MOSS
SOLICITORS

WWW.MOSS-SOLICITORS.CO.UK

LEGAL REVIEW SPRING 2019

Your legal bulletin on news & views from Moss Solicitors LLP

WELCOME EMMA MACHOWSKA

We are delighted to announce the appointment of **Emma Machowska** into our **Commercial Property Department**. Emma qualified as a Solicitor in 2006 and since then has gained valuable experience from working in leading planning and commercial property law practices in Leicestershire.

Emma is an expert in commercial property transactions including acquisitions and disposals of freehold commercial property. Emma also acts for landlords and tenants on the grant and assignment of leases and all related issues.

Emma's broad commercial knowledge allows her to provide support in wider corporate transactions and in the acquisition and sale of businesses.

Emma is based at our Loughborough office.

Please do give Emma a call or drop her a line to discuss your commercial property requirements.

Emma Machowska
e.machowska@moss-solicitors.co.uk
01509 217770

NO HIGHER RATE OF SDLT IF PROPERTY UNINHABITABLE

Stamp Duty Land Tax (SDLT) is a tax that is payable when land is purchased. Like most taxes, the rules are rather complex and there are sometimes arguments between the buyers of property and HM Revenue and Customs (HMRC) about the amount of SDLT payable.

In a recent case, a couple who bought a derelict bungalow had just such an argument, which ended up in the First-tier Tribunal (FTT). They had bought the property for £200,000. It was uninhabitable as it stood and their plan was to demolish it and build a new house on the site. They formed a company to undertake the transaction.

When a second home is purchased or a company buys a residential property, a higher rate of SDLT is payable. A lower rate of SDLT is due if the property is not a residential property.

HMRC took the view that the higher rate of SDLT applied to the property purchase, and the couple understandably disagreed.

The law says that the higher rate is payable if the property is 'suitable' for use as a dwelling, and the property clearly was not. The FTT's response was to reduce the SDLT demand to the non-residential rate.

Says Emma, "Tax planning comes into many property transactions, and it is quite common for HMRC to try to collect tax using interpretations of the law which cannot be justified in the Tribunal."

Moss Solicitors LLP
80 -81 Woodgate
Loughborough
Leicestershire
LE11 2XE
Tel: 01509 217770
Fax: 01509 233698

By appointment at:
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

PENSION FREEDOM - THE NEXT BIG SCANDAL?

In 2015 the Government granted people the freedom to access their pension funds in full once they turn 55. Since then thousands of people have done so, but regulators are worried that we could be in the middle of a new mis-selling scandal.

Andy Jervis, a **Director of Woodgate Financial Planning** writes:- I've found that a Client's pension plan is likely to be their biggest financial asset. The latest published data from the Office for National Statistics, confirms that pensions are the biggest component of family household wealth in the UK, comprising 42% of the family wealth.

The reason why, for most people, the majority of their financial wealth sits within their pension plan is quite simple... It's because they haven't been able to get at it. People can't spend their pensions and, when left to increase, the value gradually accumulates into substantial investments.

The situation is complicated by the way in which some pension schemes work. If you have a 'final salary' pension plan you don't have a pension fund as such, but you do have an entitlement to a pension at a specified date in the future. For many years it has been possible to transfer the value of this future pension entitlement to another scheme. To enable this scheme administrators have to calculate the 'cash equivalent' value of the pension.

Until recently the main choice was whether you should stay in the current scheme and draw your pension from there, or move to a new scheme and arrange for it to pay your pension instead. Since 2015, however, there's another option on the table you can elect to withdraw the whole lot at once!

So suddenly the reason why you had such a sizeable fund in the first place meets your daily desire for cash. You need to be over 55 to access your pension. Of course, many people will recognise that they need to keep some cash set aside for the future, and will make good and prudent decisions with their pension fund. But for some, the ability to withdraw tens of thousands of pounds is like winning the lottery. It's a temptation that's hard to resist.

The problem is that most people significantly underestimate their likely lifespan and their consequent need for future cash. This is a time when people need great advice. With charges often as high as 5% or more of the transfer value, there's a big incentive for firms to recommend a transfer, whether or not it makes sense to the pension owner.

That's why the regulators are concerned, and it's why you should approach this area with extreme caution. Be very wary of offers of 'free' pension advice, and be prepared to pay a realistic professional fee for sound advice. Think carefully about your future needs before you consider raiding your pension.

For impartial, fee paying advice on your pension, get in touch with Joel, David or Anna (pictured below) at Woodgate Financial Planning.

Left to right:
Joel Burgess at: joel.burgess@woodgatefp.co.uk
David Wright at: david.wright@woodgatefp.co.uk
Anna Sidat at: anna.sidat@woodgatefp.co.uk

DOES A DIRECTOR NEED TO FILE A TAX RETURN?

There is a widespread belief that every UK company director has to file a tax return. Indeed, the Government's own website suggests that being a company director alone means you should register for self-assessment and file a tax return annually.

However, that is not what tax law says. Under the law, there is no automatic requirement for a company director to file a tax return.

A return must be filed in order to claim certain tax reliefs or if there are liabilities which must be reported to HM Revenue and Customs (HMRC), such as a Capital Gains Tax liability. A return must also be filed where HMRC issue one.

When in doubt, it is less risky to file a tax return, but it is established law that unless there is a tax liability which must be reported, a return does not normally have to be filed.

For advice on your responsibilities under the law, contact us.

COURT VISIT REQUIRED TO GIVE CLARITY TO WILL

When a will is drafted with the intention that the distribution of assets will change in the event of changing circumstances, it is essential that the relevant clauses are absolutely clear in order to prevent confusion, as a recent case shows.

