

HOW WELL ARE YOU PROTECTING YOUR BUSINESS FROM AN INSIDER THREAT?



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PROTECTING YOUR BUSINESS FROM AN INSIDER THREAT

When employees are leaving a business there can be a temptation for them to:

- take confidential information belonging to their employer with them;
- poach key clients and customers; and/or
- entice their colleagues to leave too.

Sometimes an employee or former employee does this to set up in competition with their former employer, to progress their career elsewhere, or to cause damage and disruption to their former employer's business. Businesses are most at risk at times of change – restructuring, reorganisation or acquisitions.

Often employees will have access to private or personal data, representing a further risk to an employer of regulatory enforcement or litigation if that data is misused or if unlawful, unauthorised or inadvertent disclosure occurs.

Our Business Protection webinar will provide an overview of the practical steps that employers/business owners can take to protect themselves from an insider threat by reference to the latest case law. Here is a taster of what we will cover.

The information contained in this Toolkit does not constitute legal advice. The facts of each case will be different and depend on the precise wording of the contractual obligations in question and the acts of the employee. Please do get in touch if you have specific queries arising out of any of the issues mentioned in this note.

COVID-19: INCREASED THREAT

74% OF COMPANY DIRECTORS SAY THAT HOME WORKING IS HERE TO STAY¹

As a consequence of Covid-19, more employees are working from home than ever and are likely to do so for the foreseeable future. A large number of businesses are also making fundamental changes to the way they operate and even what they look like. Restructuring and acquisitions are on the rise. This environment makes business protection more relevant than ever:

- when working remotely employees can feel more disconnected from their employers and loyalty can diminish, especially if there is a risk of business instability or redundancies. Creating risk that employees will begin to consider alternative options.
- starting up a new competitor business is easier in a virtual environment and can be done in an employer's time due to the lack of physical oversight.
- there is a greater risk of misuse and/or theft of confidential information. Employers working from home can be printing, using or taking copies of employer confidential information easily unless the right controls are in place.

1 [*Home working is here to stay*](#)

THREE STEPS TO PROTECTING YOUR BUSINESS FROM AN INSIDER THREAT

1

PROACTIVELY PROTECT

- Contractual Protections
- Insurance
- IT Systems

2

IDENTIFY RISKS EARLY

- People management
- Exit Procedures
- IT Systems

3

ENFORCEMENT

- Undertakings
- Injunctions
- Damages Claim



STAGE 1

PROACTIVELY PROTECT

CONTRACTUAL PROTECTIONS

**1. EXPRESS
CONFIDENTIALITY
OBLIGATIONS THAT WILL
SURVIVE TERMINATION
OF THE RELATIONSHIP**

**2. ADEQUATE AND
ENFORCEABLE
RESTRICTIVE COVENANTS**

**3. CONSISTENT AND
SUPPORTIVE POLICIES
AND PROCEDURES.
SUCH AS: IT, SOCIAL
MEDIA, ACCEPTABLE USE
AND BYOD POLICIES**

**4. WELL-DESIGNED
BONUS AND INCENTIVE
SCHEMES**

RECENT CASE LAW

- [Supreme Court applies “Blue Pencil” test](#)
- [Enforceability of Restrictive Covenants in Shareholder Agreements- Recent Guidance](#)
- [Argus Media Limited v Mr Mounir Halim](#)



