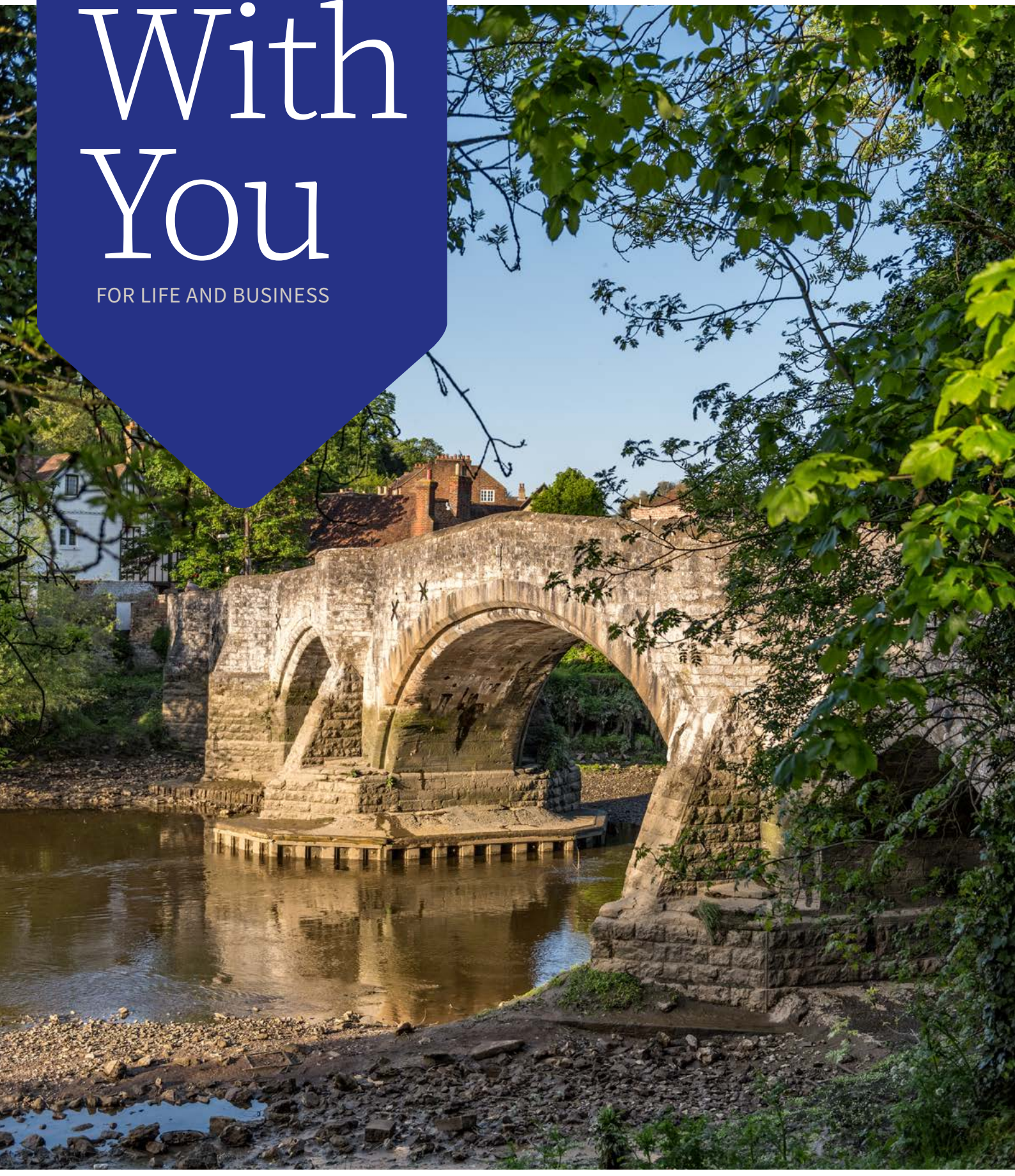
With You

FOR LIFE AND BUSINESS



Everything was seamlessly and professionally handled with the utmost care and courtesy.

Private Client

I was delighted that we had a very successful event with a strong turnout. Mesothelioma and other asbestos diseases have had a terrible impact on many thousands of people and Kent has been amongst the worst affected areas. I am very grateful to Brachers for their support for the event.

Alan McKenna, University of Kent

The team has an exceptionally high level of expertise but are also very open-minded, approachable and passionate about their work. They really care about their clients and that's what makes the team special and so great to work with.

Phil Defraine, Finance Director, RBLI

So proud of the exceptional team at Brachers - professional, ethical, savvy, authentic, kind, practical, no nonsense & so much more.

Sandra Matthews-Marsh, Chief Executive, Visit Kent

EDITOR'S NOTE

Welcome to the first edition of With You, our Brachers magazine. Inside you'll find a mixture of news, insight, client stories and regular columns on a wide range of legal-related topics.

We want our magazine to be informative and useful. Whether it's to help protect you, your family or your business, support you with major life changes, plan for retirement or anything else to help maximise your legacy – we're here to give you expert opinion. Our articles aim to cut through the confusion and give you clear and reliable information from our legal experts that you can trust.

Brachers looks ahead with great optimism. We are a well-established full service law firm with two regional offices providing legal support to help you prosper.

I appreciate you taking the time to read this and do let us know if there are any topics you'd like to see covered in the future.

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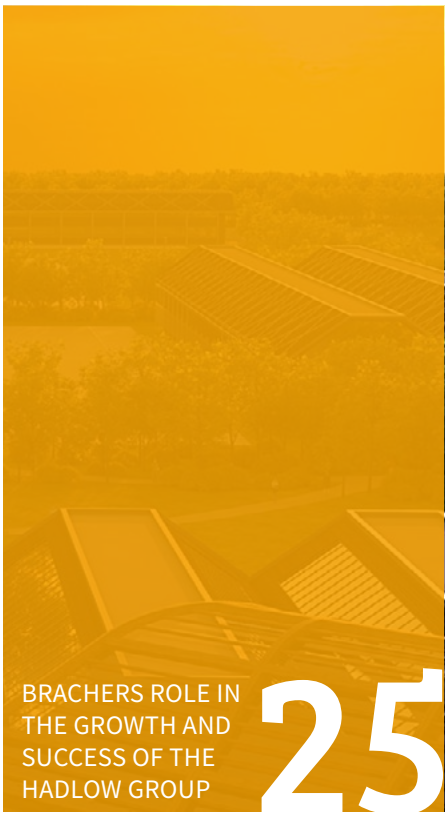

FUTURE-PROOFING YOUR BUSINESS

CLIENT INSIGHT

BRACHERS IN THE NEWS

Protect your property from fraud

KATE BAIGENT

Kate is the Head of Brachers' Residential Property team. Under Kate's leadership Brachers was one of the earliest firms in the country to gain the Law Society Conveyancing Quality Scheme accreditation.

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Property fraud appears to be increasing. This is where fraudsters have been able to dupe loan companies and the Land Registry into thinking they are the legitimate owners of properties, resulting in monies and titles being passed over.

A recent case, in which a mother and daughter were able to conspire to commit fraud, highlights this worrying trend and warns property owners to be more vigilant.

EXAMPLE PROPERTY FRAUD CASE

In 2014, a mother and daughter not only conspired, but were able to take monies by fraudulent means. Having secured the tenancy on a property and following the death of the legal owner, the mother was able to steal her identity.

With her new identity, the mother successfully applied for and secured a significant bridging loan using the property as collateral. Her daughter was pivotal to the deception and was living in Dubai, meaning the mother could open a bank account there in order to store the funds.

With suspicions being raised by the Land Registry based on activities surrounding the property, the Metropolitan Police investigated and were able to secure a prosecution against both parties under s1 Criminal Law Act 1977. The proceeds of the fraud, however, were never recovered.

HOW WAS THE FRAUD ABLE TO OCCUR?

Key points in this case led to the fraud being able to occur. These included:

- the property was rented out;
- the only contact address for the owner was the property address;
- the property was mortgage free;
- the property was high value.

WHY YOU SHOULD PROTECT YOURSELF AGAINST PROPERTY FRAUD

With owners believing that their properties are protected, following the steps outlined can help stop this type of fraud.

Opportunists are able to pose as real owners, which means they are able to inadvertently satisfy security checks. If contact details are outdated, this provides a window for fraudsters to take control of the property. If the property is mortgage free or empty for long periods, as seen in the example case, fraudsters can benefit.

With alerts only being raised by astute members of staff at the Land Registry, with heavy workloads, some fraudsters are slipping through the net. With two simple methods offered by the Land Registry to combat this issue, even if a small fee has to be paid, not only can owners have peace of mind, but this type of fraud can be stopped. Don't run the risk of having your property potentially being sold from underneath you without you even being aware. Make sure you have taken these steps to avoid property fraud.

