

THE *Brief*

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THE NEWSLETTER OF BELLS SOLICITORS

Government promises to cut red tape for businesses

The new Government has promised to reduce bureaucracy for businesses and to take urgent action to "boost enterprise".

Its plans were outlined in its policy document, *The Coalition: our programme for government*, which covers more than 30 subject areas including banking, business, jobs, welfare, equality and taxation. As far as business is concerned, it says it will "cut red tape by introducing a 'one-in, one-out' rule whereby no new regulation is brought in without other regulation being cut by a greater amount".

It will also "end the culture of 'tick box' regulation, and instead target inspections on high-risk organisations through co-regulation and improving professional standards".

There will also be "sunset clauses on regulations and regulators to ensure that the need for each regulation is regularly reviewed". The Government will also "end the so-called 'gold plating' of EU rules, so that British businesses are not disadvantaged relative to their European competitors".

There's a pledge to promote small business procurement "by introducing an aspiration that 25% of government contracts should be awarded to small and medium-sized businesses and

by publishing government tenders in full online and free of charge".

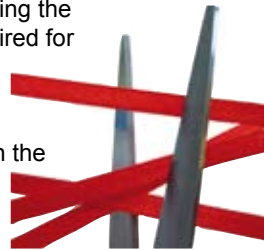
The word aspiration makes the pledge a little vague but many will still see it as a step in the right direction.

There will also be a review of employment and workplace laws "to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for enterprise to thrive".

The Government will promote equal pay and take a range of measures to end discrimination in the workplace.

The right to request flexible working will be extended to all employees but employers will be consulted on the best way to achieve this. The default retirement age will be phased out and there'll be a review to set a date at which the state pension age starts to rise to 66, although that will not be sooner than 2016 for men and 2020 for women.

We shall keep clients informed of developments as new policies are introduced. In the meantime, please contact us if you would like more information about any of the issues raised in this article.



Scrapping HIPs 'will boost fragile housing market'

Ministers in the new coalition Government believe that their quick decision to scrap Home Information Packs (HIPs) will encourage sellers back into the market and help the economy to recover.

The decision was first announced in a joint policy document published by the Conservatives and the Liberal Democrats within days of the coalition being formed.

Ministers then moved quickly to suspend HIPs from May 21st to prevent any uncertainty that might disrupt the housing market. Primary legislation will be needed to abolish them permanently and that will be introduced in due course.

It means that HIPs, which have been widely criticised since they were introduced by the Labour Government three years ago, are no longer needed when selling a home. However, Energy

Performance Certificates (EPC), which many people considered to be the most important component of HIPs, will be retained. EPCs rate a property's energy efficiency from A to G and are seen as an important part of the new Government's policy to protect the environment. Sellers will still have to commission an EPC before marketing their property. The EPC must then be available within 28 days of the property being put up for sale.

Abolishing HIPs means the burden of paying for searches will now fall back on the buyer and so will add to their costs.

The new communities secretary, Eric Pickles, said: "The expensive and unnecessary Home Information Pack has increased the cost and hassle of selling homes and is stifling a fragile housing market.

"That is why I am taking emergency action to suspend the HIP, bringing down the cost of selling a home and removing unnecessary regulation from the home buying process.



"This action will encourage sellers back into the market, and help the market as a whole and the economy recover."

The Law Society welcomed the decision to scrap HIPs and is calling for further reform to improve the system for both buyers and sellers. It says it wants to develop new approaches that will improve efficiency, value and transparency.

Please contact us if you would like more information about the new developments or any aspect of buying and selling a home.



UK opts out of European proposals on wills and cross border estates

The UK has chosen to opt out of EU proposals dealing with wills and cross border estates.

The issue may be important to people who own property abroad or who may live away from their native country. Different countries have widely differing approaches to inheritance and so the administration of cross border estates can become very complex as more than one legal system may apply.

The European Commission is currently considering draft proposals to address the problem by simplifying the regulations on international successions.

The new proposals mean that successions would automatically be dealt with under the laws of the country in which the person was permanently resident before they died. This would apply unless the person had opted out and chosen the country of their nationality instead.

The proposed changes would have no effect on the succession laws of each member country.

The UK has decided to opt out for the time being because of concerns that the new regulations could create some potential problems.

For example, under English law, if a person makes a lifetime gift then, with a few exceptions, it is considered final and cannot be later undone.

However, in some EU countries such

lifetime gifts can be “clawed back” in favour of family members.

Despite the decision to opt out for now, the UK may eventually adopt the new regulations when they are finalised as long as certain concerns are addressed.

In the meantime, the main issue for most people will be how to make the most of the current regulations in the UK and ensure that as much of their estate as possible will pass on to their chosen heirs.