STAGE 1

PROACTIVELY PROTECT

INSURANCE

1. BUSINESS
INTERRUPTION
INSURANCE

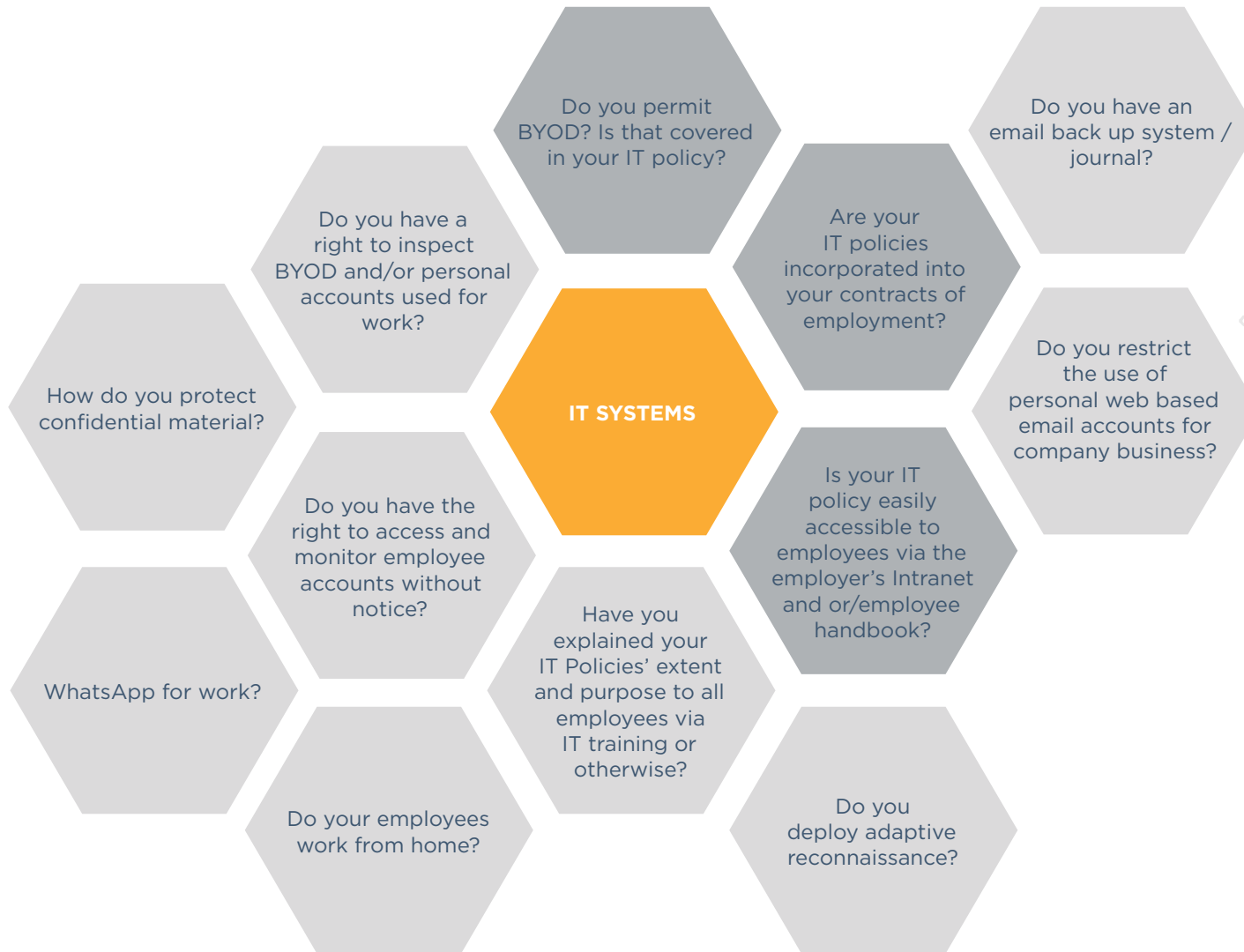
2. DIRECTORS AND
OFFICERS LIABILITY
INSURANCE

3. BESPOKE INSURANCE



STAGE 1

PROACTIVELY PROTECT



STAGE 2

IDENTIFY RISKS EARLY

THE EARLY INDICATORS OF AN INSIDER THREAT

**1. EXIT PROCEDURE -
RESIGNATION OR THREAT
OF RESIGNATION**

**2. PEOPLE MANAGEMENT
- EARS ON THE GROUND**

**3. IT SYSTEMS - UNUSUAL
ACTIVITY DETECTED**



STAGE 2

IDENTIFY RISKS EARLY



STAGE 3

ENFORCEMENT

WHO TO BRING A CLAIM AGAINST?