HOW TO AVOID PROPERTY FRAUD

01 Ensure the property is registered. There are still many unregistered properties in England and Wales that fraudsters could try and claim against.

02 Consider voluntarily registering the property at the Land Registry.

03 Make sure the Land Registry has up to date contact details. Out of date contact details means that correspondence can be inadvertently sent to fraudsters and intercepted, enabling them to pose as the legal owner.

04 Consider applying to the Land Registry for their free property alert service. This means that if a fraudster does try to make a claim or change the property title, they will alert you. Time is of the essence as titles can pass if owners do not act quickly.

05 Consider entering a restriction on the title which requires a solicitor or conveyancer to confirm that the person who submits the document for registration is the same person as the registered proprietor. If you live at the property, there is no fee, if the property is rented out or empty a small fee of £40 is required.

The General Data Protection Regulation

CATHERINE DAW

Catherine leads the Employment and HR team and has a reputation for providing clear, practical and client focussed advice. Catherine has maintained long-standing client relationships and works closely with clients to meet their strategic aims.

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On 25 May 2018, the General Data Protection Regulation 2016 ("GDPR") will come into force across the European Union, including the United Kingdom.

It was announced in the Queen's Speech on 21 June 2017 that there will be a new Data Protection Bill which will implement the GDPR into our domestic law and, whilst we currently await the exact wording of that Bill, the GDPR is well and truly on its way.

Aside from any political arguments around Brexit, the implementation of the GDPR is a logical step for the UK to take going forward. The Data Protection Act 1998 ("DPA") sets out current data protection law within the UK. The world is, however, a very different place now compared to when the DPA was implemented nearly 20 years ago. Technology and the use of the internet have moved on significantly in that time and cybercrime is becoming an ever-increasing concern for both businesses and individuals. The need for an updated, modern piece of legislation governing data protection has become increasingly apparent.

Beyond this, the GDPR will have a wide territorial scope. It will not only apply to entities that are based within the EU but it will also apply to those based outside of the EU if they offer goods or services to individuals who are based in the EU or if they monitor activities carried out by individuals inside the EU (e.g. spending habits). Such activities are crucial to many UK-based businesses.

The GDPR also allows data transfers to take place only to non-EU countries if the European Commission has made an "adequacy decision" in respect of the levels of safeguarding within that country. Currently only a handful of countries benefit from this recognition and the UK will want to ensure that on leaving the EU it continues to be able to receive data from the EU without hindrance, rather than the more case-by-case approach which will apply to other countries that are not recognised in this way.

The biggest change in Data Protection Law in 20 years

With the above in mind, even once the UK has left the European Union it seems likely that the provisions of the GDPR will remain part of the UK's domestic law. This will meet the dual purpose of safeguarding individuals' rights and allowing UK organisations to continue to operate freely with the EU from a data protection perspective.

As a result, it is essential that businesses and organisations ensure that, if it is not the case already, the GDPR is high on their management team's agenda and that a plan is in place to address the changes which will come into effect on 25 May 2018.

CONTACT OUR SPECIALIST LEGAL TEAM

Whilst the GDPR presents some new and complex challenges for organisations, it is important not to be daunted by them. With a good understanding and the right support, compliance can be achieved.

At Brachers we have a team of experts on hand who can assist you with all aspects of GDPR compliance, whether the personal data that you handle relates exclusively to your employees or extends further into your commercial practices.

Our GDPR brochure helps guide you through the changes that come into force from 25 May 2018.

To request your FREE copy, please email catherinedaw@brachers.co.uk

ACTION POINTS

01 Make sure that the GDPR is being discussed at the top level of your organisation and that those managing the business are aware of the need to ensure compliance and the risks of not complying.

02 Appoint a Data Protection Officer ("DPO") or other individual whose responsibility it will be to oversee data protection within your organisation.

03 Ensure that your DPO has received all necessary training to allow them to undertake the role and that a sufficient budget is set aside to allow them to do this and to access any additional support they will need both prior to the GDPR taking effect and in the future.

04 Undertake a full audit of the data collected and processed by your organisation.

05 Identify the basis upon which the data is processed and consider alternative grounds for processing the data other than simply by the data subject's consent.

06 Review and shape your procedures in line with the data you hold and the processing activities undertaken.

07 Put in place a procedure for breach notification that ensures that details of any breaches of the GDPR reach the DPO or other appointed individual swiftly.

08 Provide training to all staff so that they can recognise a breach of the GDPR and are aware of who to notify of the breach.

09 Review your commercial agreements to check for any caps in your liability and/or the liability of any of your own service providers and seek to vary any contracts that provide inadequate protection.

10 Seek external expert advice where you need it. Brachers' team of experts can be with you all the way on your journey to ensure that your organisation will be GDPR compliant by 25 May 2018.

Kent charity making a difference to veterans' lives

Brachers' client Royal British Legion Industries (RBLI) is a national charity supporting the Armed Forces, people with disabilities and people who are unemployed. In the last 12 months the charity has helped just over 15,000 beneficiaries.

More than just a charity, RBLI is also one of the largest social enterprises in the UK, with a thriving commercial manufacturing operation employing 150 people. Overall the charity employs nearly 400 employees.

Based in Aylesford in Kent since 1919, the charity spans an estate of over 80 acres providing welfare, care and accommodation for veterans. As the charity gathers momentum leading up to its centenary year in 2019 and beyond, we spoke to Phil Defraine, Finance Director, about their future and exciting growth plans.

Tell us about the Royal British Legion Industries and the work you do

RBLI is a national charity supporting the Armed Forces, people with disabilities and people who are unemployed. We improve lives every day by inspiring individuals and supporting them to find work and lead independent lives.

Our work includes:

- Britain's Bravest Manufacturing Company
- Veterans' housing
- Care services for veterans and assisted living
- Supported work and facilitating return to work

Phil Defraine

Our manufacturing arm is a registered social enterprise with over 150 people, ex-service men and women, working here on site.

What sets you apart from other organisations in the sector you work in?

RBLI is a diverse organisation focussed on supporting veterans and their families in practical ways. Our manufacturing arm is a registered social enterprise with nearly 150 people, ex-service men and women, and disabled employees working here on site. This is quite unique in comparison to similar charities as our beneficiaries have the opportunity to both work and live on site.

Have you taken any steps to "future-proof" your charity?

RBLI has completed the construction of 24 new flats to provide long-term housing options for single veterans and families on the Aylesford site. It has been a long-held ambition of RBLI to be able to offer longer-term housing solutions for veterans who might not be able to access social housing.

We want to continue redeveloping our site so that we offer new, modern and flexible accommodation for both single veterans and families. This will help us continue to build thriving communities.

For further information about RBLI, please visit **www.rbli.co.uk**

How has Brachers helped you?

Brachers provides employment law and commercial support to RBLI in ensuring the organisation maintains the highest governance and employment standards. The team has an exceptionally high level of expertise but are also very open-minded, approachable and passionate about their work. They really care about their clients and that's what makes the team special and so great to work with.

What do you like most about your job?

We do an awful lot of good which can be seen and touched here on the site. There are a lot of charity sector jobs where you can't see the benefits like we do here.

> "When I have tough days in the office, I can have a walk around the estate and speak to residents and workers and see and feel the good work we are doing.

Phil Defraine, Finance Director

From 6 April 2017 an additional main residence nil rate band became available so that less inheritance tax may be paid.

CHRISTOPHER ERIKSSON-LEE

Christopher is a Partner in the Private Client team. Christopher has particular expertise in inheritance tax planning for clients with businesses and/or agricultural assets. He is a full member of the Society of Trust and Estate Practitioners and lectures for CILEX Law School on various Private Client topics.

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AMY LANE

Amy joined Brachers in 2014 and specialises primarily in tax planning and succession matters with a view to mitigating tax exposure and preserving family wealth for future generations.

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Under the current rules, inheritance tax (IHT) is charged at a rate of 40% on your assets which exceed the nil rate band. The nil rate band is currently set at £325,000 and any assets that fall within this are taxed at 0%.

The residence nil rate band (RNRB) is an additional allowance that may be claimed on your estate if you die on or after 6 April 2017, and if you leave your interest in your family home to "qualifying beneficiaries". This includes your direct descendants such as your children, grandchildren or stepchildren.

01

It is still possible to utilise your RNRB allowance if you leave your home to your spouse because any unused allowance can be carried forward for the benefit of the surviving spouse.

02

The RNRB can be claimed even if your home was sold prior to your death, as long as the property was sold on or after 8 July 2015 and at least part of the estate is inherited by a qualifying beneficiary.