It is important to start planning as early as possible. Make sure you make a will and keep it up to date and then look at the provisions provided by the law that could help you pass on your wealth in a tax efficient way.

Currently, there is a £325,000 threshold before inheritance tax becomes payable. It is then charged at 40% on the value of the estate above the threshold. However, there is no tax to pay if a person leaves their estate to their spouse when they die.

Since 2007, married couples and civil partners have been able to effectively double the threshold to £650,000 at today's rates when the second spouse dies. This won't happen automatically, however. To take advantage of this benefit, the first spouse's unused

inheritance tax threshold or “nil rate band” as it is known must be transferred to the second spouse when they die. A solicitor will be able to advise on how this should be done.

There are other provisions people may wish to consider. For example, if you live for seven years after making a gift to someone there will usually be no inheritance tax liability – no matter how large the gift.

You can also give away a total of £3,000 each year, either to one person alone or divided between several people, without the recipients being liable for inheritance tax on the gift when you die. Gifts made to charities, either in your will or in your lifetime, are also exempt from inheritance tax.

Inheritance tax planning can be quite complicated so it is wise to seek legal advice as soon as possible to make the most of the provisions available.

Please contact us if you would like more information about the issues raised in this article.



Husband didn't reveal affair to wife when remortgaging home

A wife has prevented her home from being repossessed after a court heard that her former husband had not revealed that he was having an affair when they remortgaged the property.

The couple had lived together in the family home with their children. The husband got into financial difficulties after overspending on credit cards. He persuaded his wife to agree to remortgaging so he could clear his debts.

Shortly afterwards, she discovered that he had been having an affair and this led to them divorcing. The husband then lost his job and was later made bankrupt.

The wife acquired the home for £1 from his trustee in bankruptcy. However, she then found she could not pay the instalments due to the company which had financed the remortgage.

The company then began legal proceedings and the court decided that it was entitled to repossess the house.

However, that decision has now been overturned by the Court of Appeal. It held that when the wife was asked by her husband to remortgage the home she was entitled to be given all the relevant information that might influence her decision. In agreeing to her husband's

request, she was working on the assumption that he was as committed to their marriage as she was. Had she known of her husband's affair she might have reached a different conclusion.

The affair should therefore have been disclosed. The husband's failure to make that disclosure amounted to undue influence on his wife which was sufficient to invalidate the mortgage transaction between them. Her appeal was therefore allowed.

Please contact us if you would like more information about remortgaging or issues relating to matrimonial law.

Print firm wins compensation for negligent advice

A print firm has been awarded damages after receiving negligent advice when entering into a franchise agreement.

The firm had contacted a company which offered franchises to run design services under its name. The company identified one of its existing franchises which could be sold as a going concern.

Negotiations began and the printers were told that it would cost £15,000 to refit the premises once the business was purchased. This figure was then entered into the business plan.

The franchise company also told the printers that they would be given client data from the existing business prior to

launch. The franchise agreement was then drawn up and signed.

However, the franchise company then refused to place the client data on to the new business's computer system as agreed. The cost of refurbishment also turned out to be double the figure stated.

The printers claimed damages on the basis that the franchise company had failed to exercise reasonable care when providing important advice. If they had known the true cost of the refurbishment, they would have negotiated a lower purchase price.

The court ruled that the franchise company had been negligent and in



breach of its duty of care when giving advice about refurbishment costs. It had also breached its contractual obligations by failing to provide the customer data as agreed and it was therefore liable to pay damages.

Please contact us if you would like more information about the issues raised in this article.

Firms are using unscrupulous tricks to delay payment

An increasing number of firms are using unscrupulous tricks to delay paying invoices for as long as possible, according to new research.

The business information provider, Creditsafe, found that 1 in 10 companies had been forced to reissue at least 20% of their client invoices in the last 12 months. Nearly 9 out of 10 companies had to reissue at least one invoice over the same period.

The research suggests that asking suppliers to reissue invoices is becoming routine for some firms who hope that



the move will restart the timescale for payment. This gives them the chance to hold on to their money for longer and so protect their liquidity.

David Knowles, Business Development Director, Creditsafe, said: "Unscrupulous accounts payable teams and finance directors are using every trick in the book to prevent paying invoices on time."

The most commonly used excuse for requesting a duplicate invoice is to claim that the original was never received. This is in spite of the fact that the original was sent by registered post. Some firms can become very arrogant, as in the comment from one director: "I'm too important to read my post so why would I know you billed me?"

Faced with such intransigence it is best to start taking action as quickly as possible. A straightforward solicitor's letter is often enough to secure payment because people then realise you are taking the matter seriously.

For those who still refuse to budge there are several other options available to get them to pay. In fact, firms can turn credit control into a profit making operation by recovering unpaid money in a way that earns more than enough to cover the cost of pursuing bad payers.

