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LEGAL REVIEW AUTUMN 2018

Your legal bulletin on news & views from Moss Solicitors LLP

THE LAW SOCIETY AWARD WINNERS

We are delighted to have won the Leicestershire Law Society Small Law Firm of the Year Award 2018. We were joint winners with Josiah Hincks Solicitors.

The award was presented to us at The Law Society Awards Ceremony, a black-tie dinner held at Athena in Leicester, earlier in the year.

The award recognises a significant year of growth for the firm and our commitment to the training and development of our exceptional team of lawyers and administrative staff. In particular, we are proud that many of our solicitors are recognised as specialists in their chosen areas through their memberships to professional organisations, including **Resolution First for Family Law, The Society of Trust and Estate Practitioners** and the **Employment Lawyers Association.**

The firm has also achieved accreditations from The Law Society in the areas of Wills and Probate and Conveyancing. For several years, we have satisfied The Society's demanding criteria to achieve membership of their **Wills and Inheritance Quality Scheme** and the **Conveyancing Quality Scheme**. These accreditations recognise our commitment and investment in those areas.

We have also achieved the **Cyber Essentials** accreditation which reflects the importance that we place on keeping your data safe on our electronic systems.

Moss also plays a very active role in supporting the community, including local events and charities and this was recognised by the judges of the award.

Partners Tim Dunbar and Rita Rathod with the Leicestershire Law Society Small Law Firm of the Year Award 2018

We would like to thank all of our staff for their hard work, dedication and professionalism.

We have been practising for over 100 years from our offices on Woodgate in Loughborough, and more recently from our offices in Coalville and would also like to thank all of our clients for their continued support and loyalty.

This is the third time that we have won this prestigious award in the last 10 years, which reflects our continuing aim to deliver a quality legal service in the heart of our local community.

CYBER ESSENTIALS

Wills & Inheritance Quality

Conveyancing Quality

resolution first for family law

COURT OF APPEAL GIVES GUIDANCE ON TIME LIMITS

Employment cases are subject to tight time limits, and delay in seeking legal advice can result in meritorious claims being dismissed without a hearing. However, in an important decision, the Court of Appeal has underlined the wide and unfettered discretion of Employment Tribunals (ETs) to extend time in deserving cases *(Abertawe Bro Morgannwg University Local Health Board v Morgan)*.

The case concerned a psychiatric nurse who suffered from a depressive illness and had to take about 17 months off work prior to her dismissal. Lengthy proceedings culminated in an ET's findings that she had suffered harassment at the hands of a human resources adviser and that her NHS employer had failed in its duty to make reasonable adjustments to cater for her admitted disability.

Although her claim had been lodged outside the three-month time limit specified by Section 123 of the Equality Act 2010, the ET found that it was just and equitable to extend time. The employer's appeal against the ET's decision was subsequently dismissed by the Employment Appeal Tribunal (EAT).

In rejecting the employer's challenge to the latter ruling, the Court emphasised that Parliament had granted ETs the widest possible discretion in deciding whether or not to waive the full rigour of the three-month time limit. The exercise of that discretion should only be disturbed in cases where an ET had erred in principle.

The employer bore some of the responsibility for the delay in launching proceedings, which was also in part explained by the woman's acute mental health difficulties. The employer had suffered relatively little prejudice and, in the circumstances, the ET was entitled to find that it would be unjust to dismiss a good claim on grounds of delay alone.

The woman's case had already been the subject of two ET and two EAT hearings, and the proceedings had stretched over almost six years. A third ET hearing would be required to assess the amount of her compensation, but the Court urged both sides to adopt a sense of reality in achieving a final resolution of the matter.

COUNCIL TAX TO BITE ON EMPTY PROPERTY

In 2017, 205,293 dwellings in England were left empty for six months or more. With the housing shortage never far from the news agenda, steps to bring unoccupied houses back into use are being taken by the Government.

Under the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill, houses which are empty for more than two years will pay twice the usual rate of council tax.

There are, however, exemptions where there are legitimate reasons for properties being unoccupied, such as when the property is genuinely on the market for sale or rent or the owner is in residential care.