The RNRB will also apply to a property that is not your actual residence when you die. For example, if you had to move into a care home, provided the property was your residence at some point during your period of ownership, then it will still qualify for the RNRB.

Change in inheritance tax rules

03

The RNRB can only be applied to one property and if you own multiple properties your executors must elect one to benefit from the allowance.

04

The RNRB will be 'tapered' if your estate exceeds the taper threshold which is currently set at £2 million. This will reduce the amount of RNRB that an individual can claim.

05

If the terms of your Will stipulate that your family home is placed into a Will trust on your death, the availability of the RNRB may be affected. For example, if the property is placed into a discretionary trust in which the beneficiaries are limited only to lineal descendants, it will still not be owned absolutely by the lineal descendants due to the discretionary nature of the trust.

However, if the trustees have sufficient power, it is possible to appoint the property out to beneficiaries who are lineal descendants within two years of the date of death so that the RNRB can be claimed.

It is therefore extremely important to ensure this is done if the RNRB is to be fully utilised. In the case of couples with mirror Wills (where they leave their estate to each other on first death) it is important to consider each death in turn to determine at which stage the RNRB can be claimed.

06

Gifts to a bare trust (where the beneficiary has an immediate and absolute right to the assets) for a lineal descendant can however benefit, along with a specified list of trusts including a disabled person's interest trust or a trust for 18-25 year olds.

07

The rules surrounding the RNRB are unfortunately very complex and careful consideration should be given to effective lifetime planning in light of them.

It is critical to review the terms of your Will to ensure your estate can fully benefit from any RNRB available. Seeking specialist advice on how to structure your Will to benefit from the new allowance is therefore highly recommended.

Resolution speaks out about the law on cohabitation

Many people still believe that as 'common law' partners they have the same legal rights as married couples. This is a legal myth and many cohabiting couples find themselves in difficulties when they separate.

The Office of National Statistics (ONS) has released figures which demonstrate that there are now 3.3 million cohabiting families in the UK. Indeed, the figures show that cohabitation has been the fastest growing family type over the last 20 years. Despite this, very little has changed from a legal perspective to provide greater protection to these families, particularly upon separation.

The Resolution Chair, Nigel Shepherd, has said: "These ONS figures are further proof that more and more couples are choosing to live together and bring up their children without marrying. Sadly, some of those relationships will come to an end at some point. This is a feature of our modern society that is here to stay and, unfortunately, current cohabitation law is failing to provide them with the rights some of them mistakenly think they have."

> "Rather than ignoring these 3.3 million families, our lawmakers must respond and introduce safety net legislation that will provide legal protection and fair outcomes at the time of a couple's separation.

The sentiments expressed by Mr Shepherd are far from new, with Resolution and other interested bodies having called for a change in the law for a number of years. However, unless and until the law is changed, cohabiting couples will have to rely on the strict laws of trusts and property, and not matrimonial law, to determine their rightful entitlement upon separation.

This could mean that a party who has lived in their partner's house for a number of years, perhaps even decades, may have no legal entitlement to any financial provision upon separation (whether by way of lump sum payment or monthly maintenance), even if they have raised a family together. This makes it all the more important, therefore, that separating couples seek specialist legal advice as soon as possible.

Rhia Davis and her colleagues at Brachers are on hand to provide such specialist advice and ensure that you receive your rightful entitlement upon separation.

RHIA DAVIS

Rhia is a Solicitor in the Family team. She deals with all aspects of family law and is a member of Resolution, an organisation committed to resolving family matters amicably.

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MEI-LING MCNAB

Mei-Ling is a Partner in the Family team. Mei-Ling is highly regarded for her ability to deal with cases in a proactive and decisive manner and is passionate about getting the right result for her client.

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Pre-nuptial agreements: for better or for worse?

Mei-Ling McNab from our Family team discusses the benefits of early discussions on pre-nuptial agreements, particularly to help protect family legacies.

Family solicitors find themselves increasingly busy advising and negotiating their client's pre-nuptial agreement in advance of the big day.

Whilst many may still seek to argue that to enter into a pre-nuptial agreement is unfair or unromantic, many more clients can rightfully argue that being able to openly discuss and scope an individual's financial expectation should the marriage not survive the test of time, demonstrates an honesty and integrity that could put many marriages in good stead for long-term happiness.

I am often asked to identify whether there is a stereotypical client who seeks a pre-nuptial agreement. It may come as a surprise that it is not always the wealthiest clients but rather those clients with mutual respect for each other's assets.

There is often an understanding of the need to protect family legacies, be it to safeguard land and farms that have been in families for generations, or where assets have been built up in the years before meeting a future spouse. Pre-nuptial agreements can also often be used to put to rest concerns from family members, whether it be children of a previous marriage or wealthy elderly parents.

As to the legal enforceability of pre-nuptial agreements in the UK, whilst they are not yet legally binding, from ever more progressive case law in this area, it is clear that they carry greater weight with the courts and within matrimonial proceedings.

Continued >

When properly entered into, pre-nuptial agreements can vastly reduce not only the financial strain, but more importantly the emotional strain of negotiating a financial settlement where marriages break down.

The benefit of entering a pre-nuptial agreement is to regulate how assets built up either prior to the marriage or through wealthy family businesses should be dealt with upon a divorce, as well as to consider and agree how joint marital income and responsibilities should be recognised and quantified. Where family businesses are concerned, properties as well as business interests are often passed down to the next working generation and so there is often good reason to protect these interests by way of a pre-nuptial agreement.

Pre-nuptial agreements are not to be entered into lightly. There is no one size fits all, so that proper and timely consideration needs to be given as to the terms of each individual agreement. Agreements need to be fair and entered into without pressure. They should be prepared with the benefit of full and honest financial disclosure, independent legal advice and in good time prior to the wedding!

Brachers supports Breast Cancer Care

We recently teamed up with leading health charity Breast Cancer Care at their monthly support service.

The support service day, gave a group of breast cancer sufferers the opportunity to access free advice from legal experts Christopher Eriksson-Lee and Amy Lane.

The topics covered on the day included Wills, powers of attorney and advance directives as well as providing for young children. During the day there was an interactive discussion on how to ensure children's inheritance was protected, protecting against care fees (should surviving husbands need care in the future), advance directives about what medical treatment sufferers did not want to receive and the importance of putting in place powers of attorney, particularly in relation to health and welfare.

Christopher Eriksson-Lee, Partner at Brachers said: "We are delighted to work with charities and support the courageous and determined people that were here today. It was humbling to speak to the attendees and a pleasure to share our expertise on how they can protect their families to help face their future with some reassurance. It was a pleasure to support the day, in the small way which we did."

Making your contracts Brexit-proof

There are still many uncertainties since the Brexit referendum result. Although Article 50 was triggered in March 2017, the UK will not formally leave the EU until March 2019 at the very earliest. Until this time, it is "business as usual" for UK companies and EU rules and regulations must continue to be abided by.

We cannot know for certain at this stage what a post-Brexit UK will look like but businesses that trade with the EU, or are exposed to EU markets, should start thinking about possible eventualities. In particular, whether contracts with EU trading partners will continue to be commercially viable if there is regulatory change or if the UK does not remain part of the single market and tariffs are imposed and/or currency fluctuations worsen.

Whilst Brexit uncertainty remains, businesses should be considering whether they need any specific contractual Brexit protections before signing any long-term agreements. For example:

- a right to terminate the agreement if there is a change in law following Brexit that has an adverse effect on one or both parties;
- a price adjustment mechanism to deal with the risk of currency fluctuations; and/or
- an obligation on the parties to meet and renegotiate terms when the Brexit deal is finalised, with defined consequences (e.g. a right to terminate) if new terms cannot be agreed.

Conversely, if the other party to such an agreement asks for contractual protections of this nature, you will need to consider whether such clauses are commercially acceptable to your business or whether they need to be softened to ensure that any termination or other rights granted are not unreasonably broad.

If the parties agree to include such "Brexit clauses" in an agreement, it will be necessary to clearly define what "Brexit" actually means and whether any termination or other rights should trigger if there is a "soft Brexit" as opposed to a "hard Brexit".

Although it is already commonplace to see "force majeure" clauses in contracts (that is, a clause allowing a party to suspend or terminate the performance of its obligations when certain circumstances beyond their control arise, making performance of an obligation impractical or impossible), it is unlikely that any consequences of Brexit would amount to a force majeure as under English law changes in economic or market circumstances that affect the profitability of a contract are rarely caught by such a provision. In any event most force majeure clauses require the event to be unforeseeable but Brexit by its very nature will be considered a foreseeable event in most new contracts.