The ambiguous wording of a will led to an executor having to attend court to get a decision on whether the estate of a woman who died in 1973 that had since been held in trust would pass to the daughter of her best friend or to the beneficiaries of her own son, who died without children in 2014.

In order to make sure your estate passes to your intended beneficiaries, it is advisable to have your will properly drafted by a solicitor, rather than by an unqualified will writer.

It is not widely known that will-writing is not a regulated activity, and failing to take high-quality professional advice can be a crucial mistake.

PROBATE CHARGES TO BE INCREASED FOR LARGER ESTATES

Proposals to link the cost of being granted probate over an estate valued at more than £50,000 (currently fixed at £215 for those applying individually or £155 if applying through a solicitor on estates over £5,000) to the value of the estate were announced in 2017, but were quickly dropped amidst a storm of protest.

That, however, was not the end of the matter, because the proposals have been brought back in modified form. Under the new plans, those with an estate worth less than £50,000 will have probate granted without charge, but a sliding scale of charges will apply where the estate exceeds that figure.

Where the value of the estate exceeds £2 million, a fee of £6,000 will be payable.

Under the new arrangements, only one fifth of estates will be subject to a charge exceeding £750.

It is not entirely certain when it is intended that the new arrangements will be introduced, but is thought that they will apply from April 2019.

For advice on how to minimise the amount of your estate that passes to the state, not the heirs you choose, contact us.

UK FAIRNESS TEST MITIGATES ITALIAN PRE-NUPTIAL AGREEMENT

The law relating to the division of family assets on divorce varies widely across the world and the UK is generally regarded as one of the fairer jurisdictions for such financial arrangements in that the assets tend to be divided more equally than in many other countries.

Accordingly, where a family with an international lifestyle breaks up and there is a reasonably strong connection to the UK, it is often chosen as the jurisdiction of preference for divorce proceedings by a spouse who might be disadvantaged if the proceedings are conducted elsewhere.

In such instances, it is often important that the proceedings are initiated here. If they are begun under a different jurisdiction, that right may be lost.

It is also the case that different countries have different rules about what sort of pre-nuptial agreements may be enforced. In such instances, complexities can proliferate.

A 2017 case that was heard in the UK dealt with the financial arrangements after the marriage of a couple who had married in Italy in 2008 and had one child foundered. They had entered into an agreement in Italy ('separazione dei beni') under which they agreed that the assets that each of them brought into the marriage would belong to them separately and not be split on divorce.

At issue was a massive increase in the value of shares owned by the husband during the course of the marriage. The husband argued that this gain should be retained by him exclusively, the principal reason being the pre-marital agreement. The wife challenged his assertion. Not only was it unfair, but she had not fully understood the implications of the agreement she had signed, not being Italian. There was also no specific agreement that their property division would be subject to Italian, not English, law.

In the end, the particular facts of the case determined the division of the family assets and the wife's settlement included only approximately a quarter of the increase in the value of the husband's shares during the marriage.

However, had the divorce been conducted under Italian law, the wife would not have been entitled to any of that increase.

International dimensions can present complexities beyond those where a family split is between those of the same nationality and residence. For advice on any issue in matrimonial or family law, contact us.

EXECUTIVE HELD TO NON-COMPETE CLAUSE IN SHARE ALLOCATION AGREEMENT

Share allocations are a widely used means of incentivising staff, but they are rarely a free meal ticket and reciprocal obligations are usually imposed on those who benefit from them. That was certainly so in the case of an executive who took a job with a competitor a few months after he was dismissed from his post *(Ideal Standard International S.A. and Another v Herbert)*.

The man worked for a group that manufactured bathroom ceramics and fittings. His employment contract incorporated confidentiality provisions which survived his dismissal, but did not contain any other restrictions on his post-termination conduct. Prior to his departure, however, he had received a substantial number of shares in the group, subject to an agreement which, amongst other things, forbade him from working for competitors for 18 months following termination.

After discovering via his LinkedIn profile that he had joined a competitor about five months after his dismissal, the group launched proceedings. It was particularly concerned that he had, whilst employed by the group, enjoyed extensive access to confidential information which had a considerable shelf life. The group sought an interim injunction to prevent its use pending arbitration proceedings.

The man argued that a settlement agreement that had been concluded following his dismissal had the effect of releasing him from any further obligations under the share agreement. It was also submitted that the non-compete clause was unreasonable and placed an excessive restriction on his ability to make a living.

In granting the injunction sought, however, the High Court found that the group had raised serious issues to be tried. The share agreement had been negotiated in a commercial context and had the legitimate aim of protecting the group's goodwill. The man's shareholding was substantial and his position could not be equated to that of an employee who benefits from a small-scale share participation scheme. The group's interpretation of the settlement agreement was preferred and the balance of convenience also fell in favour of granting the injunction.

Commercially sensitive information is often the lifeblood of an organisation. The law can be used to protect a business in circumstances such as these.

Contact us if you would like advice on any of the issues raised in this bulletin or on any other employment law matter.

NEW NATIONAL MINIMUM WAGE RATES

The Government has accepted the recommendations of the Low Pay Commission as regards the National Living Wage (NLW) and the National Minimum Wage (NMW) rates that will apply with effect from 1 April 2019:

- The NLW, which applies to those aged 25 and over, will increase from £7.83 to £8.21 per hour;
- The NMW for 21- to 24-year-olds will increase from £7.38 to £7.70 per hour;
- The NMW for 18- to 20-year-olds will increase from £5.90 to £6.15 per hour;
- The NMW for 16- and 17-year-olds will increase from £4.20 to £4.35 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 £3.70 to £3.90 per hour.

The accommodation offset will increase from £7.00 to £7.55 per day for each day during the pay period that accommodation is provided.

MOSS SOLICITORS

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

WOODGATE FINANCIAL PLANNING LTD

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