FAIL TO COMPLY WITH COURT ORDERS AND PRISON MAY AWAIT

When a couple divorced in early 2017, the financial agreement made included the provision that the wife should be allowed to remain in the first-floor flat she occupied until completion of the sale of the ground-floor flat of the same property, which she and her husband owned jointly, or until 24 October 2017 at the latest. The plan was that the sale of the ground-floor flat would realise a very significant sum and this would be paid to the wife.

The wife had serious money problems, despite also having received payments totalling nearly £250,000 from her former husband. In the event, the property had not been sold by the date specified, as a result of which she did not have the expected sum of money. She refused to leave the premises so

her husband went to court to force her removal.

The judge commented that 'the way the order is structured is that she took the risk of having to leave before she got access to her capital sum' and that she had 'plenty of time to sort that problem out and she must have known as the months passed approaching 24 October 2017 that the ground-floor flat was not going to sell in time for her departure…and, therefore, she would have to make some other arrangements'.

In November, the husband made an application for his wife to be committed to prison for failure to comply with a valid court order. The court ruled that unless she moved out within 28 days of the hearing, she would be sent to prison for two months. In addition, she was ordered to pay her husband's legal costs of £24,000 from her share of the proceeds of the property when sold.

Failing to comply with court orders is a risky strategy at the best of times and can lead to more than financial costs. For advice on the best way to deal with any legal issue, contact us.

NATIONAL SAVINGS INTEREST RATES

The Bank of England has raised interest rates from 0.5% to 0.75% after much speculation.

Expectations of a strengthening economy, solid employment levels, more consumer spending and the potential for wages to rise have all played a part in the decision.

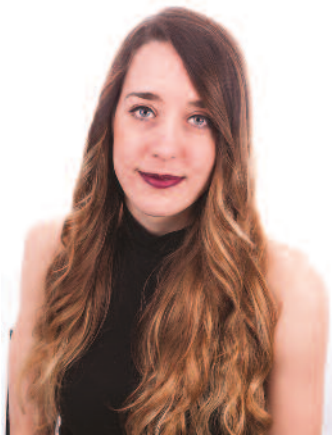
The Bank's main priority is to keep the rising cost of living - known as inflation - under control. It uses its key interest rate, known as the Bank rate or base rate, which is the reference point for how much banks and building societies pay savers and charge borrowers in interest.

But the products at National Savings & Investment (NS&I) do not act like normal retail savings accounts.

Back in March, the returns on NS&I's Guaranteed Income and Guaranteed Growth bonds were cut, and it has now been announced that the return on the Direct ISA will reduce from 1.00% to 0.75% from 24th September.

These apparently anomalous changes are products of NS&I's operating framework. NS&I investments are backed by the UK Treasury so they are, arguably, more secure than most other deposit accounts (although the availability of up to £85,000 in compensation through the Financial Services Compensation Scheme for savings accounts does limit this advantage); they must therefore adhere to limits set by the Government.

As stated by Jill Walters, NS&I Retail Director, they have to 'strike a balance between the needs of our savers, taxpayers and the stability of the broader financial services sector'. All of which means that NS&I cannot attract too much investment in fairness to the taxpayer (who funds the return) and the savings market (which could otherwise face 'unfair' competition). NS&I savings products are generally high quality and 'super' secure – just don't expect them to behave like the rest of the market.



Anna Sidat
Financial Planner

It is essential that enough cash is held to meet your ongoing expenditure needs, however if you have excessive amounts of cash in the bank earning around 1% interest, and the price of your shopping is increasing at over 2% each year, then the real value of your money is reducing over time.

If you are wondering what is the best 'plan of action' for you and your savings, why not get in touch with Anna Sidat, Financial Planner at Woodgate Financial Planning on 01509 635467 who'd be happy to answer your questions.

STAIRCASE TAX REFORMS ON THE WAY

Following a well-publicised Supreme Court decision that offices spread over two floors of a building should be assessed for business rates purposes as if they are different properties unless both are accessible without going onto other property, there is to be a change to the applicable law. In many let premises (such as most office blocks), access between floors is only possible via a common area, which has led to the phrase 'staircase tax' coming into use. Draft legislation now exists to correct the anomaly.