There is no one size fits all solution to Brexit-proofing a commercial agreement and the nature and extent of the contractual protection required will need to be tailored to your particular business.

If you would like to discuss any issues relating to contracts in the light of Brexit, please do not hesitate to contact us.

EROL HUSEYIN

Erol is a Partner in the Commercial team and has over 20 years' experience advising on all aspects of commercial transactions. Ranked in Chambers Global, Erol has extensive experience of providing focused, risk-based advice to clients.

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SARAH HEWITT

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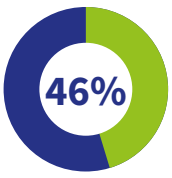
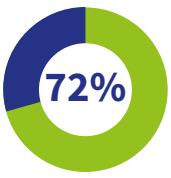
Cyber-crime: are you prepared?

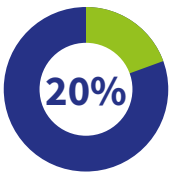
UK GOVERNMENT'S CYBER SECURITY BREACHES SURVEY 2017



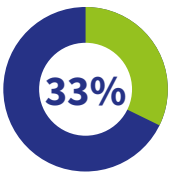
46% of all businesses identified one breach or attack in the last year



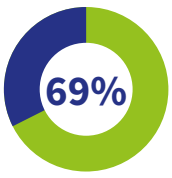
72% of those were due to staff receiving fraudulent emails



only 20% of those surveyed had provided cyber security training



only 33% have formal policies on this issue



only 69% have strong password security protocols.

FURTHER ASSISTANCE

The cyber threat is a difficult issue for all businesses, from small and owner managed enterprises right up to multi-national corporations. We offer Data Protection Awareness Training programmes and training on what to expect from the new GDPR. These can be provided in-house or by Webinar. In addition, we offer a review and update package for employment and commercial contracts, consent statements and data protection policies. We can help you review your data protection and cyber compliance and put you in a stronger position for the future.

Three quarters of businesses in Kent have been subject to an attempted email fraud, cyber-attack or telephone fraud in the past six months.

This was the worrying headline finding of a survey conducted amongst businesses in Kent. The survey also found that Kent businesses expect to see a marked increase in attempts over the next two years.

For most businesses their biggest cyber threat is their own staff. Uncomfortable but true. Training and updating of policies and rules is key.

TRAINING

You wouldn't let a new employee operate a dangerous piece of industrial machinery without training and assessing their competence. You wouldn't let them drive on company business without checking they were licenced to do so. You wouldn't execute a contract without putting in place basic safeguards in respect of your own and your counterparty's behaviour under that contract.

A computer (in any form) is now one of the most serious threats (and vital tools) within a business. Basic cyber security and data protection risk awareness training (and updating of that training) is now a key business safeguard.

Putting aside the direct commercial impact of criminal ransomware or operational disruption and reputational damage, businesses will soon be faced with the new General Data Protection Regulation (GDPR) in 2018. This will create significantly increased financial penalties for businesses who do not have proper practices in place to protect personal data.

The new penalties regime will enable fines to be levied of up to €20 million or 4% of global group turnover in serious cases. Lesser breaches of the GDPR may attract fines of up to €10 million or 2% of annual world-wide turnover.

POLICIES AND RULES

Review your policies and your contracts – are they up to date? Does your current policy provide clear guidance on avoiding phishing attacks, spear phishing attacks, ransomware etc? Does it match your IT practices and does it clearly outline your rules and expectations?

PROTECTIVE ACTION – INCLUDING THIRD PARTY CONTRACTS

Make 2017 the year of cyber awareness. In addition to protecting your business through staff training and a review of your IT policies and procedures, it is essential to ensure that you minimise the risks when entering into commercial contracts with third parties.

EROL HUSEYIN

Erol is a Partner in the Commercial team and has over 20 years' experience advising businesses and lenders on all aspects of commercial transactions. Ranked in Chambers Global, Erol has extensive experience of providing focused, risk-based advice to clients.

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COLIN SMITH

Colin is a Partner in the Employment team with over 10 years' experience. He is committed to finding solutions for his clients, whether that may be on a tricky workplace grievance or disciplinary, through to large scale collective redundancies, TUPE transfer or tribunal claims.

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PRACTICAL STEPS SHOULD INCLUDE THE FOLLOWING:

- **Undertake due diligence** on any party that will have access to your computer systems, your hardware and/or who may receive personal data and/or commercially sensitive information.
- **Ensure that the other party is compliant** with published cyber security standards (e.g. ISO 27001).
- **Include a contractual right to audit** the other party's cyber standards.
- **Include security and data protection policies** in each contract that must be adhered to.
- **Include contractual provisions requiring the parties to comply with all cyber security regulations** (especially data protection) and (potentially uncapped) indemnities for breach.
- **Include a right to vet individuals or sub-contractors and to remove** any such persons you are concerned about.
- **Include obligations to provide software free of flaws, malware** etc. and to remedy any such problems.
- **Specify in the contract a policy to follow in the event of a cyber-security breach**.

Employment focus: How to negotiate an employment contract

When faced with the prospect of a new job, promotion or pay rise many employees enter into new contracts of employment with little consideration of the contract terms beyond what they view to be the "headline" items: pay, hours, holiday, notice and, perhaps, sick pay and benefits.

ANTONIO FLETCHER

Antonio is a Senior Associate in the Employment team. He has over 10 years' experience advising both employers and employees on a full range of employment matters and is frequently asked by clients to review proposed terms of employment offered to them by their employer or prospective employer.

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Many employers have no more than two or three standard sets of employment terms that they use across their business with little variation from contract to contract within each group.

However, this does not mean that you, as an employee, cannot seek to vary those terms to your benefit or to suit your particular circumstances before the contract is entered into, particularly where you are joining in (or moving to) a key role and are in a strong negotiating position.

Furthermore, as with all contractual arrangements, you need to have a clear understanding of the obligations you are committing yourself to and what both their short and long term effect will be.

DOES THE CONTRACT CONTAIN ALL RELEVANT TERMS?

Many contracts refer to other documents which you may not have been provided with alongside the contract of employment, particularly if you are not already employed by the employer. Sick pay and holiday entitlements may be set out in the staff handbook, the rules applicable to any bonus scheme may be set out in separate documents.

It is important to ensure that you have sight of these in order to be clear on your entitlements and to check whether these documents are part of your employment contract or not. Non-contractual policies and entitlements can generally be varied without an employee's express consent, unlike contractual terms.

Have a clear understanding of the obligations you are committing yourself to and what both their short and long term effect will be.

DUTIES AND HOURS OF WORK

Are these clearly defined? Do you know what is (and what is not) expected of you in your role?

In order to determine whether a job is right for you, it is important to know exactly what is required of you when undertaking the job in terms of skills, tasks and hours. Are additional hours of work paid or unpaid? Are you being asked to opt out of the maximum 48 hour working week set out in the Working Time Regulations which otherwise applies to all workers?

If so, does that meet your expectations of the hours you will be regularly required to work or do you need to ask more questions? These are important considerations and should be addressed before the contract is signed.

OBLIGATIONS FOLLOWING EMPLOYMENT

Does the contract place continuing duties on you even once it has come to an end? Post-employment restrictions are common in the contracts of more senior employees but can be found in contracts of more junior employees too. Some can be far-reaching and can prevent you from working within the employer's industry sector for a number of months after your employment comes to an end.

Other clauses are too widely drafted and are therefore unlikely to be enforceable. Obtaining advice on their enforceability and thinking about how the restrictions could impact you in the future is crucial from the outset of your employment and prevents nasty surprises when the time comes to move on.

Most contracts will also prevent employees from making use of confidential information after their employment has ended, but you should check that such provisions do not extend beyond what really is confidential.

Within Brachers' Employment team, we frequently review contracts of employment and service agreements on behalf of senior directors and other employees highlighting unusual and unsuitable terms as well as practical considerations such as the examples detailed above.

Taking expert advice before entering into a contract of employment will allow you to take up your new opportunity with thorough knowledge of your rights and obligations and help you avoid future conflicts.

U-turn on increase in probate fees...but maybe not for long!

EMMA HEGARTY

Emma is a Chartered Legal Executive in the Private Client team and has over ten years' experience in dealing with a broad range of private client matters including, Will preparation, probate, the administration of estates and powers of attorney.

