

# WinckworthSherwood

## Significant restrictive covenant Supreme Court decision will be welcome news for employers

The long-awaited restrictive covenant decision in *Tillman v Egon Zehnder* was handed down by the Supreme Court this morning.

Restrictive covenants prevent an employee from competing with their former employer for a limited period of time, provided the employer can establish they have a legitimate business interest which should be protected.

The Tillman case focussed on the drafting of a non-compete provision. The clause in question prohibited the former employee being 'interested in' any competing business. This was held to potentially include the former employee holding shares in another business (whether or not this shareholding was significant). The Court of Appeal in Tillman took a very narrow approach to the drafting of this provision and held that the entire covenant was unenforceable as the clause was too widely drafted. The fact that the former employee had no intention of holding shares was held not to be relevant.

This was an unusually restrictive approach and good news for departing employees, not such good news for the former employer.

The Supreme Court today has decided that the wording 'interested in' could be severed which meant that the covenant went no wider than was necessary to protect the legitimate interests of the employer. This gives comfort to employers that even if their covenants are too widely drafted to be enforceable, the Court will still uphold the covenants if it can delete the wording which is the cause for the concern.

However, there could be a 'sting in the tail' for employers on costs in cases of unclear drafting.

Employers are likely to celebrate this decision and employees will have less scope to argue they are not bound by contractual restrictions going forward.

### For further information, please contact:



**BETTINA BENDER**  
Partner, Employment  
T: 020 7593 5045  
E: [bbender@wslaw.co.uk](mailto:bbender@wslaw.co.uk)



**LOUISE LAWRENCE**  
Partner, Employment  
T: 020 7593 5082  
E: [llawrence@wslaw.co.uk](mailto:llawrence@wslaw.co.uk)



**DANIEL PARKER**  
Solicitor, Employment  
T: 020 3735 1938  
E: [dparker@wslaw.co.uk](mailto:dparker@wslaw.co.uk)