SON'S CASUAL EMPLOYMENT PROVES EXPENSIVE FOR DAD

One area in which problems may not be anticipated is when a family member's status as a 'genuine' employee is disputed by HMRC.

For any expenditure to be deductible for tax purposes, it must be 'wholly and exclusively' made for business purposes. In the case of a claim by an employee for a deduction, such expenditure must also be made 'necessarily'.

In a recent case, HMRC took a taxpayer to task over payments to his son, who was a university student. Specifically, HMRC claimed that £7,400 paid to him was not 'incurred wholly and exclusively for the purpose of the Appellant's trade and deductible against his self-employment income'.

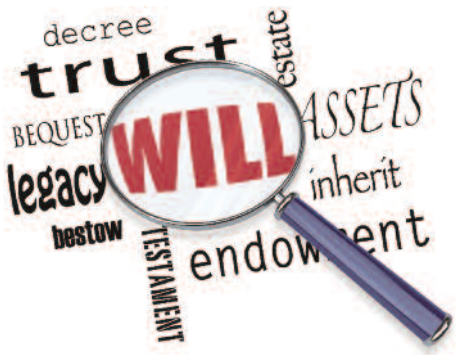
When an HMRC enquiry was opened into deductions totalling more than £23,000 in the taxpayer's accounts, he was eventually able to satisfy them with regard to all the sums claimed except those payments made to his son. In point was the fact that the taxpayer did not actually record the 'wages' paid. HMRC took as their starting point the fact that the taxpayer was unable to prove that the payments had been made at all.

The taxpayer made protests, but the way his evidence was given probably did not help his case.

The First-tier Tribunal concluded that the absence of evidence that the payments had been made on the basis of time records or some other methodology made it impossible to conclude that they were made wholly for business purposes. They were not, therefore, 'directly and solely referable' to the carrying on of the taxpayer's trade.

Casual arrangements such as these are fraught with potential problems. We can help you make sure you get it right first time.

HIGH STREET STORE WILL INVALID, RULES COURT



The dangers inherent in adopting a casual approach to one's will were starkly illustrated in a case in which the High Court was called upon to consider the validity of three 'templated' wills following the death of an elderly woman.

The woman had three children and two brothers. One of her sons became her principal carer and lived with her whilst one of her brothers managed her finances.

In 2011, the social services team of the local council began an investigation as a result of concerns over possible neglect and financial abuse by her brother. These resulted in an application to the Court of Protection by the council, in 2012, to be appointed the woman's deputy in respect of her financial and property affairs.

Before the matter could be fully resolved, the woman died. Her son, who was unaware that his mother had made any wills and assumed that she had died intestate, applied for and obtained letters of administration over her estate. These were opposed by the woman's brother, who produced the wills for consideration by the High Court. The first, dated 2008, was of the kind sold at stationers. This left the bulk of her estate to her brother and appointed him as her executor. He also submitted similar wills dated 2011 and 2012. He sought to have one of these accepted as valid by the Court.

The Court ruled that the 2011 and 2012 wills were not validly executed. The 2008 will was challenged on the basis that the woman lacked testamentary capacity when it was created and did not evidence 'knowledge and approval' of its contents.

Considerable evidence was given that the woman had been confused. She had, for example, put a dress on the wrong way round and had also asked why a long-dead relative had not called her. However, the judge considered that 'merely showing that a testator suffered from confusion or some level of dementia is insufficient to render that person incapable of

Anthony Benskin

making a will'. The challenge on the grounds of testamentary capacity therefore failed.

Crucial to the claim that the 2008 will was executed without knowledge and approval of its contents was independent evidence given by a third party that the woman had repeatedly told her she wanted all her children to have a share of her estate.

The judge found that the will was therefore executed without knowledge and approval and was not therefore valid.

If you have concerns about the validity of a will or a relative's ability to create a valid will, contact Anthony Benskin for advice on a.benskin@moss-solicitors.co.uk or call him on 01509 217770.

EU'D BETTER GET READY

One of the lesser-known consequences of Brexit is that a European Commission decision made some time ago means that after 29 March 2019, UK companies that do not have a place of business in the EU will no longer be able to acquire or renew .eu domain names.

More than 300,000 .eu domains are registered to UK companies. If yours is one of them, you should consider the implications of the decision carefully.

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