2, how much are the people making them being paid? She believes media attention will be the key to changing people's perceptions.

"In food in particular, the media has led the way but it hasn't filtered through to other products yet.

"I think also the publicity surrounding cases where companies are using slave labour is starting to change thinking. They all claim they didn't know and had people checking the factories, but if you're buying jeans at £3, then the retailer bought them at £1, which means somebody has made them for 50p. It's not hard to work out the pitiful labour costs involved."

The change in UK public buying ethics

is not likely to happen overnight however, unlike the Far East invasion in health and beauty which Julie says "happened much quicker than any of us thought". So she is doing what many before her have done in the face of fierce foreign competition – she's diversifying. Julie took a long, hard look at where the market is today and is transforming her business accordingly.

The heritage market remains strong for her products – gift shops in cathedrals, National Trust houses, royal palaces – so this continues. Potions & Possibilities also makes own label products to order. For example every year it harvests the lavender and rose at Hampton Court to use in soaps and products made especially for them, and it supplies products for the House of Lords.

A research trip to America pointed to organic as the way forward in health and beauty so she is in the process of developing a niche, organic range.

It is a major step, with investment of £175,000 so far.

Export is another growing market, with Julie playing the Chinese at their own game and selling her products in China. "Interestingly, the Chinese actually value the English brand," she says. Japan, the US and Europe are other markets where the range sells well and export now accounts for around 15% to 20% of sales.

Julie is also putting added emphasis on selling the products into the health and beauty sector, which she believes is a less price-sensitive retail environment. And this is a direction in which she is taking the Potions & Possibilities brand more definitively, last autumn branching out (or in fact going back to Julie's roots) into offering aromatherapy spa treatments as well as accredited therapist training programmes. Called The Academy, this new division is housed in the company's tastefully refurbished former warehouse

in Martlesham, adjacent to the Potions & Possibilities shop.

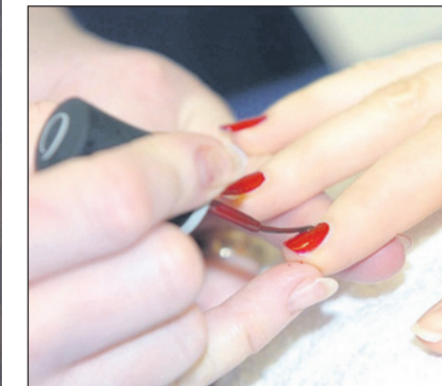
She has employed two experienced therapists, with other specialists available on a sub-contract basis as required, and although the site isn't yet completely finished, the Potions & Possibilities brand name is already pulling in the punters.

Julie has based the model on hairdressing businesses which cut hair, sell their own hair products, and train stylists. The plan is to get this side of the business up and running in the coming two years and then look to expand it via the franchise route.

"As part of selling our products in spas and beauty salons, I have always had to do training as all the products are choreographed into specific treatments. So I thought it was only a small step to actually getting the accreditation and offering vocational courses," explains Julie.

The Academy offers a fast-track learning option. The qualifications are accredited by the Association of British Therapists and backed by Axa insurance which, according to Julie, means those who pass are safe enough to be insured and can immediately go out and earn money. Most people taking up the courses are nurses, healthcare workers, fitness instructors and hairdressers looking to add another string to their bow, but there are also quite a few private individuals wanting to learn the skills.

In typical fashion, Julie, a former saleswoman for Mercedes Benz trucks, has taken on the challenge to protect the future of her business with gusto. Running what is now effectively two businesses, as well as fulfilling her roles as wife and mother of two young children, is however putting demands on her time which, while she always enjoys her work, are becoming difficult to manage.



BUYING BRITISH: Julie Foster, left, of Potions & Possibilities, and, above, some of the products and services available at the aromatherapy business

Photos: SIMON PARKER

With the business now 11 years old and at a cross-roads, she is beginning the search for a local business partner – someone who can help her take Potions & Possibilities on to the next stage and help run the company's diverse portfolio. Like all successful entrepreneurs, Julie has a vision and, given her track record, she is odds-on to realise it. So what is the next five-year target?

"I would like us to be well established against competitors such as Neal's Yard, with a thriving export market as well. I want Potions & Possibilities to be known as a niche, natural, genuine Made in England brand that people can trust. The Academy is very much part of that credibility – it shows people I don't just make a massage oil, I use it."

And she will keep supporting the Buy British campaign, not only to promote the integrity of her own products but also to protect the UK economy.

"When you buy jeans for £3, only 60p goes to the Treasury in tax. When you buy a pair for £30, that's £6 going into the system. The more VAT gets squashed down because we're all buying cheaper goods, the more the pressure on you and I who are working because the tax has to come from somewhere to pay for hospitals and schools," she explains.

"I don't think people realise the knock-on effect that this trading down is having. We all want better schools and hospitals, but where is the money going to come from?"

It's an argument that may soon line up alongside trade miles and fair trade to turn the tide against cheap imports.

## BUSINESS FINANCE

## Doors open as others close

Peter Harrup from the Ipswich office of PKF says that, despite Government efforts to prevent avoidance, you are still allowed to save tax



AS we near the end of the tax year, wise individuals who avoided the January rush and have already submitted their tax returns for 2006-07 will now be turning their attention to the tax saving plans they want to put in place before April 6.

But with the Government's current obsession with stopping tax avoidance are you still allowed to?

For straightforward planning, the answer is yes. Now is the time to start thinking about using up the basic tax reliefs for 2007-08 – your annual capital gains exemption, ISA investment limits, making pension contributions or, for the more adventurous, investing in a Venture Capital Trust or shares qualifying for the Enterprise Investment Scheme.

The option to make larger personal pension contributions for this year is particularly important as, with the reduction in the basic rate of income tax from April onwards, amounts going into the fund will only be topped up with a 20% tax credit, rather than the 22% addition to contributions made now. Higher rate taxpayers will still get 40% tax relief on contributions but the extra 2% will come back to them as tax relief rather than building up in their pension funds.

Beyond the basics, planning to save tax is becoming more challenging. Despite the Chancellor of the Exchequer's claims that he wants to offer more tax certainty for taxpayers, moving the goal posts by constantly changing the tax rules can put off many from even trying to save tax.

For example, under anti-avoidance rules effective from December 6, 2006, realising paper losses on shares to offset them against capital gains may no longer be effective if your motive is to save tax. Similarly, transferring assets between spouses so that losses can be crystallised to reduce a Capital Gains Tax (CGT) charge may not be effective. Oddly, current HMRC guidance on these rules is more lenient than the law but, given that it does change its guidance from time to time, will it remain so?

As I write this, we are still awaiting the transitional rules that may soften the impact of the proposed abolition of CGT taper relief at midnight on April 5. However, we do already know that some people may save tax by selling assets before the end of the tax year and claiming CGT reliefs before they are abolished. Others may save tax by delaying sales until the 2008-09 tax year, so that any gain is taxed at 18% rather than 20% or 40%. Detailed calculations will often be needed to establish which option is the most tax efficient.

The constant change in the world of personal tax has closed some planning doors, but others have opened. Saving tax legally is still possible and, indeed, the Government offers tax incentives to encourage investment in new businesses in selected industries or areas.

It is just that this year's Government sponsored tax incentive can easily become seen as a tool for "unacceptable tax avoidance" with the passing of time or a change of Chancellor. To save tax in the long run, you have to keep on the ball, take expert advice and update your plans regularly.

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