



Welcome



Mary Butler

Welcome to our newsletter which I hope you find to be useful and informative.

This has been a busy and eventful year so far. We have welcomed a number of new solicitors to the firm, all of whom we are confident will add to the depth of expertise in their various departments.

I am very pleased to announce that the firm has incorporated as a Limited Liability Partnership with effect from 1 November. The official details appear at the foot of this newsletter. There will, however, be no change to the way in which we will continue to deal with clients' affairs.

Partnerships can benefit from LLP incorporation in a number of ways and our Commercial Head of Department Alex Ross will be happy to discuss this with any company that would like to investigate further.

On another note we have also had a relaunch of our website. Please log on to www.bellbuxton.co.uk for further details.

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Private Client Award Winners

The fields of Contentious Probate and Financial Abuse of the Elderly have been a recognised strength of the firm for many years - in September we were delighted to receive the 2006 Yorkshire Lawyer Awards Private Client Category.

Mary Butler won the award in recognition of the strength and quality of service to private clients through Bell & Buxton's Wills & Probate department, and particularly as a result of Mary's recognised expertise and success in handling the most difficult complex 'contentious probate' cases where disputes arise during the administration of a deceased person's estate. Mary also specialises in handling cases involving financial abuse of the elderly and acting to retrieve properties or monies misappropriated from elderly people. As an appointed Panel receiver to the Court of Protection, she also works to protect the interests of people who have become mentally incapable and oversees their affairs in the event of no suitable person being identified to do so.

Examples of cases include:

- She was referred the case of a murder victim whose house had been fraudulently transferred to a family member by a forged signature. Once the house had been restored to the estate the beneficiaries had to be identified which was very complex and involved consideration, amongst other things, of the case of Dr. Crippen.

- Mary was successful in tendering for instructions from a public authority to apply for a rare form of Creditor's Grant to enable two properties to be realised more than 15 years after their owner's death. Consequently large sums owing to the authority were eventually repaid and the family also received a distribution.

- Upon taking instructions in a large



THE YORKSHIRE LAWYER AWARDS 2006

estate she discovered that tax planning arrangements by a Bank had been defective with the result that there was an additional tax bill of £300,000. The bank had already agreed to indemnify £250,000 but Mary noticed two other potential causes of action. After complicated and detailed technical argument the bank capitulated and settled the additional claims at virtually full value together with costs.

In addition to expertise and success in a particular field, the award also recognised a demonstrable dedication to clients and a broader contribution to the community.

The award ceremony took place on 4th October at Ridding Park, Harrogate with Mary Butler proudly collecting the trophy from the TV presenter Gaynor Barnes.

It is a tremendous achievement for the firm as the awards are judged throughout the Yorkshire region to win this prestigious title.

Pictured below: Gaynor Barnes and Mary Butler



Commercial News

Financial Assistance or Hindrance?



Any commercial lawyer groans when the words “financial assistance” are mentioned. Not only does this mean extra work in a transaction that is already bursting with issues, but also it means having to explain an archaic procedure that ceased to have any relevance over 20 years ago to an already confused client.

Financial assistance is basically the agreement by a company to allow its assets to be used in connection with the acquisition of its own shares. This means that, if the buyer wishes to secure bank funding on the target company’s business, the directors of the target company will be required to swear a statutory declaration confirming that, in their reasonable opinion, the company will be solvent for the next twelve months. There is also a requirement that the company’s auditors prepare a report stating that the company ought to be solvent in the year following. Not only is there a substantial amount of work in preparing the necessary documentation (including board minutes, shareholder resolutions and a mini audit), but also the timing of the whole process needs to be carefully co-ordinated in order to avoid falling foul of the rules. The penalties for not carrying out the procedure or wrongly completing a stage can be severe. Added to all this, the client is often bemused at the need for such a process when companies can be formed with a minimum of a £1 stake and in these days of seemingly limitless credit available to all and sundry.

It therefore comes as a huge relief that the rules on financial assistance for private companies are likely to be abolished under the latest Company Law Reform Bill which is due to come into force in 2007, and in case the message seems to be confined to a handful of commercial lawyers shrouded in legalese, be aware that the removal of this process will enable solicitors to provide a far more competitive price, which should mean that clients see the benefits in reduced legal fees!

For further information contact Alex Ross
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Matthew Rodgers is a specialist Commercial Property Lawyer who joined the firm this year. Here he explains the need for caution in examining break options in commercial leases

Commercial lease break options need careful examination

As with any commercial property transaction, the best advice is to seek advice from your solicitor. Just one example of the many issues that can arise relates to ‘break options’, which are arising more frequently in commercial leases.