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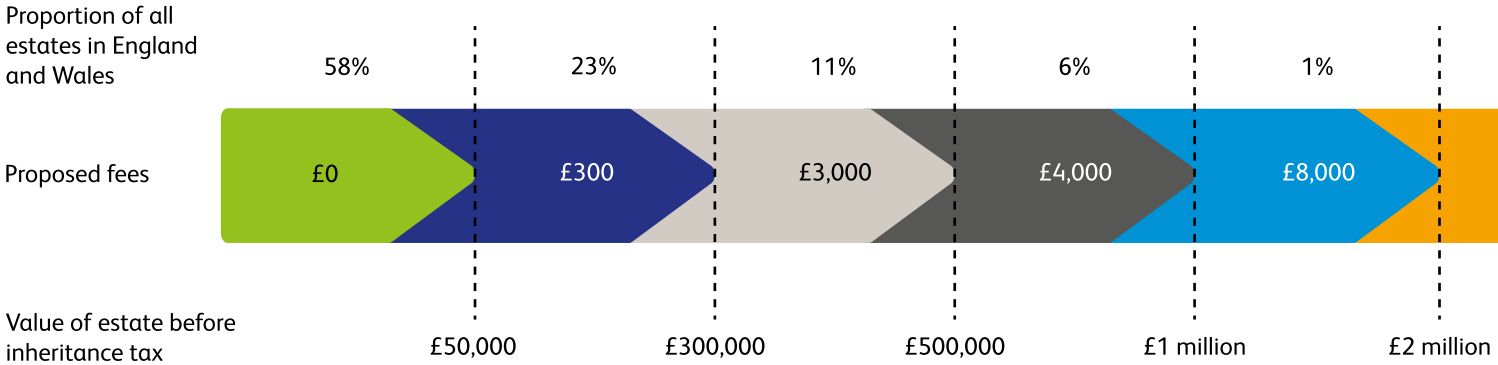
In February 2017, it was announced that from May, probate fees were due to rise from £155 or £215 (personal applications) to a tiered level up to £20,000 for estates over £2 million in England and Wales. Perhaps unsurprisingly, this hike in fees was not welcomed by the public or the legal profession and came under heavy scrutiny and debate.

It was suggested that, as access to estate funds is limited, executors may have to find the £20,000 themselves to obtain the grant of probate. If the executors were unable to come up with the funds, then other options would be bank loans or firms of solicitors funding the fee themselves out of their office account. It was hoped that bank and investment managers would arrange for the court fee to be released in the same way they do for inheritance tax and funeral costs, but this had not been confirmed.

The Government argued that only a small percentage of estates (0.5%) would be affected by the maximum increase in fees, and that a large proportion (58%) would not pay anything as there would be no fee for estates worth less than £50,000. However, given that many assets under £50,000 can be dealt with without a grant of probate anyway, it was debatable how much of a bonus this "no fee" consequence would have been.

In late April, just days before the rise in fees was due to come into effect, bereaved families and lawyers welcomed the news that the proposal had been axed because there was not enough time to get it through parliament before the General Election on 8 June.

THE PROPOSED FEES ARE AS FOLLOWS:



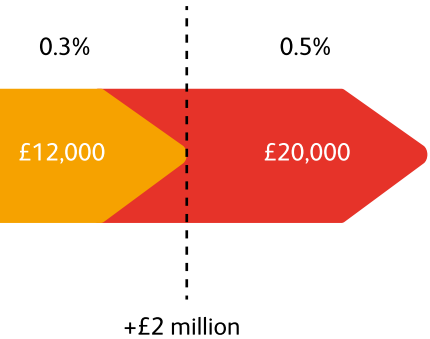
Figures taken from the Ministry of Justice consultation publication February 2017

At the moment, the fees remain at £155 if you are applying for a grant of probate through a solicitor, or £215 for a personal application, regardless of the size of the estate.

However, now that the election is behind us, it is possible that the proposal to increase fees could reappear, leaving bereaved loved ones struggling to meet the potentially significant hike in costs.

One way of mitigating the increase could be to set up a trust that will pay out on death, allowing for the money in the trust to be used for the court fee. This is commonly done by those with estates that will be subject to inheritance tax.

The message here is to watch this space. At any time, the government could announce it is reviving the proposal to increase probate fees. The increase could come in very suddenly so if you are an executor looking after an estate, you may wish to speak to a solicitor sooner rather than later in order to get your probate application in and avoid an unpalatable ballooning of costs.



Brachers' expertise exemplified by top rankings in leading legal directories

Brachers' legal expertise has been commended by the leading legal directories, with the firm's rankings highlighting its continued success over the past 12 months.

The Debt Recovery, Clinical Negligence and Family and Matrimonial teams had notable achievements with all three receiving top tier rankings. The firm's reputation for family law was further emphasised with three partners being named as leaders in this field with an additional 16 lawyers across the firm receiving the same recommendation.

The rankings from Chambers and Partners and Legal 500 consider the calibre of work undertaken as well as feedback from clients and other professionals. The firm received high praise this year, with the teams being described as "outstanding in every criterion", "personable and supremely efficient", "very commercially minded, with good attention to detail "and" first class, they go above and beyond."

Overall, the firm received 26 rankings across both Chambers and Partners and the Legal 500, the most prominent, independent guides to the legal sector. Over half of these rankings fell into the top and second tiers.

> "We are delighted that so many of our lawyers and practice areas have been recognised for their expertise by these respected authorities. It is testament to Brachers commitment to delivering the highest quality of service and care to our clients.
>
> Joanna Worby, Managing Partner

Brachers supports Action Mesothelioma Day 2017

Brachers was delighted to support an event held in Chatham in July to commemorate victims and raise awareness of the asbestos killer disease mesothelioma. Statistics show that the Medway area has one of the highest incidence rates in the country of the cancer.

JEREMY HORTON

Jeremy is the lead Partner of Brachers' Personal Injury and Industrial Disease team. He specialises in serious and complex personal injury claims, usually for claimants, but occasionally for defendants.

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The event, held at Royal Dockyard Church in Chatham Dockyard, saw a dove release in the presence of the Deputy Mayor of Medway, followed by a public meeting to discuss asbestos issues and victim support.

Speakers at the event included Professor Anne Bowcock from Imperial College, London, Dr Helen McGee from Hospice in the Weald, John Reeves of the Kent National Union of Teachers, and Jeremy Horton Partner at Brachers.

The event was organised by Alan McKenna who teaches law at the University of Kent and campaigns and writes on asbestos issues.

Brachers has established a reputation for helping victims of industrial diseases such as mesothelioma to make their claims, on a 'no win-no fee' basis.

Brachers is the only firm in Kent, Surrey or Sussex with an APIL (Association of Personal Injury Lawyers) Accredited Occupational Disease Specialist and an APIL Accredited Asbestos Disease Specialist solicitor.

Government figures on mesothelioma deaths show that the Medway area (including the Medway Towns of Chatham, Gillingham and Rochester) remains in the top 10 for the incidence of deaths from mesothelioma.

The high incidence of mesothelioma and other asbestos-related disease can clearly be linked to the heavy use of asbestos at Chatham dockyards in ship building and repair, and exposure at other sites such as BP's Isle of Grain oil refinery and the asbestos manufacturing factory at British Uralite Higham, just on the edge of the Medway Towns.

Jeremy Horton, partner at Brachers said: "We were very happy to lend our support to this action day and our thanks goes to everyone that came. Sadly, the industrial past in our region was a recipe for a future epidemic of asbestos-related deaths and diseases which we are only experiencing now. Mesothelioma deaths have increased by over one third in the past 10 years and now run at just over 2,500 nationally. They are expected to remain at this level until at least the end of the decade. We are committed to helping victims of the disease get the compensation they deserve."

Five Acre Wood school chosen as charity of the year

Staff at Brachers have selected the Friends of Five Acre Wood School, the charitable trust for the Maidstone special needs school, as its dedicated charity and will now raise funds and build links with the school over the next two years.

Five Acre Wood School (FAW) is an outstanding all age (4-19) day District Special School for children and young people with profound, severe and complex learning difficulties. It currently has 374 pupils.

The Friends of FAW charitable trust was set up in 2013 and has managed to raise almost £300,000 so far, which has been spent on things such as minibuses, play equipment and classroom equipment to enhance the pupils' experience whilst at school.

The school is expanding, with a new wing creating 23 new classrooms - but unfortunately there is no funding to fit out a new sensory room, a music room, an ICT suite and a soft play room. FAW also require more communication aids for the children, a new hydrotherapy pool and materials to create a sensory garden.

Funds raised by Brachers will help towards these things. However, it won't just be about fundraising – the firm will also encourage staff to get involved and build personal links with the school through such things as attending school events and fetes, and supporting the children with activities.

The firm already has links with the school in that one member of staff's child attends the school and Managing Partner Jo Worby has been a Governor for the past two years.

