Training fee clawback scheme was an unreasonable restraint of trade and unenforceable

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Geeks Limited v Watts [2026] EWCA Civ 889

Introduction

1. This case concerns the enforceability of a "training fee clawback scheme" in the defendant's, Mr Watts', contract of employment. It raises issues of significance about restraint of trade in the context of contracts of employment[1].

Background facts

2. Mr Watts entered into 2 agreements with Geeks Ltd ('Geeks'). The 1st agreement was the Employment Contract by which he was employed by Geeks, an IT services company, as a trainee quality assurance ('QA') engineer / tester. His starting salary was £18,000 for his 1st year of employment, increasing to £20,000 and £22,000 per annum in years 2 and 3 respectively. Material clauses of the Employment Contract were the section 'Termination of Employment' which stated: *"Upon termination of employment, the Company however maintains the right to recover the cost of any formal training course or conferences that you attend or undertake at the Company's expense in the 18 months preceding the termination of your employment. The Company will pay for such formal training course or conferences as a career development loan. Should your employment come to an end other than by means of a Company-instigated reduction in workforce you remain liable for the return to the Company of fees incurred for such training course or conference, and the cost of any course materials which have been incurred by the Company as a consequence of your participation in the training courses or conferences. This will be calculated at the full*

[1] Paragraph 1 of the Judgment.

cost to the Company less 1/18th for each full month following the completion of the course or training."; and the section which dealt with 'Restrictions following Termination of Employment' which contained restrictive covenants of a common kind, such as a restriction on employment during a period of 2 years with certain of Geeks' clients.

3. The 2nd agreement was the 'Contract of Training Investment' (the 'Training Contract'). The Training Contract stated that Mr Watts' position at Geeks would start with a 6-month training period which covered *'[l]earning the technologies, methods, technical architectures, technical leadership and mentoring practices'*. The Training Contract stated that: '*You have agreed to meet the Training Cost Debt that is the estimated financial cost of supporting you in this position'*. The total Training Cost Debt was £8,108. The Training Contract further stated that the debt would be written off and deemed repaid at the rate of 1/18th per month of employment after the first 12 months until it reached zero, but that if Mr Watts' employment ended before the debt was fully repaid, the outstanding balance would become repayable in monthly instalments. The Training Contract further stated that '*for avoidance of doubt'* Mr Watts would not be in breach of contract if he decided not to work for Geeks after any period of time and that nothing in the Training Contract was intended to restrict him from pursuing other employment.

4. Approximately 8 months after his Employment Contract with Geeks had begun, Mr Watts resigned to take up employment as a QA at a different firm for which he would be paid £30,000 per annum.

The county court proceedings

5. Geeks commenced proceedings against Mr Watts in the county court to recover the £8,108, alleging that he had breached the clawback provisions. Mr Watts filed a Defence in which he alleged that Geeks could not enforce the relevant terms of the Training Contract as they constituted an unlawful restraint of trade and, at trial, further alleging that the provisions went further than was reasonably necessary to protect any legitimate business interest of Geeks.

6. The deputy District Judge gave judgment for Geeks. He held that although the clawback provisions amounted to a restraint of trade, they protected a legitimate

interest in retaining employees that it has invested time in money and training and were not unreasonable. That decision was upheld by a Circuit Judge on appeal[2].

7. Mr Watts appealed to the Court of Appeal, challenging the conclusions that Geeks Ltd had a legitimate interest and that the provisions went no further than reasonably necessary. The Court of Appeal also permitted the company to argue that the provisions were not a restraint of trade at all, as it was a pure point of law closely connected to Mr Watts' grounds of appeal and it was desirable that this important point of principle should be resolved.

Permission to appeal to the Court of Appeal sought and granted on 2 grounds

8. Mr Watts sought and was granted permission to appeal to the Court of Appeal on 2 grounds:
   (1) The Circuit Judge was wrong to hold that Geeks had a legitimate interest for the purpose of justifying the restraint of trade.
   (2) The Circuit Judge was wrong in holding that the restraint went no further than reasonably necessary to protect those interests[3].

9. Geeks filed a Respondent's Notice asking the Court to uphold the judgments below on the additional ground that the clawback provisions did not amount to a restraint of trade at all[4].

Judgment of the Court of Appeal

10. The parties' cases were summarised by the Court of Appeal as follows. Mr Watts said that the clawback provisions were in restraint of trade and either a) did not protect any legitimate interest of the company, alternatively b) went further than reasonably necessary to protect such legitimate interest as there may have been. Geeks' primary case (pursuant to the Respondent's Notice) was that the clawback provisions were not in restraint of trade at all and were simply enforceable as a debt. Their alternative case was that the company had a legitimate interest in protecting its investment in training

[2] Paragraphs 19 to 36 of the Judgment.
[3] Paragraphs 37 and 38 of the Judgment.
[4] Paragraph 39 of the Judgment.

Mr Watts, and the clauses went no further than reasonably necessary to protect that interest[5].

11. It was common ground that the enforceability of the clawback provisions must be considered as matters stood at the time that the Training Contract and Employment Contract were signed[6].

