

---

# Directors: No implied term to provide documents containing confidential information following termination

*Published 17 December 2014*

In this case the High Court had to decide, as part of an application for summary judgment or strike out of claims, whether a director was subject to an implied term requiring delivery up of confidential documents after termination of his appointment.

## Facts

Mr Judge had been a non-executive director of Eurasian Natural Resources Corporation Limited. His service agreement provided that all information acquired during his appointment was confidential and should not be disclosed to third parties or used for any reason other than in the interests of the company, either during the appointment or following termination, without prior clearance; but included no express term requiring him to deliver up confidential documents on termination.

The company became concerned that confidential information about it was being leaked to the press, and concluded that Mr Judge had done this. The company therefore asked Mr Judge to give back to them any confidential information he held and not to disseminate it any further. Mr Judge refused and the company terminated his appointment. The company brought proceedings in the High Court against Mr Judge, alleging he was in breach of his fiduciary and contractual duties. It sought delivery up of the confidential information and an injunction to prevent Mr Judge using it.

The High Court found there was no implied term requiring delivery up of confidential documents after termination of the appointment. Had it been the "obvious but unexpressed intention of the parties", one would have expected it to be incorporated into the contract. Moreover, the court had been shown no legal authority, code of practice, guidance or other evidence that would suggest that such a requirement was the norm for directorships. There would be difficulties in complying with such a duty, especially for individuals who took on multiple directorships. Such difficulties would be particularly acute where company documents had been sent to a number of email addresses, some personal to the director and others maintained by companies with which the director was associated. It was difficult to see how business efficacy would be achieved by an implied term to deliver up, which could involve a considerable amount of work, to very little purpose. It followed that there was no reasonable prospect of a claim for relief based on an implied term requiring delivery up succeeding, and that part of the claim was struck out. There was also no wider obligation of confidence (embracing delivery-up) arising from Mr Judge's fiduciary duties.

## What this means for employers

This case is a reminder that where parties to a contract have negotiated and agreed the terms governing how confidential information may be used, their respective rights and obligations are then governed by that contract. If a company wishes a director to agree they will deliver up any confidential information on the termination of their appointment, this needs to be an express term of the agreement. The reality is that this may be a difficult clause to enforce, given the potential difficulties in complying with the clause mentioned above, but having an express clause makes it more likely an order will be granted.

## Authors



**William Allison**

*London - Walbrook*

[wallison@dacbeachcroft.com](mailto:wallison@dacbeachcroft.com)