Jo Worby, said: "I am delighted that staff have voted for Friends of Five Acre Wood to be our selected charity for the next two years. It's a wonderful school that does so much fantastic work with children and young people with special needs.

"It's a place that makes a huge difference to many children's lives. As a firm, we're strongly committed to supporting good causes in the local community and I'm always really proud of how much our staff get involved. I'm sure that everyone will really get behind Five Acre Wood and hopefully we can raise much-needed funds to help the school continue to expand and improve its facilities. It's exciting to be at the start of what I hope will be a fantastic relationship."

If you would also like to help FAW please contact them at www.fiveacrewood.co.uk

Strengthening the tourism industry

Brachers joined the destination management organisation, Visit Kent, as a corporate investor in 2016, as part of a drive to build mutually beneficial strategic partnerships with businesses that have links to or interest in the tourism industry.

Working together with Visit Kent means we can provide expert advice at all stages of the business life-cycle, tailored to the specific issues that face organisations in the tourism and transport sector. Ultimately this means we can provide better support to companies who want to ensure they are risk resilient and equipped for sustained growth and success.

Our dedicated legal experts regularly meet with members and we're pleased to share with you some of their frequently asked questions and answers.

Q: My business employs a number of permanent employees as well as seasonal workers from the European Union. I am concerned about the impact Brexit will have on my ability to retain and attract these workers. What steps can I be taking now to avoid a future issue?

ANTONIO FLETCHER
EMPLOYMENT
SENIOR ASSOCIATE

The first step is to make sure that you have a good understanding of where potential areas of risk lie for your business. The best way of doing this is to carry out a full audit of both your permanent staff and of the processes you follow and the agencies you use for the recruitment and provision of temporary workers. If many of your seasonal workers are EU nationals it is worth speaking to the agency about whether they still have a good bank of workers available to them currently and what their longer-term strategy is should it become more difficult for seasonal workers to come to work temporarily in the UK.

Turning to your permanent employees, ensuring that you have engaged, motivated employees who recognise that they have an employer who cares about their wellbeing is often crucial to their retention. This can be achieved in a number of ways, such as by ensuring that your workplace is genuinely one that is free from discrimination or harassment in any form, providing foreign nationals with information and support as the steps individuals and families will need to take to obtain "settled status" become clearer, as well as more holistic strategies for promoting engagement and wellbeing throughout the workforce.

It is also worthwhile spending time thinking about alternative types of workers you could look to introduce to your business in future. For example, if your business has not traditionally engaged apprentices (or has only done so in small numbers), the current national focus on apprenticeships and the recent introduction of the apprenticeship levy means that there is now plenty of information readily available on how apprenticeships can help your business and plenty of potential opportunities for those looking to hire apprentices to explore.

Whilst there is still a significant level of uncertainty as to what the full impact of Brexit will be, using the time now to plan ahead and identify the risks will place your business in a much stronger position in future.

Q: As a tourism business we regularly send our customers direct marketing material via post and email with new and exciting offers. We have heard that data protection law is changing – is there anything we need to be aware of?

SARAH HEWITT
CORPORATE & COMMERCIAL SOLICITOR

The Data Protection Act 1998 (DPA) currently regulates the control and processing of personal data in the UK but from May 2018 the General Data Protection Regulation (GDPR) will come into force, imposing a number of onerous obligations on organisations.

In order to process personal data (including postal and email addresses) businesses need the data subject's consent and under the GDPR the standard of consent will become higher. In particular, consent will have to be freely given, specific, informed and unambiguous and it will also require some form of clear affirmative action from the data subject - pre-ticked boxes, silence or inactivity will not suffice. You will therefore need to consider how you currently obtain consent from your customers to receiving marketing material and whether in light of the GDPR your procedures need to be updated.

In relation to existing customers that you already send marketing material to, whether you will be able to legally continue to send such material ultimately depends on what sort of consent to processing you originally obtained from them under the DPA. In principle, you will not be required to obtain new consent from individuals if the standard of the original consent meets the higher standard required under the GDPR. Email marketing already requires a higher form of consent under the Privacy and Electronic Communications Regulations 2003 so if this has been your preferred method of communication in the past, there may be a greater chance that you are already GDPR compliant.

It is important to review your current policies to avoid non-compliance with the GDPR. Under the GDPR fines for data protection breaches will rise from the current maximum of £500,000 up to €20million or 4% of global annual turnover.

Continued >

Q: How easy is it to get planning permission for Tourism and Leisure Development?

LEE MAY
PLANNING & ENVIRONMENT PARTNER

Planning Applications for tourism and leisure development (for example a new hotel or guesthouse or leisure facilities such as cinemas, museums and galleries) are considered by the Local Planning Authority (LPA) for the area in which the development is to take place – i.e. the local District or Borough Council. When considering such applications the LPA must decide whether or not to grant planning permission based upon local and national planning policies and other material considerations.

National policy is set out in the National Planning Policy Framework (NPPF). This is the government's high level policy for the whole of England. It contains a presumption in favour of sustainable development. Being a "high level" document is does not say much about tourism and leisure development specifically. Whilst national policy generally favours placing such uses in town centres it also encourages LPA's to have policies which support a strong rural economy.

Local policies (produced by LPA's) should be in conformity with national policy and will go into greater detail about what types of development is ok in principle then a scheme will need to be draw up which addresses any policy concerns.

Q: Hiring out my venue is becoming an increasingly important source of business. What are the key legal considerations?

SARAH HEWITT
CORPORATE & COMMERCIAL SOLICITOR

With its beautiful landscapes and excellent transport links, Kent is often a prime choice for venue hire for weddings, conferences, corporate days out and much more.

Whilst venue hire is a lucrative additional source of income, it is important to ensure that certain elements are in place to minimise risk and maximise return.

As the venue owner you will, so far as possible, want to exclude liability arising from the event by ensuring any hire contract includes an appropriate disclaimer together with a clause by which the hirer agrees to indemnify you for all damage, injury or loss occurring at or arising out of their event (which is not due to your own negligence).

Insurance is absolutely crucial. As well as your own insurance for the premises, you should contractually require third party hirers to take out suitable insurance, to support the indemnity referred to above.

The contract should be very specific and clear about cancellation and the costs involved. It is usually best to have a staggered cancellation policy, depending on the size of the event and amount of notice given. You should ensure that deposits are clearly stated to be non-refundable.

Other legal considerations include health and safety obligations, permits, licences and advertising.

> “So proud of the exceptional team at Brachers - professional, ethical, savvy, authentic, kind, practical,no nonsense and so much more.
>
> Sandra Matthews-Marsh, Chief Executive, Visit Kent

VISIT KENT GARDEN of ENGLAND Corporate Partner

Proud to support our local business community

Kent Invicta Chamber of Commerce Patron 2017

VISIT KENT GARDEN of ENGLAND Corporate Partner

Kent corporate finance Alliance

CLA

ONEMaidstone the town centre partnership

New 'Pre-action Protocol' for debt claims

PAUL ABDEY

Paul is an Associate in the Debt Recovery team. Since 2002, Paul has specialised in defended debt collection and insolvency work both pre and post order.

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A 'Pre-action Protocol' for debt claims is effective from 1 October 2017. The Protocol places new requirements on businesses who are seeking payment of debts from an individual (including sole traders). However, the Protocol does not extend to business to business debt.

The Pre-action Protocol sets out the requirements for information which must be included in letters of claim which, alongside the expected points (i.e. the debt amount, interest being claimed and attaching a statement of account) also includes the requirement for an information sheet and reply form to be attached to the letter as well as a financial statement.

The letter must be sent on the day or the day after it is produced, and must be sent in the post, unless the debtor has explicitly provided alternative contact details.

The debtor has up to 30 days to respond to the letter of demand. If they fail to respond within this time then legal proceedings can be commenced. If the debtor does respond to the letter of demand by completing the reply form, then proceedings cannot be commenced less than 30 days from the receipt of the form or 30 days from the creditor providing the documents or information requested. The creditor must give 14 days' notice of their intention to commence legal proceedings if agreement cannot be reached.

Failure to comply with the Protocol can lead to sanctions from the court including the party at fault paying the other's costs, regardless of the outcome.

At Brachers we provide full advice in respect not only of debt recovery but also credit control procedures. We would be happy to hold an informal discussion as to how your terms and conditions and credit control procedures can be re-written to deal with the forthcoming introduction of the Protocol.

WHAT YOU NEED TO KNOW FOR YOUR BUSINESS

01 Although encouraging parties to communicate, the Protocol could increase the time from when an invoice is raised to when a claim can be issued. This will necessarily lead to a change to your credit control procedure.