12. Whilst the Court set out a convenient statement of the principles of restraint of trade from the judgment of Carr LJ (as she then was) in **Quantum Actuarial LLP v Quantum Advisory Ltd [2021] EWCA Civ 227** at [60] (emphasising that this was not an employment case), it emphasised that the application of the doctrine depends less on legal niceties or theoretical possibilities than on the practical effect of the restraint in hampering the freedom to trade: it is a question of substance, not form. It is not an answer to the applicability of the restraint of trade doctrine simply to say that the training clauses do not prevent any employee from leaving. No clause ever could do so, by virtue of both of the common law rule against specific performance of an employment contract against the employee and the statutory prohibition in the Trade Union and Labour Relations (Consolidation) Act 1992 s 238 on injunctions requiring an employee to attend for work. Rather the question is whether, viewed as it must be at the time of the contract being made, it will or may have the effect of hampering the employee's ability to trade freely. It is right to say that most of the traditional authorities concern express restrictions on where and / or for whom the employee can work on termination of the contract, what clients or customers he can or cannot deal with or solicit; whether he can entice fellow employees to leave and so forth. But financial disincentives are not exempt as a class from scrutiny under the restraint of trade doctrine[7].

13. The Court was in no doubt that a clause in an employment contract (or, as here a 2nd document forming part of the terms and conditions of an individual's employment), which provides that in specified circumstances all or part of the salary which he has been paid may be repayable to the employer, engages the restraint of trade doctrine. If it were otherwise, then a clause stating "if you leave within 12 months you must repay us your entire gross salary" would presumably be enforceable as a debt without any enquiry into its reasonableness[8].

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[5] Paragraph 44 of the Judgment.
[6] Paragraph 45 of the Judgment.
[7] Paragraphs 48 and 49 of the Judgment.
[8] Paragraph 54 of the Judgment.

14. The Court proceeded on the basis that the legitimate interest of 'maintaining a stable, trained workforce' was present in this case[9].

15. If, as the Court thought, the Training Contract repayment provisions plainly engaged the restraint of trade doctrine; and on the assumption that they may be justified if they went no further than reasonably necessary to protect the legitimate interest of Geeks in maintaining a stable trained workforce, the final stage was to assess whether that test was satisfied[10].

16. The Court held that there were 2 reasons which led it to the conclusion that the repayment provisions were unreasonable and unenforceable. The 1st was that the provisions applied whatever the reasons for Mr Watts' departure (with the single exception of redundancy); whether he was dismissed (which could have been on one week's notice) or leaves voluntarily; and irrespective of whether he left for a job in the technology sector or elsewhere, with a salary increase or none, or for no job at all[11].

17. The 2nd reason involved standing back and looking at the broader picture. No doubt starter jobs, such as that which Mr Watts obtained at Geeks, are highly sought after and, as in the not so far off days of widespread unpaid internships, many prospective employees, if their personal circumstances permitted it, would be willing to work for nothing. The effect of the clawback provisions was that in the early months of his employment Mr Watts, who was paid not very much more than what was then the level of the national minimum wage, was reduced in retrospect to the equivalent of an unpaid intern albeit with a loan repayable over a period. The Court could not accept that these repayment provisions went no further than reasonably necessary to protect the legitimate interests of Geeks in maintaining the stability of their trained workforce[12].

18. Consequently, the Court allowed Mr Watts' appeal and set aside the decisions of the county court in Geeks' favour[13].

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[9] Paragraph 65 of the Judgment.
[10] Paragraph 66 of the Judgment.
[11] Paragraph 69 of the Judgment.
[12] Paragraph 70 of the Judgment.
[13] Paragraph 71 of the Judgment.

Comment

19. It is important to note that this case does not set any precedent that training costs clawback clauses are not enforceable; rather, it makes it clear that such clauses will need to be carefully drafted to show that repayment is properly linked to circumstances which justify the investment made, and demonstrate a real connection between the sums repayable and the actual loss made. Clauses which seek to clawback significant portions of a low-salaried employee's wages could well fall foul of the prohibition against restraint of trade.

20. It is also important to make clear that this judgment does not negate or invalidate an employer's decision to operate a bonus scheme which may include a clause in employees' contracts requiring the bonus to be repaid to the employer in certain circumstances i.e. if the employee's employment is terminated, or the employee tenders his or her resignation, within a certain specified period after the bonus is paid. Such 'clawback' provisions are designed to promote loyalty and encourage employee retention. However, an employee seeking to avoid the consequences of such a provision may try to argue that it operates as a penalty clause or an unlawful restraint of trade. In **Tullett Prebon plc and ors v BGC Brokers LP and ors [2010] IRLR 648, QBD**, the High Court held that provisions requiring employees to repay certain signing-on payments and loyalty bonuses if they resigned within a certain period were not in restraint of trade as they did not restrict the employees' activities after they left. They were also not penalty clauses as the requirement to repay the bonuses was not dependent on the employees breaching their contracts. The employees were given large sums of money that they could keep if they remained employed for a minimum period but that were repayable if they did not[14].

21. The judgment in **Tullett Prebon** was followed in **Steel v Spencer Road LLP (t/a The Omerta Group) [2024] ICR 137, ChD**, which was strongly relied on by Geeks in argument before the Court of Appeal[15]. **Steel** concerned an annual discretionary bonus which was calculated and paid at the end of the calendar year but was repayable if the employee left or gave notice to leave within the following 3 months. The High Court held that such bonus clawback provisions did not constitute a restraint of trade, even though the provisions operated as a disincentive to the employee resigning. In **Geeks Ltd v Watt**, the Court held that while the result in **Steel** was no doubt correct,

[14] IDS Employment Law Handbooks, Volume 3 – Contracts of Employment, Chapter 7 – Employee competition and confidentiality, Clawback clauses, paragraphs 7.203 to 7.204.a
[15] Paragraph 55.

the case does not support the proposition that the restraint of trade doctrine is only applicable to contractual provisions which seek directly to limit the employee's activities after leaving employment. Rather the doctrine was plainly engaged in the instant case where the clawback provisions constituted an indirect restraint when they came into effect some time after Mr Watts left Geeks.

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