As the recent case of **Legal & General Assurance Society**

Limited v Expeditors International (UK) Limited [2006]

demonstrates, it is advisable for both parties to a commercial lease to ensure that the wording of any break clause contained in the lease is not only carefully considered at the point of drafting the lease, but also is re-examined closely when it comes to exercising the break.



In this case, the break clause entitled the tenant to terminate the lease on six months prior written notice provided certain conditions were complied with, which included returning the property to the landlord with vacant possession. This required, amongst other things, the property to be cleared of the tenant’s belongings and personnel. The tenant served a break notice on the landlord and there then followed some discussions about the tenant’s repairing and decorating liability under the lease. Eventually, a deal was struck whereby, in return for a payment, the landlord would release the tenant from all liabilities, past and present, under the lease.

Later, the landlord made a claim against the tenant for arrears of rent and service charges. It argued that the tenant’s exercise of the break option was not effective as the tenant had failed to return the property with vacant possession; the tenant had left a large number of unwanted items inside the property, its staff were still clearing the site after the notice period had expired and it had failed to return the keys to the landlord. The tenant, in turn, argued that a deal had been struck and the landlord could not claim against it.

The Court agreed with the tenant, stating that it was implied into the terms of the settlement agreement that the break notice was to take effect and that the landlord was unable to rely on a failure of strict compliance with the provisions of the break clause to defeat the notice.

It is therefore important, for both tenants hoping to implement a break option or for landlords receiving such a notice, to seek timely legal advice as to how best to deal with it.

To contact the Commercial Services Team please call 0114 2202167 or email: m.rodgers@bellbuxton.co.uk

New Appointments



(Left to right: Charles Neal, Sue Ross, Matthew Rodgers, Lizzie Payne, Sarah Kelsey)

We have recently significantly bolstered our ranks with the combined appointment of a number of specialist solicitors and the qualification of solicitors from our in-house training programme.

With leading practitioners in the fields of family law, wills & probate (including contentious probates) and conveyancing, Bell & Buxton has been providing expert advice and legal services to individuals in the region for many years with the skills and expertise to handle the most complex cases.

Let your legal team protect your property investments

Matthew Rodgers looks at Houses in Multiple Occupation (HMOs) and Empty Dwelling Management Orders

Whether building a portfolio of commercial or residential property, using the services of an expert legal team to protect your investment should be a top priority.

In addition to the great amount of legal detail surrounding property transactions, frequent legal updates and introduction of new regulations mean that property owners can encounter serious difficulties if they are not informed of and do not react to the implications of regulatory change.

The property licensing regime introduced earlier this year for Houses in Multiple Occupation (HMOs - essentially any house or flat that is not self-contained, occupied by more than one household who share an amenity) means that any landlord who rents out an HMO which is three or more storeys high and occupied by five or more people who are not members of the same family will be obliged to obtain and pay for a licence from the local authority. It is a criminal offence to operate such an HMO without a licence and no rent can be recovered whilst the premises are not licensed. Local authorities also have the power to specify areas where all HMOs must be licensed even if they do not fall into the above

Similarly, the success of the commercial services department in supporting local businesses with handling the complexities of commercial deals and property matters has prompted the firm to expand the services available to meet client demand.

Commercial Head of Department Alex Ross comments, "We are expanding the firm in keeping with our culture of being approachable, efficient and effective. In today's market, the 'supermarket culture' is creeping into many areas of law in personal matters, and commercial clients often need closer relationships than the big law firms tend to provide. We are committed to growing the firm to continue to deliver the relationships and services that businesses need to support their day to day activities."

Recent appointments at the firm include:

Charles Neal - has recently completed a training contract with Bell & Buxton and joins the Commercial Services department as a solicitor

Sue Ross - a specialist commercial litigator providing clients with the expertise to protect their interests.

Matthew Rodgers - a specialist in commercial property, Matthew is enhancing Bell & Buxton's recognised expertise in this area.

Lizzie Payne - a recent starter with the firm as a trainee solicitor

Sarah Kelsey - joining the Wills & Probate team, Sarah is also an expert in tax planning matters which, with ever changing legislation, are of key importance in limiting the amount of tax payable.

category, so all landlords need to establish whether they are required to hold a licence.

Residential property owners also need to be aware of the Empty Dwelling Management Order - a power potentially enabling local authorities to take over empty residential properties even if they are not poorly maintained or neglected. If a property is unoccupied for more than six months and the owner cannot be located, an order may be imposed if other options to bring the property back into use are not found.