02 Your costs of printing and postage will also increase as all letters of demand covered by the Protocol will need to be sent by post. This could be addressed within your terms and conditions by seeking your client's agreement to send correspondence by email.

03 More positively, parties will be forced to engage with each other as never before which could lead to matters being resolved without recourse to the court, saving money on expensive court fees.

JOANNA WORBY

Joanna was appointed as Managing Partner in May 2013. Joanna has a reputation for advising on complex litigation both in the High Court and at Tribunals. She prides herself on giving clear practical advice which is both strategic and commercially focussed. Developing a good trusting relationship with a client is absolutely paramount.

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ASH JILANI

Ash is a Partner in the Commercial Property team with over 19 years' experience in commercial property and leads the firm's primary care sector. He works closely with education clients.

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Future-proofing:

Brachers' role in the growth and success of the Hadlow Group

Brachers was first retained in 1992 to support Hadlow College with effective credit management and equity release to help bolster its finances and footprint in the educational sector.

As with any struggling business, legal support was needed to help build resilient strategies including staffing, governance, effective credit management and land management. It was imperative to create a cohesive working culture and success came from working together and highlighting potential risks. The College's leadership championed good corporate governance and this supported the changes that were needed to build a sustainable business for the future.

> Clients don't necessarily think of things from a legal practice perspective; they're looking at their own issues. Our approach is about looking through their eyes and thinking about their needs and the sector in which they operate.

A major transition was from 2005 to 2010 when the land-based college expanded its offering to more commercial operations. This involved restructuring its sourcing of funding so that it diversified to receive income from commercial operations that included a working farm, garden centre, tea room, equine facilities, farm shop and a fishery.

Ash Jilani, Property Partner at Brachers, explains: "We were able to support the college as it embraced a unique entrepreneurial approach to diversification. The two common themes which continue throughout our 25-year relationship are quality and speed. Hadlow aim for the best, and we have sought to deliver the best service to them.

"The evolution of Hadlow in creating a model for the future of further education, coupled with innovative commercial, social and environmental projects, has proceeded at an impressive pace. Our close working relationship and detailed understanding of their business has put us in good stead to support them in effecting innovation."

With Brachers' understanding of best practice and changing legislation, the firm has helped steer the Hadlow transformation to help minimise risk. The work is critical and requires bespoke services rather than working on repetitive tasks.

Jo Worby, Managing Partner at Brachers comments: "This has had a positive impact on our team, not only in our interaction with Hadlow but also internally, collaborating across practice areas to deliver creative solutions. Our firm has grown alongside Hadlow and we have been able to meet all of their legal needs as they arise."

"Clients don't necessarily think of things from a legal practice perspective; they're looking at their own issues. Our approach is about looking through their eyes and thinking about their needs and the sector in which they operate."

Brachers has developed a high level of expertise in the industry sectors the College has chosen to focus on, including education, agriculture, SME and infrastructure. Our legal team for Hadlow is structured by these industries, so our approach is hardwired into the organisation.

This approach has helped build up a strong relationship with Hadlow and has helped Brachers' lawyers become rounded professional advisors as well as legal experts.

Jo is quick to highlight how the firm's unconventional approach with Hadlow has led to this knowledge development: "Traditionally, lawyers become specialised in particular legal skills but to be an outstanding lawyer is to translate commercial and sector knowledge and apply it to what's going on with the client. Many commercial lawyers would never ask to look at the annual reports or their client's vision and strategy but this is commonplace at our firm. Indeed, Hadlow actively encourage us to sit on their business advisory boards and we eagerly take our seat."

Brachers' relationship with Hadlow is an example of how we move our client relationships to become a true partnership: working with the client rather than for the client. In practice, this means developing a team of sector-specialist lawyers with the leadership at Hadlow to tackle projects together - projects that Hadlow would be shy of tackling alone without a grounded support structure behind them. Jo adds:

"Taking this approach has provided plenty of exciting opportunities, most recently with the regeneration of Betteshanger Colliery and the development plans for West Kent and Ashford College. Our team are proud to be part of the Hadlow success story!"

Our Education team works at all levels of the education sector.

Brachers makes Top Family Law Firm rankings

Brachers has been recognised in the 'eprivateclient' Top Family Law Firm rankings for 2017, which identify 45 top firms across the country for their family law services.

The Top Family Law Firms list is based on a survey of law firms throughout the UK with firms selected on the basis of a thorough assessment across ten key factors.

Brachers has a dedicated team of family lawyers who work with clients to achieve the best outcome for them and their families, advising on all aspects of family law from pre-nuptial agreements through to divorce.

Mark Leeson, Partner in the Family team at Brachers, said: "We are delighted to receive this accolade from 'eprivateclient' in being recognised as a top family law firm. Many family law matters such as separation and divorce are of course very stressful and difficult for clients – our aim is to work closely with clients in the most efficient way possible to minimise the impact of such a stressful time. We are committed to excellence in client service and to giving the best possible advice. It's very pleasing to receive this recognition."

eprivateclient
Top Family Law Firms 2017

> We are committed to excellence in client service and to giving the best possible advice. It's very pleasing to receive this recognition.

Local and national businesses are starting to feel the effects of Brexit, with news of local businesses even closing due to the exchange rate of the pound to the euro. It has become more important than ever to make sure your business' cash flow is robust enough to deal with the uncertainty currently facing UK plc.

Cash flow is the life blood of any business - so getting effective credit control and debt collection in place is key if the company is to prosper and grow.

A critical point to appreciate is that credit control starts from before a sale is agreed. This means that your sales team must obtain the right basic information from a prospective customer, with the most important piece being who your customer actually is, e.g. a limited company, a partnership or an individual. Without this information, seeking to recover payment will be extremely difficult and will only lead to extra costs being incurred to establish who has formal responsibility for the amount owed.

Safeguarding your cash flow and making your business Brexit-proof

To assist in the collection process, you should consider including the following items in your contracts and the terms and conditions of sale that are used by your salesforce:

- Strict payment terms
- As much information as possible regarding your customer (i.e. phone number, address, email address) - if you need to attempt to recover the outstanding invoice then knowledge is power. Make sure that all sales people are fully briefed as to what is expected of them in obtaining information from the customer
- The addition of interest to invoices which have been paid late
- The ability to recover legal costs

Importantly, once a product has been sold or a service provided you should raise an invoice without delay. Should the invoice remain unpaid after the payment term then you need to consider implementing a strict procedure, such as:

1. Send an email or text reminder a few days before the invoice is due for payment
2. The day after payment is due you should note at this point whether you are claiming interest or not
3. 4-5 days after point 2, make a phone call to the customer to establish if there is any difficulty with payment of the invoice (be it a dispute or an inability to pay at once).
4. 7 days thereafter send a formal letter attaching a copy of the invoice
5. 4-5 days thereafter attempt a second phone call to the customer
6. 7 days thereafter send a formal letter of demand
7. After a further 7 days, any outstanding accounts can be referred to Brachers for collection

This is a guide to the general principles that it is sensible to follow. Of course, there may be individual customer where you want to play things differently, according to the relationship you have with them or knowledge of any special circumstances.

At Brachers, we can provide you with a variety of services to assist. This can range from general advice on credit control policy, to drafting specific documents such as contracts and terms and conditions, to undertaking active credit control on your behalf. Should the need arise, we can also help with formal debt recovery procedures through the court process.

If you have any requirements that you would like to discuss, please don't hesitate to contact Michael Oatham.

MICHAEL OATHAM

Michael is the Head of Commercial Litigation and is a litigation specialist. Renowned for his tenacity, Michael is also highly regarded for keeping his clients' wider objectives in mind.

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Compulsory purchase laws – what does this mean for landowners?

LEE MAY

Lee has over 14 years' experience of advising clients in all areas of town and country planning, environmental law and health and safety legislation. Lee acts for developers, landowners and local authorities in delivering a range of projects.

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There has been discussion on the need to reform our complex and out-dated compulsory purchase laws. The government has passed the Neighbourhood Planning Act 2017, and when it comes into effect Part 2 of the Act will amend a key rule regarding the valuation of land which is being compulsorily acquired under a Compulsory Purchase Order (CPO).

The rule known as the "no-scheme" principle or the 'Point Gourde' rule has long been used when assessing the value of the land to work out the compensation payable to a land owner. In broad terms it requires that any increase or decrease in the value of land which is attributable to the CPO scheme is to be disregarded.

The rule sounds simple but has proven to be difficult and controversial to apply in practice. The need for reform was highlighted in the recent judgment of the Supreme Court in the case of the Homes and Communities Agency (HCA) v JS Bloor (Wilmslow) Ltd [2017]. In 2002 the HCA had compulsorily acquired 26.85 acres of land from JS Bloor for the development of a business park. The amount of compensation to be paid to the former land owner could not be agreed. The claimant's sought £2,539,000 on the basis that the land had significant hope value for residential development. The HCA offered existing use value of £50,000. The matter had to be determined by the Lands Chamber of the Upper Tribunal.

