



LEGAL REVIEW SPRING 2018

Your legal bulletin on news & views from Moss Solicitors LLP

MOSS STRENGTHENS ITS TEAM

We are delighted to announce that we have recently recruited two commercial solicitors and a residential conveyancer, all of whom bring considerable experience to our expanding team of legal advisors.



Shilpa Modi qualified as a solicitor in London in 1993 and, after living in Moscow for a few years, moved to Leicestershire where she has worked for firms in Leicester and Nottingham, and for a national housebuilder.

She has a broad range of experience in commercial transactions. She has acted for landlords and tenants on the grant of leases, and on assignments, sub-sales and licences. She has also acted on acquisitions and disposals of freehold commercial properties for retail, industrial or residential uses. Some such transactions have included perfecting security on behalf of lenders.

Shilpa has also supported corporate transactions, in the acquisition of businesses, and re-financing of commercial and residential property portfolios.

In her spare time, Shilpa likes to read and belongs to a book club, going to the theatre, and watching Formula 1.



Keith Vaughan is a very experienced solicitor, having been studying and practising the law for over 40 years.

Keith specialises in corporate, commercial and commercial property work. This includes company and

business sales and purchases, leases, joint ventures, partnerships, business structures and re-financing work.

Keith has been involved in the Leicestershire business community since qualification and, as the former finance partner of a large practice, has practical experience of running a business. This is helpful in enabling him to recognise the business needs of his clients.

When not practising the law Keith enjoys spending time with his wife and their dog, watching sport, photography and venturing out in his motorhome.



We are also pleased to welcome **Lauren Spencer** to our Residential Conveyancing department.

Lauren graduated from Coventry University in 2013 and since then has worked for a number of

law firms in Coventry and Birmingham gaining valuable experience of property transactions.

Lauren recently moved to Loughborough and joined the Moss team in February. In addition to having a sound knowledge of general residential sales, purchases and transfers, Lauren brings with her particular expertise in New Builds, having previously acted for national housebuilders. Lauren enjoys helping her clients buy, sell and transfer their properties with ease, and in particular, guiding first time buyers through the purchase process including the Help to Buy ISA scheme.

In her spare time Lauren enjoys playing badminton and arts and crafts. She also enjoys watching football and boxing, following on from being the President of her boxing club at Coventry University.



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Loughborough
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Tel: 01509 217770
Fax: 01509 233698

By appointment at:
Unit 11A, Whitwick
Business Centre
Stenson Road, Coalville
Leicestershire, LE67 4JP
Tel: 01530 815747
Fax: 01509 233698

Email: enquiries@moss-solicitors.co.uk

www.moss-solicitors.co.uk

POWERS OF ATTORNEY – COURT FEE REFUND

by Anthony Benskin

The Ministry of Justice have recently announced a scheme to refund those who may have overpaid their Court fee when applying to register their Powers of Attorney.

If you applied to register a Lasting or Enduring Power of Attorney with the Office of the Public Guardian (OPG) between 1st April 2013 and 31st March 2017 and paid an application fee, you could be due a partial refund.

The amount of the refund depends on when you paid the fee and the table below provides details on the amount of the fee which is refundable.

For further details on how to bring a claim visit <https://www.gov.uk/power-of-attorney-refund>. A refund helpline is also available by calling the OPG on 0300 456 0300 and selecting option 6.

If you would like any advice on the creation and registration of Lasting Powers of Attorney, please call our office on 01509 217770 and ask to speak to our Lasting Powers of Attorney department or email a.benskin@moss-solicitors.co.uk



When you paid the fee	Price Per Week
April to September 2013	£54
October 2013 to March 2014	£34
April 2014 to March 2015	£37
April 2015 to March 2016	£38
April 2016 to March 2017	£45

Interest at 0.5% is also payable.

ONEROUS LEASEHOLD TERMS TO BE BANNED

Following an outcry over the terms that apply to the purchase of new leasehold properties in some circumstances, the Government conducted a public consultation. This has now reported and legislation is expected soon to deal with the abuses identified.