We ensure that all of our clients are aware of latest regulations and that their property portfolios are protected from possible pitfalls. We also make sure that new beneficial opportunities which arise such as the potential introduction of Real Estate Investment Trusts (REITs) and which may be of benefit to smaller property companies are explored and implemented if appropriate.



The reality behind the myth

Pictured below: Kate Patterson, Alex Watkinson, Rachel Roebuck and Barbara Cartledge



The Law Commission recently published its consultation paper on the financial consequences of the breakdown of cohabitant relationships by separation or death. Many couples live in blissful ignorance of their financial rights and responsibilities on separation believing in the myth of "common law spouses". Clients so often inform their solicitor that they expect to claim financial entitlement as a result of having cohabited for six months. This is a total fallacy.

Married couples can rely upon the Matrimonial Causes Act and the Civil Partnership Act 2004 to define their rights and obligations. The published Paper deals with the extent to which cohabiting couples should be able to claim financial remedies from each other following the end of their relationship.

The factors to be considered are not defined but will include the degree of mutual commitment to a shared life, whether the parties maintained a common household, whether the parties had a sexual relationship, their financial interdependence, the ownership, use and acquisition of property, the performing of household duties etc. There may be a minimum duration requirement for the relationship before a party becomes eligible to apply for financial relief.

The major problem confronting lawyers is the clarification of the respective interests of the parties in any home they shared. If owned jointly, often the position is clear. If owned by one party only, the other may need to seek an order for a declaration as to his or her interest in the property and in the net proceeds of sale. The Trusts of Land and Appointment of Trustees Act 1996 is the relevant legislation which also enables one party to seek an order for sale.

A partner left having care of a child does have rights to make an application under Schedule 1 of the Children Act 1989 for financial relief but this can only be made when the child is by law a child of both cohabitants.

Otherwise a deserted partner has no right to seek financial relief. Apart from property interests having to be resolved, there is no particular legislation dealing with issues

arising from contributions by one partner to the other e.g. for the purchase of a vehicle or the opening of a bank account in the name of the other and the responsibility for debts which may be in one name but which have been used for joint benefit. Such problems would be avoided if, following the paper, legislation is brought in establishing a right to financial relief upon relationship breakdown.

Under current law upon the death of a partner, the survivor could only make a claim against the estate in the event of the relationship having endured for at least two years.

Our experienced Family Department can assist and advise you should your relationship breakdown whatever the circumstances.

Barbara Cartledge is the Head of the Family Department. She and Kate Patterson are Resolution accredited. Solicitor, Louise Rawson, has experience in Trust for Land Act applications. Legal Executive, Alex Watkinson, is also a member of the Family Department.

Rachel Roebuck is our specialist child care Solicitor.

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Solicitor banged to rights!

Bell & Buxton's Wills and Probate head of department was recently jailed at HMP Doncaster in a 'Jail and Bail' day in a charity event organised for Bluebell Wood Children's Hospice.

It was more of a case of good girls than bad girls (and boys!) at HMP Doncaster when they locked locals up in the prison to raise funds for the Bluebell Wood Children's Hospice. This was their second Jail and Bail event, where 11 willing volunteers went into the clink and pledged to raise a minimum bail of £500 each before being released.

The day started at The Regent Hotel where participants were given their 'last supper' of a full English breakfast! At 9.30am, just as they were nicely full, South Yorkshire Police stormed the restaurant and made their arrests. All 11 felons were placed into the police van, where they faced an uncomfortable ride across town to the prison.

On arrival at HMP Marshgate the felons were processed through and became fully fledged inmates! After an inspection, interview, mug shots and fingerprints the new prisoners were locked in a cell and changed into prison issue track suits. Then it was time to start making those all important "I'm an inmate - get me out of here!" phone calls!

After an hour and a half of frantic phoning it was time to stop for lunch. Scampi, chips and salad were served on plastic trays, with plastic knives and forks and to the cries of "What? No tartar sauce?!" After a quick stop for lunch it was back to the ringing round for another frenzied 90 minutes!

By 3pm it was time to celebrate as ALL of the felons could be released. Everyone had done fantastically well and in total over £8,500 was raised for Bluebell Wood! After a presentation and champagne reception inmates changed back into their own clothes and were seen off prison premises!

Since the Jail and Bail many people have come forward and donated even MORE money to the felons and the total raised from the day has exceeded £9,000.

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