It's possible because businesses are entitled to levy a statutory late payment fee depending on the size of the debt and they can also impose punitive interest charges.

If this doesn't make the debtor pay, it may be necessary to issue a 'court order for questioning' against the company secretary. This is often enough to prompt many late payers into action but for those who still refuse to pay, there are other legal options available.

Please contact us if you would like more information about dealing with late payment.

Director wins the right to buy out 'unfair' colleague

A director of a golf equipment company has won the right to buy out a fellow director who had acted in an unfair and prejudicial manner.

The two men had set up a new company in which they had one share each and were joint directors. The relationship then broke down with the first director making several allegations about the way his colleague was conducting business affairs.

He complained that the colleague had withdrawn a large sum of money illegitimately from the company account and had run up unexplained debts on the company credit card. He had also altered the share structure to give himself greater voting power and then removed his colleague as a director at a meeting that was inquorate.

It was also alleged that he had registered his home address as the company's office address, and opened a new company bank account and wrongly paid company receipts into it. The second director disputed the allegations and the court held that,

given the direct clash of evidence, deciding the facts of the matter would come down to appraising each director's credibility.

The judge said that the court preferred the evidence of the first director who was making the complaint. He answered questions in a frank and straightforward way and had tried to provide an accurate account.

His colleague, however, had been evasive and had lacked credibility. When pressed, he had made admissions that were against his own interest. The court held that he had conducted the company's affairs in a way that was prejudicial to his fellow director.

The court therefore held that the director making the complaint was entitled to buy his colleague's share of the company at a value to be agreed.

Please contact us for more information about issues relating to company law.

Employee 'fit notes' and time to train come into effect

The new system using "fit note" medical statements for employees who are ill has now come into effect.

Until now, a doctor could provide a medical statement giving an employee's condition and indicating whether or not he was fit to work.

Under the new system, the doctor can add a new category saying the employee "may be fit for work". This could be used if the doctor believes the employee could work as long as the employer provides appropriate support.

The employer doesn't have to act on the doctor's advice but it's hoped the new system will help to get employees back to work sooner and so reduce absence through sickness.

If the employer cannot or does not want to act on the advice then he can proceed as if the doctor had issued a statement saying the employee is not fit for work. The new approach does not affect the employer's obligations to pay statutory sick pay and make reasonable adjustments under the Disability Discrimination Act 1995.



Employers also need to be aware that workers in companies that employ more than 250 people now have the legal right to request time for training.

Time to Train, which was introduced in the Apprenticeships, Skills, Children and Learning Act 2009, came into effect in April this year. It will be extended to apply to all employees from April next year.

The legislation entitles employees to request time for training that is relevant to their work.

This could be an accredited course that leads to a qualification, or it could involve unaccredited training that helps develop skills and improve business productivity.

The employer is obliged to consider the request but can turn it down if there are good business reasons for doing so. For example, the employer may feel that the training is not relevant or would not improve business performance.

Please contact us if you would like more information about employment law matters.

Divorcee awarded £215,000 - 25 years after separation

A barrister has been ordered to pay a lump sum of £215,000 to his former wife, 25 years after they were divorced.

The couple separated in 1985 after 13 years of marriage. They had no children. Under the divorce settlement, he agreed make regular payments to her. He then remarried and now has two children with his second wife.

The barrister retired last year and applied to have the payments dropped because his income had reduced.

His former wife submitted that if the payments were to stop, he

should pay her a lump sum instead as a final settlement.

When assessing the barrister's income, the judge halved the value of some of his assets to reflect the interests of his second wife. This included his pension which would be the main source of his income.

The judge also took into account that the first wife had received an inheritance which she could use to support her needs. He then granted the order allowing the barrister to stop the payments. The wife's claim for a lump sum payment was rejected.

The wife appealed on the grounds that she would suffer undue hardship and

that the judge had overestimated the interests and claims of the second wife. The Court of Appeal has now ruled in her favour. It held that the judge had been wrong to give priority to the claims of the second wife and that the barrister was in principle obliged to continue making the payments.

The judge had also been wrong to conclude that the first wife could adjust to the sudden loss of payments without undue hardship.

The court ruled that the barrister should pay his first wife £14,000 a year until he had paid a total sum of £215,000.

Please contact us if you would like more information about matrimonial law.



PROPERTY

- ESTATE AGENCY
- RESIDENTIAL CONVEYANCING
- LANDLORD AND TENANT
- BUSINESS LEASES
- PROPERTY DEVELOPMENT
- RE-MORTGAGES
- COMMERCIAL PROPERTY

LITIGATION

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- PARTNERSHIP DISPUTES
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COMPANY/COMMERCIAL

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PRIVATE CLIENT

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