Many unfair practices were reported as the sale of new properties on a leasehold, rather than freehold, basis has proliferated and some of the leases contain onerous terms that apply in the long run. Describing the practices as 'practically feudal and entirely unjustifiable', the Secretary of State for Communities and Local Government



decided to end them 'once and for all'. Legislation will be brought forward as soon as possible to put a stop to the

sale of leaseholds over new-build houses or existing freehold houses, except in exceptional circumstances.

In addition, the ground rents on newly established leases of houses and flats will be set at zero and the Government is looking at ways owners of leasehold properties with escalating ground rents can be protected and have the right to acquire the freehold.

If you have bought a property on a leasehold and discovered later that there were onerous terms of which you were not aware, contact us for advice.

INSOLVENCY SERVICE PURSUES DIRECTORS WHO TRANSGRESS

The Government's Insolvency Service has been prosecuting and banning increasing numbers of directors. Such bans include persons acting as a director 'in fact', even if they are not listed as a director in a company's official records.

In the first week of July last year alone, the offences listed below all led to bans on acting as a director of any company in the UK:

- Failing to maintain, preserve and deliver records following liquidation of a company and failing to deal with tax affairs – nine-year ban;
- Failing to maintain adequate company books and records – eight- and seven-year bans;

- Trading in a manner that breached consumer protection law causing loss to customers – seven-year ban;
- Continuing to trade while disqualified – ten-year ban.

It is accepted that companies can fail, and a director who takes prompt action to protect the interests of creditors and who makes sure the company complies with its legal requirements will not face retribution from the authorities. However, a company director who flouts the law and/or fails to take action when it is necessary can face a substantial ban and in some circumstances become personally liable for the debts of the company.

If your company is in financial difficulties, contact us for advice immediately.

CASH ISAS

Cash ISAs have declined in popularity, not only in relation to stocks and shares ISAs, but also in relation to other forms of deposit. Interest rates have fallen and the attractions of cash ISAs have also been undermined by the introduction of the Personal Savings Allowance (PSA) in April 2016, which permits basic rate taxpayers to receive up to £1,000 savings interest tax-free each year, and higher rate taxpayers up to £500. The PSA applies to income from banks and building societies and is additional to the Personal Allowance and the Starting Rate for savings.

The Personal Allowance (£11,500 this tax year), is available to all taxpayers and exempts all types of income from tax, while the Starting Rate for savings permits up to £5,000 of savings income to be received tax-free in cases where the taxpayer's total income does not exceed £16,500. The allowance reduces by £1 for every £1 of income above £16,500, so that it ceases to be available to people whose total income exceeds £21,500.

With interest rates at current low levels, deposits and investments of reasonably significant levels will

produce interest which can be received tax-free as a result of the Personal Savings Allowance. If £83,333 produced interest of 1.2% p.a., the income generated would be within the Personal Savings Allowance for a basic rate taxpayer. For a higher rate taxpayer, the corresponding figure would be £41,667.



Anna Sidat
Financial Planner

The prospect is for interest rates to increase, which could tilt the advantage back in favour of cash ISAs, particularly for higher rate taxpayers. However, it might be unwise to lock into fixed-term ISAs at current rates.

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 and explain how we may be able to help you.

'GIG ECONOMY' – PIMLICO PLUMBERS GIVEN LEAVE TO APPEAL

There have been a number of recent cases looking at the precise nature of the employment status of those working for employers who like their operatives to appear to clients as their representatives but who operate a model of self-employment. Last year, the Court of Appeal dismissed an appeal by Pimlico Plumbers Limited against a finding that the

claimant's relationship with the company was that of a worker rather than that between an independent contractor and his client (*Pimlico Plumbers Limited and Another v Smith*). It has now been reported that the Supreme Court has granted Pimlico Plumbers leave to appeal against that decision.

FAMILY COURT HAS HIGH COURT POWERS

When a couple divorced, their financial settlement was complicated by the fact that both of the properties they jointly owned were mortgaged.

