

AUTUMN 2014

MOSS

S O L I C I T O R S

AUTUMN LEGAL REVIEW

Your legal bulletin on news & views from Moss Solicitors LLP

NEW FINANCIAL PLANNER JOINS WOODGATE



Woodgate Financial Planning, an associated business of Moss Solicitors is experiencing an increased demand for their services as people continue to require professional financial advice. This has enabled them to increase their Advisers, with the appointment of Lee Kirven (pictured above) to the Financial Planning team.

Commenting on the appointment, Woodgate's Director, David Wright said; "Lee's appointment further strengthens our offering to the Clients of Moss Solicitors. We pride ourselves on knowing our Clients and by working closely with them we quickly get to understand their requirements and aspirations. Lee's appointment will enhance these key relationships."

TIME TO MAKE YOUR WILL?



There has recently been much publicity regarding the change to the intestacy rules brought in by the Inheritance and Trustees Powers Act 2014. The Act alters the way estates will be distributed where the deceased did not leave a Will.

Whilst the intestacy provisions are simplified by the Act they do highlight the fact that they do not always achieve the best outcome for families, particularly in modern society. For example there is no provision made under the intestacy rules for cohabitantes or stepchildren who, to receive what they might be entitled to expect from a deceased's

estate, would need to make a claim in that estate, which is of course a stressful thing to do at a time when the claimant is bereaved and upset.

The change in the law, and the fact the government can change the law at any time, only goes to further highlight the need for all of us to have a Will in place reflecting our true wishes. The fact is many people still do not have a Will and therefore take the risk that their estates on death will not pass to those for whom they care most.

Therefore whether you have not made your Will yet or whether your Will needs reviewing please contact our specialist team who will be delighted to assist you.

Please feel free to contact:

Katrina Greenwell

(k.greenwell@moss-solicitors.co.uk) or

Anthony Benskin

(a.benskin@moss-solicitors.co.uk) or

Anne McGuinness

*(a.mcguinness@moss-solicitors.co.uk) or
telephone (01509) 217770.*

RESTRICTION ON GOODS SOLD BREACHES COMPETITION LAW

It is not uncommon for a landlord to want to preserve a 'balance' among the tenants trading in a commercial development and therefore to restrict the number of tenants in a particular trade.

A hidden danger inherent in this approach became evident recently when competition law was used to stop a landlord from enforcing such a policy.

The case arose when a tenant's lease came up for renewal. The landlord refused to renew it on the ground that the tenant would be selling alcohol and staple goods in the neighbourhood when there was a nearby shop selling the same sorts of products.

The landlord argued that the area needed a variety of shops selling different goods and the tenant argued that

the landlord's policy had the effect of reducing competition.

The County Court agreed that the landlord's attempt to restrict the range of goods being sold was in breach of competition law.

For advice on ensuring that all your legal agreements comply with competition law, contact us.

NEW MINIMUM WAGE RATES – A REMINDER



Employers are reminded that the following changes to the National Minimum Wage (NMW) rates came into effect on 1 October 2014:

- the adult NMW rate increased from £6.31 to £6.50 per hour;
- the NMW rate for workers aged 18 to 20 increased from £5.03 to £5.13 per hour;
- the NMW rate for 16- and 17-year-olds increased from £3.72 to £3.79 per hour; and
- the apprentice rate of the NMW, which applies to apprentices under 19 or over 19 and in the first year of their apprenticeship, increased from £2.68 to £2.73 per hour. The accommodation offset increased from £4.91 to £5.08 per day.

In recommending the rates that will apply from 1 October 2015, the Low Pay Commission (LPC) has been asked to consider whether any changes can be made to the apprentice NMW rate – in particular, whether the structure and level should continue to be applied to all levels of apprenticeship, including higher levels. In addition, the LPC will review the conditions that need to be in place to allow the value of the NMW to increase in real terms and assess whether such increases can be afforded at the current time.

COMPLEX DIVORCES TO BE MADE SIMPLER?

All too often, the wrangling over the financial arrangements on divorce turns out to be lengthy, expensive and a cause of anxiety and anger.

In order to reduce these negative aspects, Mr Justice Mostyn has released a statement outlining procedures designed to enhance efficiency in the disposal of financial remedy cases to be heard by a High Court judge.

