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Avoiding the Abu Qatada situation

Possibly to the embarrassment of the Home Office, the Abu Qatada deportation case provides a useful reminder of the ambiguities inherent in many commonly-used expressions of time in legal documents.

Radical cleric Abu Qatada made a final appeal to the European Court of Human Rights against his deportation from the UK. A question arose on whether his appeal was filed too late. This centred on the meaning of "from" in the wording of the European Convention on Human Rights, which states that an appeal may be made "within a period of three months from the date of the judgment…".

The Home Office publicly insisted that the 3-month period began on 17 January (the date of the judgment) and expired at midnight on 16 April. Abu Qatada's lawyers argued that it began on 18 January, thus allowing them to lodge their appeal on 17 April. Ultimately, the Court decided that the appeal _was_ filed in time, although it rejected it on the merits of the case.

EXPRESSIONS OF TIME

Meanwhile, in the commercial world, here are our top 10 tips for avoiding an argument over the drafting of expressions of time in contracts:

When does a time period end?

1. **The period of a year does not generally end on the anniversary of the start date**. So, a "three-year period beginning on" 1 January 2012 will end on 31 December 2014, not 1 January 2015.

2. Generally speaking, however, **"three years from 1 January 2012" will not include 1 January 2012 itself and so will expire on 1 January 2015.** That said, it is important to look at the whole of the contract and its commercial background. So if there is a clear indication elsewhere in the contract that the

period is intended to start on 1 January 2012 and thus end on 31 December 2014, this is likely to prevail.

3. For clarity's sake, therefore, avoid:

   - **"from", "to" or "until" in expressing time periods** because it is unclear whether the reference dates are included or not. A period of x months/years "commencing on", "beginning with" or "from and including" and "ending on" or "up to and including" will avoid much ambiguity; and

   - **"by" in expressing a deadline**. "On or before" (reference date included) or "before" (reference date excluded) are clearer.

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What's a "day"?

4. A "day" is normally a 24-hour period from midnight to midnight. If in context it should mean something different, you should say so expressly. So, for example, if time as well as date is important in a deadline, you should specify it, e.g. "5 p.m. on 1 January 2012", but watch out for different time zones in multi-jurisdictional contexts.

5. "Midnight" can be ambiguous, as "midnight on 17 January" could be interpreted as 00.00 on 17 January (i.e. the very beginning of that day), or 00.00 on 18 January (i.e. the middle of the night on 17 January). The rules on contractual interpretation require words to be given a purposive meaning, so neither interpretation can be definitively ruled out. One solution is to specify 23.59 or 00.01 on the relevant date to avoid any ambiguity.

6. Unless otherwise stated, weekends and holidays are normally counted in time periods, so if you want to exclude them, you should do so expressly by using "business days" or "working days", but watch out for cross-border differences.

Other common pitfalls

7. The expressions **"at least" or "not less than" x days' notice are usually construed as requiring "clear" days' notice**, i.e. you do not count the date on which the notice is served or the date of the event in respect of which it is given. For example, "at least 7 days' notice to terminate" means that if notice is given on 1 February, termination cannot take place until 9 February (since the 7 clear days' notice runs from 2 February to 8 February inclusive).

8. "Forthwith" can be affected by context and may in certain circumstances be construed as "within a reasonable time" or "as soon as practicable". It is preferable either to stipulate a specific time period or use **"immediately"**, **"instantaneously"** or **"directly".**

9. Take care with formulations such as "once a year" or "annually". For example, if a counterparty is obliged to do something "once a year", it could do so on 1 January in the first year and 31 December in the second year, a gap of almost 2 years. Instead, it is preferable to specify a particular date during the year or a maximum period which can elapse between compliance in one year and compliance the next. "Year" should be defined and used consistently to mean a calendar year, financial year or anniversary date.

Non-contractual situations

10. Finally, bear in mind also that, **in non-contractual contexts, such as time limits in relation to litigation, case law or statute may lay down different rules** about when time starts to run/expire.

FOR FURTHER INFORMATION, PLEASE CONTACT

10 Snow Hill
London EC1A 2AL
T: +44 (0)20 7295 3000
F: +44 (0)20 7295 3500
www.traverssmith.com

Richard Brown
Partner, Commercial, IP and Technology

E: richard.brown@traverssmith.com
T: +44 (0)20 7295 3254

Anthony Foster
Partner, Corporate Finance Group

E: anthony.foster@traverssmith.com
T: +44 (0)20 7295 3394