The Family Court ordered that they should each have one of the properties and use their best endeavours to release the other from their obligations under the mortgage. If that proved to be impossible, each should indemnify the other against any liability under the respective mortgages, such that each alone would be responsible for the payment of the mortgage on the house they occupied.

When problems occurred with regard to the payment of one of the mortgages, a legal argument arose as to whether the Family Court had the power to make an



order including the indemnities or whether its powers were 'confined to the four corners of the Matrimonial Causes Act'.

In a terse judgment, Mr Justice Mostyn stated that "the Family Court has all the powers of the High Court. The High Court unquestionably has the power...to order an indemnity. If awarded, that represents a legal right in favour of the person so

indemnified. The court can award an injunction in support of a legal right. To order someone who has been ordered to indemnify the other party in respect of a mortgage to use his or her best endeavours to keep up the payments on that mortgage is of the nature of an injunction in support of a legal right. In my opinion, this provision is squarely within the power of the High Court to order, and is therefore within the power of the Family Court."

The ruling confirms that the Family Court has the powers of the High Court in these circumstances.

This means it can make orders for indemnities and injunctions, which may be necessary in cases where the existing financial arrangements are tricky to separate out.

SETTING UP A COMPANY WITH FRIENDS OR FAMILY?



Tim Dunbar – Commercial Partner

Getting into business is relatively easy – it is getting out of business where it starts to get really tricky. Despite that, many people establish companies without thinking through the mechanics and consequences of leaving the company. This is especially true when people go into business with friends or family, and the closeness of the relationship can be especially problematic if differences of opinion ensue. The sorts of issues that can arise are many and varied.

For example, personality clashes are relatively common, especially when there is a difference in strategic thinking or the business is under financial

pressure. These can often make small gaps into unbridgeable fissures. Another source of board-level friction can be if one director feels others are no longer pulling their weight or are taking out more from the business than they should.

Even a pre-planned and agreed retirement can prove problematic as the question of what the retiree should extract from the company rears its head. Share valuations and whether the remaining stakeholders wish to acquire the shares of the departing director can be particular issues.

Prevention is better than cure. Putting the right documentation in place at the beginning of the process can help you minimise the chances of a dispute later on. Here are some of the main safeguards you should consider creating:

Shareholders' Agreement

A shareholders' agreement is a crucial document in small companies. It should specify the terms under which shares can (or must) be transferred and normally a pricing mechanism. The key aspect is to remove the areas for potential dispute. This (and a Director's Service Agreement – see below) may contain differing clauses for use

depending on whether the director is a 'good leaver' or a 'bad leaver';

Contracts of Employment

A director's contract of employment should include all of the principal terms applying to their employment as an employee of the company;

Director's Service Agreement

A director's service agreement can be used to spell out the details not included in the standard contract of employment – for example, entitlements to performance-related incentives after retirement, termination payments into pensions and so on; and

Non-Competition Agreement

If needed, this may be combined with one of the agreements above. Its terms must be narrow enough to be enforceable but wide enough to protect the company's interests.

What is most important is to get these agreements in place early, while relations are convivial and before there is a divergence of interests.

Contact our Commercial Department for further advice or email Tim at T.Dunbar@moss-solicitors.co.uk

NEW NATIONAL MINIMUM WAGE RATES

The Government has accepted the Low Pay Commission's recommended rates for the National Living Wage (NLW) and the National Minimum Wage (NMW) that will come into effect on 1 April 2018:

- The NLW, which applies to those aged 25 and over, will increase from £7.50 to £7.83 per hour;
- The NMW for 21- to 24-year-olds will increase from £7.05 to £7.38 per hour;
- The NMW for 18- to 20-year-olds will increase from £5.60 to £5.90 per hour;

- The NMW for 16- and 17-year-olds will increase from £4.05 to £4.20 per hour; and
- The apprentice rate of the NMW, which applies to apprentices aged under 19 or those aged 19 or over and in the first year of their apprenticeship, will increase from £3.50 to £3.70 per hour.

The accommodation offset will increase from £6.40 to £7.00 per day for each day during the pay period that accommodation is provided.



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

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