The changes include a requirement that a 'pre-trial review' be held before the allocated trial judge (unless this is completely impracticable) approximately four weeks before the final hearing.

Among a number of other requirements is one that stipulates that these reviews contain only evidence (not argument) relating to the parties' financial resources, living standards etc. There is also a requirement that the evidence bundle presented to the Court does not exceed 350 pages.

Since only higher value and more complex cases are allocated to the High Court in the first place, these requirements will pose a tough test in some cases and make it important that information you wish to rely on is well organised and carefully considered for its evidential value.

The proposed changes follow hard upon several 'high net worth'

BEHAVIOUR NEGATES ENTITLEMENT TO SALE PROCEEDS

When the ex-partner of a woman sought a share in the sale proceeds of the house they had lived in before their break-up several years previously, the court had to decide whether or not he had abandoned his interest in the house.

The couple had lived together for several years and bought a property in 1999. It was held in their joint names. They broke up shortly thereafter and the female partner carried on living in the property and paid all the costs, including the mortgage. A declaration of trust had been prepared, but this was unsigned.

The woman suffered from depression, however, and fell into arrears on the mortgage. The property was repossessed in January 2005. When it was sold, there was a surplus of £66,000.

A legal argument arose over how the proceeds should be divided. The woman claimed that she should have the whole of the surplus and her ex-partner argued that he should receive half. She contended that the original intention was to hold the property jointly but he had abandoned his interest in it when he left. He had moved out of the property without leaving her a forwarding address or notifying the bank that held the mortgage. Nor had he made any attempt to discuss the situation with his ex-partner.

The High Court held that he had abandoned his interest in the property, his behaviour clearly showing that his intentions toward his ownership of it had changed.

If you are buying a property with another person, there are a number of ways of protecting your interests. We can advise you on your individual circumstances.



divorce cases in which the costs of litigation have spiralled.

There is no substitute for good quality legal advice at all stages of a marriage break-up. Our family law department is able to provide expert representation in all areas of family law.

FAILURE TO NOTICE FLAW DOES NOT DEFEAT INDEMNITY

An argument over who was responsible for water leaks in an apartment block recently led to an appearance in the Court of Appeal for a contractor and subcontractor.

The contractor had won a contract to design and install the water system for a block of flats, using a 'boosted water' system to ensure the flow of water to the topmost flats was adequate.

This work was subcontracted to another firm. The contractor was warned about a possible danger to the system as a result of surges of pressure and arranged for the subcontractor to install two pressure arrestor valves to prevent surges from causing leaks.

The subcontractor's installation of the valves was defective, and this was not noticed by the contractor when its employees inspected the system.



The contract between the contractor and the subcontractor contained an indemnity clause in which the subcontractor indemnified the contractor for any loss resulting from the default or negligence of the subcontractor.

When a pressure surge subsequently caused a burst pipe, the question arose as to who was liable for the damage caused. At the first hearing, the court decided that the subcontractor was liable under its indemnity.

The subcontractor appealed, arguing that the contractor itself was at fault because it had been negligent when inspecting the system.

The Court of Appeal confirmed the original decision. The indemnity held good because the subcontractor had committed a negligent act which caused the damage. The indemnity clause could not be 'stretched' to mean that it included only defects that would not be visible on inspection by the contractor.

For advice on limiting your risk in any construction contract, contact us.

TIME OFF TO ACCOMPANY A PREGNANT WOMAN TO ANTE-NATAL APPOINTMENTS

From 1 October 2014, an expectant father or the partner (including a same-sex partner) of a pregnant woman is entitled to take unpaid time off work to accompany the woman to up to two of her ante-natal appointments.

The time off is capped at six and a half hours for each appointment.

The Department for Business, Innovation and Skills has produced guidance for employers on the new right in the form of frequently asked questions. This can

be found on the Government website www.gov.uk.

We can advise you to ensure your contracts of employment are compliant with current employment law.

CHANGES TO DIRECTORS' DISQUALIFICATION AND COMPANY OWNERSHIP DISCLOSURE RULES ON THE WAY

The Government plans to make sweeping revisions to the regulations concerning the disqualification of directors.

These will generally operate to make the regime more punitive towards directors whose behaviour is deemed to warrant a penalty.

