DIY
Restraint Checklist

This checklist lets you sanity-check your employment contracts and see whether the restraints you're relying on would actually stand up in court (see disclaimer).

Restrictive covenants are only enforceable if they go **no further than reasonably necessary to protect legitimate business interests.** The courts often refuse to enforce clauses that are too broad or poorly drafted, so these checks matter.

1. General Red Flags

No signed contract.
You need to show that the contract has been agreed/applies. This may be possible without a signed contract, but why risk it?

No legitimate business interest stated.
(e.g., protection of clients, confidential information, or workforce).
Contracts should make clear what the company is seeking to protect.

Unreasonably broad restraints.
Restrictive covenants are only enforceable if they go no further than reasonably necessary to protect legitimate business interests.

The same covenant duration used for all staff.
(e.g., 12 months for both junior & senior roles).
Durations must reflect the employee's role and influence.

Promoted staff left on old contracts
Reasonableness is assessed at the time the contract is signed, so when someone is promoted get a new contract in place.

No tailoring to the specific position.
Cut and paste clauses across the business are a big red flag.

Restraints in separate document.
Properly incorporated, a separate agreement/schedule can work, but best practice is a single agreement and why risk it?

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2. Primary Considerations Across All Restrictive Covenants

Restrictive covenants are only enforceable if they go **no further than reasonably necessary to protect legitimate business interests.** Courts strike out clauses that are too broad or poorly drafted, so these checks matter.

Unreasonably broad restraints

Always check that the scope of any restraints sufficiently narrow, e.g.:

- Is the **duration appropriate** for the role/seniority?
- Is the **territory defined and sensible** (e.g. not global if the job was local)?
- Is the scope limited to those clients, candidates etc that the employee dealt with in their **last 12 months or less** (i.e. not somebody they might have dealt with 7 years ago)?

Garden Leave

- Best practice is to **have a clear right to place employee on Garden Leave**; and
- Consider **setting off Garden Leave period against restraints duration** (the courts often consider whether the combined duration of garden leave + post restraint duration is reasonable or excessive)?

3. Additional considerations for specific restraint types

Non-Competition

Non competes are the highest risk and most commonly struck out by the courts, especially consider the following:

- Does it restrict working for a competitor **clearly limited by sector and service line?**
- Does it apply only to the **business areas/functions the employee worked in?**

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Non-Competition (Continued)

- Is the **duration six months or less** for most roles (longer will need good reason)?
- Avoid applying to **junior staff** with no strategic influence.
- Avoid applying to employees without **access to genuinely sensitive business information.**
- Allowing the employee to hold a **small stake in a publicly listed competitor** (e.g. in their pension).

Non Solicitation / Non Dealing

These need to be focused on the individual not the broader business, consider:

- Are “client”, “Candidate”, and/or “contractor” etc defined sensibly (e.g., **clients the employee had material dealings with in their last 12 months**)?
- Does it avoid covering **all clients of the group,** including those the employee had no material dealings with (knowledge of may be sufficient in some cases)?
- There should be separate **non-solicitation & non-dealing covenants** (this helps avoid the argument that the client proactively approached the former employee which is often argued in "non-solicit" clauses, because restrained by "non-deal" anyway).
- For non solicitation: does it cover only **active outreach or engagement/facilitation**, not passive contact?

Non Poaching (Employees)

Courts do not like people poaching employees, but it is still sensible to focus the restriction, consider;

- Is the restriction limited to **staff the employee worked with or managed** (often difficult to justify in relation to other staff)?
- Is the duration **12 months** or less (beyond this is usually difficult to justify)?
- Does it avoid covering **all staff company wide**, including junior/unrelated roles (overreach & no legitimate business interest risk enforceability)?

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Supplier interference Clauses

These also need to be focused on the individual's potential impact/risk to your business, consider:

- Does it restrict dealings only with suppliers the **employee had material dealings with**?
- Is it limited to interfering in such a way that is **to the detriment of the company**?
- Does it avoid restricting **essential suppliers** that all businesses must use (the courts dislike restrictions that prevent a business from trading normally)?

Confidential Information

Businesses need to protect their information, but think about what you genuinely need to protect (client info, databases etc.) and how it is stored, consider the following:

- Is "confidential information" **clearly defined**?
- Avoid definition including information already public domain (other than by employee breach).
- Must the employee return/delete all confidential information on exit?
- What does the contract say about social media contacts?
- Does the clause **survive termination**?
- Avoid limiting the employee's **statutory rights** (e.g. public interest disclosures and/or whistleblowing).

4. Further/Technical Drafting Considerations

- **Restrictions overlap or contradict each other**
  → A sign clauses haven't been well drafted.
- **No definition of key terms or poorly drafted** such as "client", "competitor", "material interest", "confidential information", "group company".
  → Unclear definitions often make clauses unenforceable.

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4. Further/Technical Drafting Considerations (continued)

- **Restrictions overlap or contradict each other**
  → A sign clauses haven't been well drafted.
- **No definition of key terms or poorly drafted** such as "client", "competitor", "material interest", "confidential information", "group company".
  → Unclear definitions often make clauses unenforceable.
- Is there a **severance / blue pencil clause** so courts can remove unfair parts?
  → Without this, a minor drafting flaw can invalidate the whole covenant.
- Are job titles, dates, and cross references **accurate and consistent**?
- Check for **typos & inconsistencies**.
- Are **outdated references** (names, legislation, group entities) removed?
- Avoid **ambiguous cross references** (e.g., "as defined below" when the definition is missing)
- Avoid **capitalised undefined terms** (e.g. words with capital letter, but no accompanying definition).
- Are there **duplicated or conflicting covenants**?
- Must the employee **notify their new employer** of restrictions?
- Does the contract allow the company to seek **injunctive relief**?

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