1. FORMER EMPLOYEES

2. CURRENT EMPLOYEES

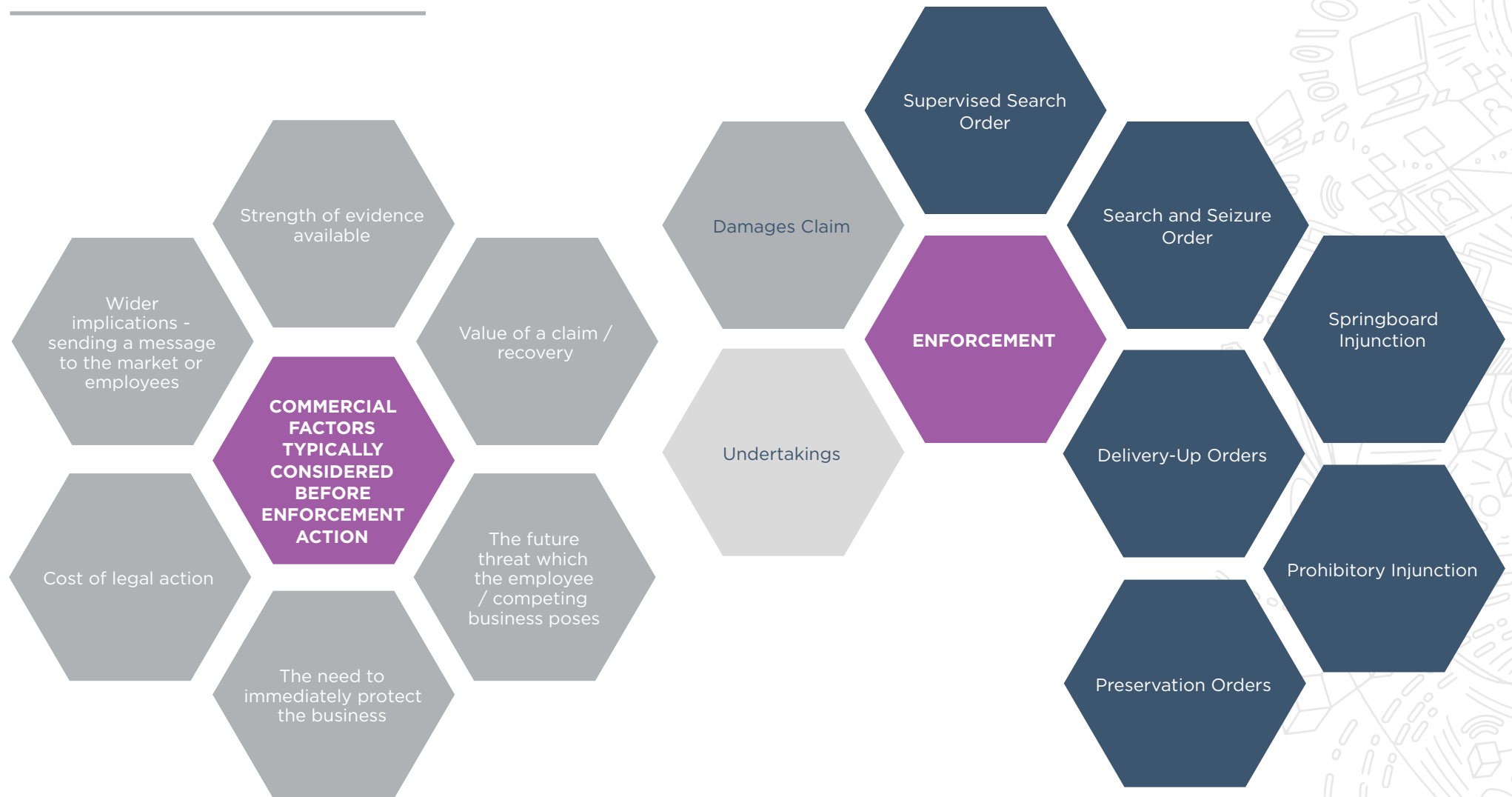
3. NEW EMPLOYER/
THIRD PARTY

RECENT CASE LAW

- [Legal Advice- A “Get out of Jail Free” Card?](#)
- [Recent Guidance on injunctions enforcing non-compete covenants](#)



STAGE 3 ENFORCEMENT



CASE STUDIES

Acting for a healthcare provider regarding an employees' disclosure of private information and personal data, including handling multiple claims intimated by affected data subjects and regulatory investigation.

Advising a global IT software security business to protect it against the poaching of key employees across multiple jurisdictions.

Acting for a manufacturing distributor against four senior employees and their new employer to protect against the theft of confidential information and unlawful competition by securing an order for delivery up of confidential information and the provision of affidavits by the executives as to how it had been used.

Acting for a firm of independent financial advisers to prevent an unlawful headstart by two former owners of the business who attempted to set up in competition using confidential information. A non-solicitation order preventing the former owners from contacting high value clients was secured.

Acting for an engineering company to secure undertakings to guarantee compliance with non-compete restrictive covenants in an employment contract when an employee resigned to join a competitor and securing recovery of the legal costs incurred by the employer.

Advising a multinational producer of dairy products on how to protect its confidential information, after an employee who was put at risk of redundancy, unlawfully downloaded thousands of files of confidential information. Securing return of confidential information from employee.



KEY CONTACTS

Addleshaw Goddard is recognised as the market-leading Business Protection Practice. Our team's work focuses on helping employers to manage the risks stemming from employees and third parties who pose a threat to their legitimate interests, by taking action to enforce the employer's rights and protect confidential information. Practical advice and solutions are at the forefront of what we do, helping employers to adapt quickly to new threats and changes in the business landscape.



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**PROBLEMS. POSSIBILITIES.
COMPLEXITY. CLARITY.
OBSTACLES. OPPORTUNITIES.
THE DIFFERENCE IS IMAGINATION.**

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