The changes include the introduction of the ability to ban from being a director of a British company a person who is convicted abroad of a criminal offence or who has an unsatisfactory background (for example, having been a director of foreign companies that failed).

When the behaviour of a director is sufficiently discreditable, the courts will be able to order the director to pay compensation to creditors of the company.

In deference to the increasing complexity of business structures, the time period for commencement of

proceedings to disqualify directors after an insolvency is to be extended from two years to three.



The Government also proposes to take steps to ensure that the opacity attached to the beneficial ownership of UK companies is removed by the creation of a central registry of company beneficial ownership information.

The measures form part of the Small Business, Enterprise and Employment Bill currently before Parliament.

LLP MEMBERS AND PENSIONS AUTO-ENROLMENT

Following the decision of the Supreme Court that a member of a limited liability partnership (LLP) should be considered to be a 'worker'

for employment law purposes, the Pensions Regulator has confirmed that LLP members can be eligible for pensions auto-enrolment.

If you require advice on the employment status of anyone working for you, contact us.

INFORMAL ARRANGEMENTS LAND WOMAN WITH MASSIVE COSTS BILL

A woman who sold her mother's house in order to buy her a more suitable home has been left with a large legal costs bill as a result of her action. Her mother is incapacitated by dementia and unable to look after her own affairs.

The resulting court case shows how important it is for anyone acting on behalf of another person to be scrupulously careful and to take professional advice whenever they have doubts about the appropriateness of any action they intend to take.

The elderly woman is looked after by her daughter and her daughter's husband, and the court praised the care they give her. However, when the arrangements were being made to buy the new property, the woman's son was not fully informed. He was also not aware that his mother's pension income had been diverted into his sister's account.

The daughter eventually made an application to the Court of Protection for legal authority to manage her mother's assets. This brought the previous dealings, and the fact that she had acted without proper legal authority, to the attention of the Court, which found that the arrangements had been made without sufficient regard for:

- i) the financial and emotional vulnerability of the person who lacks capacity; and
- ii) the requirements for formal, and legal, authorisation for the family's actions, specifically in relation to property and financial affairs.



Her brother applied to the Court objecting to her appointment as deputy.

The Court had considerable sympathy for the daughter, and the judge was prepared to accept that she had 'embarked on this project with her mother's best interests at the forefront of her mind'. However, within a short time, 'her own best interests and those of her husband dominated the financial arrangement'.

The Court ruled that the daughter should pay 80% of the costs of the Deputy application to the Court and two thirds of her brother's legal bill. The total legal costs exceeded £70,000.

Informal arrangements to manage the finances of other people can cause considerable difficulty.

For advice on these matters, contact our Private Client Department.

CONVERSION OF CIVIL PARTNERSHIP INTO MARRIAGE WILL NOT REVOKE WILL

It is sensible for a couple to ensure that they have valid wills once they start to cohabit and share their assets.

However, it is regrettably not well known that marriage revokes an existing will (unless the will was specifically made in contemplation of the marriage), so if a couple decide to get married, their existing wills will lapse and they should write new ones. The same has been true for couples entering into a civil

partnership since the Civil Partnership Act 2004 came into effect.

From 10 December 2014, civil partnerships will be able to be converted into marriages under the Marriage (Same Sex Couples) Act 2013 and the marriage will be treated as commencing on the day the civil partnership commenced. However, the Act did not state whether the conversion of a civil partnership into a marriage would revoke an earlier will.

To remedy this situation, legislation is currently before Parliament that will provide that the conversion of a civil partnership into a marriage will not invalidate an earlier will made by a civil partner.

To make sure that your will has exactly the legal consequences you desire or for advice on any aspect of wills and estate planning, contact us.

MOSS

S O L I C I T O R S

80 -81 Woodgate, Loughborough, LE11 2XE
Tel: 01509 217770 Fax: 01509 233698
Email: enquiries@moss-solicitors.co.uk
web: www.moss-solicitors.co.uk

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WOODGATE

F I N A N C I A L P L A N N I N G L T D

an associated business of Moss Solicitors LLP
80 -81 Woodgate, Loughborough, LE11 2XE
Tel: 01509 635467 Fax: 01509 233698
Email: enquiries@woodgatefp.co.uk
web: www.woodgatefp.co.uk

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