The huge disparity between these two valuations arose from very different interpretations of the "no-scheme" principle. The Tribunal ultimately awarded the claimant £746,000 on the basis that there would have been a 50% chance of obtaining planning permission for residential development in the "no-scheme" world.

The Supreme Court upheld that ruling. At the time of the judgment the Neighbourhood Planning Bill was before parliament. In giving their judgment the Supreme Court stated that:"It is to be hoped that the amendments currently before Parliament will be approved, and that taken with the 2011 amendments they will have their desired effect of simplifying the exercise for the future."

Part 2 of the Neighbourhood Planning Act 2017 Act, which has not yet come into effect, will make a number of significant changes. In particular the Act will put the "no-scheme" principle onto a statutory footing and will specify five rules which must be applied:

(a) any increase in the value of land caused by the scheme for which the authority acquires the land, or by the prospect of that scheme, is to be disregarded, and

(b) any decrease in the value of land caused by that scheme or the prospect of that scheme is to be disregarded.

The Act clarifies the question of what counts as a "scheme" for the purposes of the "no-scheme" principle – defining it as "the scheme of development underlying the acquisition". The interpretation of this phrase will be crucial as the likely effect is that a wide interpretation will lead to lower levels of compensation payable to landowners.

This is highlighted by another part of the Act which will introduce a mechanism whereby the amount of compensation payable to a land owner will be reduced by an amount equivalent to the amount by which the value of any contiguous or adjacent land owned by the same person has increased as a result of "the scheme".

The stated justification for this change is that it will avoid land owners receiving a "windfall" from the CPO scheme. Although it raises issues of fairness towards the land owner, for example, the increase in value of adjacent land may only exist on paper whereas the reduction in compensation actually paid out is real.

The Act also provides that where a land owner receives compensation for "injurious affection" i.e. a loss in value of adjacent land as a result of the CPO scheme, then an equivalent amount will be deducted from any compensation payable to the landowner if that adjacent land is also subsequently compulsorily acquired.

In conclusion, clarification of the law is generally to be welcomed. However, land owners faced with a Compulsory Purchase Order will not welcome changes which reduce the level of compensation payable. There are also issues over how the new rules will be interpreted and how they will operate in practice when they come into force. Begging the question, has the Act provided clarity or just added further layers of complexity to an already complex system of CPO compenation?

Engineering excellence
Burgess Marine success story

JAMES BULLOCK

James is the Head of Brachers' Corporate team and advises clients on mergers and acquisitions. He is "Top Ranked" by the Chambers UK legal directory in Band 1 for Corporate M&A in the South of England.

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Our client, Burgess Marine is the UK's largest independent ship repairer; the company is at the forefront of the specialised marine engineering industry, having earned a world-wide reputation as experts in all aspects of structural repairs and renewals, as well as mechanical repairs, both above and below the waterline.

Roughly 50% of the Group's £40 million turnover comes from ship repair; and that's principally from their nine locations in the UK – with offices and workshops from Lowestoft to Devonport.

In the last 10 years, Nicholas Warren, Chief Executive Officer & Managing Director, Company Director and NED has led the growth of Burgess Marine from a single site sub £1 million per annum turnover, Dover centric ship repairer, into a large independent ship repairer and marine services company with annual revenues in excess of £40 million. The growth that Burgess Marine has enjoyed has come from a dual strategy of targeted organic growth and M&A activity.

Brachers advised Burgess Marine on its first strategic acquisition in 2013 and has since supported them on a further four acquisitions. We also advised on the private equity backed management buyout of the company in 2015 and also advised the group on all its intellectual property, commercial, property and employment matters.

Nicholas Warren talks about their business success and future expansion plans.

What proportion of your business is ship repair and what proportion other work?

Roughly 50% of the Group's £40 million turnover comes from ship repair; and that's principally from our nine locations in the UK – we've offices and workshops from Lowestoft to Devonport. The 'jewels in the crown' are the 75m dry dock in Lowestoft, the 1000T shiplift in Portchester and the 5000T shiplift in Cherbourg. We also carry out numerous major marine civil projects each year. These could include significant infrastructure works in Ports such as Ramsgate, or the fabrication of major pontoons and brows for the Thames. The rest of the business comes from our two sister companies, Meercat Workboats and Global Services.

Meercat Workboats specialises in building highly versatile shallow draft workboats up to 22m in length; we've invested heavily in a new site in Hythe on Southampton Water, and thankfully the business is growing nicely into the footprint. We've signed three new orders this year, and we've extended the project range significantly.

Global Services is a specialist supply business that supports both the superyacht industry and the cruise sector; the global superyacht fleet is supported by a team of 30 based in Exeter, and the cruise sector by a team of seven based in Southampton. Collectively, that part of the business supports over 1000 vessels per annum, and specialises in offering both exceptional value for money and great customer care.

Do you have any other expansion plans?

Whilst our objective to grow the business geographically remains unchanged, I think you'll see a period of consolidation and integration in the coming 12 months. Having acquired Global, we need to maximise that opportunity.

The logic behind the transaction was three-fold; we wanted a home for our existing cruise-centric marine procurement revenue, we wanted the opportunity to cross-sell our engineering expertise into the superyacht sector and we wanted the opportunity to win more superyacht refit work for our centres in Portchester, Lowestoft, Cherbourg and Palma.

Continued >

To achieve those objectives we've plenty of work to do – and that'll be our focus in the coming weeks and months. We'd also like to expand our service offering internally too; many of our clients only use some of the selected services that we offer and not the full spectrum of our offering. Can we sell more diving, more marine electrical, more mechanical services – can we sell procurement; can we cross-sell workboats and port / infrastructure maintenance? Rather than geographical expansion, we'll be putting the customer first and focus on expanding our service offering.

Are you looking to diversify into any other markets?

We broadly articulate our markets as Commercial Marine, Defence, and Superyachts. Our focus will be on the expansion of the Commercial Marine sector. We're doing more and more marine civil works for support in ports and harbours as principal contractors, and we see further growth in this space – as well as increased activity in the fabrication sector. We're looking at more pontoons and houseboats with plenty of opportunities developing in this area.

What do you regard as your yard's main (ship repair) strengths?

The biggest strength in our business is our people. We've a focussed, capable and accomplished workforce, supported by experienced and committed management. An extension of this philosophy is a commitment to flexibility – our men and managers work locally, nationally and internationally to support our customer base. We try to put the customer at the centre of all our endeavours, and we are very committed to meeting their aspirations.

I think it's also worth mentioning that our clients are also one of our greatest strengths – ship repair is very competitive and the loyalty of our customers allows our yards to survive in the leaner times too; we really do appreciate every bit of business we get.

Who do you regard as your main competitors and why?

Each of our businesses, and each of our geographical locations, endures competition; that's life. We focus on our own business and our own customers – it's easy to obsess about competition, but across our business I encourage a positive outlook, a positive mentality and a focus on our 'own' and on what we do. I genuinely believe that across the group, we've got some of the best guys in the business; we need to worry about our own company rather than others.

How do you see the future in terms of ship repair activity, both for your yard, and in more general terms for yards in the region?

Ship repair continues to be a hugely competitive market place, with increased pressure in the industry derived from historically low oil and gas prices. Yards and fabricators alike are keenly pricing work to fill the hole left by the downturn. I can't see this changing in the short-term.

Closer to home, all of our markets and geographical regions remain competitive, and simply put, we must strive to be the best at what we do.

With thanks to Dry Dock Magazine for giving us permission to republish this article.

"It has been a pleasure to work with Brachers. I regard James Bullock and his team as our legal 'partners', they understand our business and our long term strategy and their legal advice is always given in that context. We can rely on them to provide strategically sound advice and a level of commercial astuteness that ensures the best outcome for our business.

Nicholas Warren, Chief Executive Officer, Burgess Marine

Security of tenure for business tenants

BARRIE JONES

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Take a look at our factsheet on this topic by visiting our website at www.brachers.co.uk.

Part II of the Landlord and Tenant Act 1954 (the Act) sets out to protect business tenants by affording them a statutory right to a new lease at the end of their current lease term.

Parties can choose to 'contract out' of these provisions so that they do not apply, but care must be taken when coming to, and effecting, this decision. It is therefore important that both landlords and tenants understand the implications of entering into either a protected or 'contracted out' lease.

IS THE LEASE PROTECTED?

To qualify for protection, the tenancy must satisfy the qualifying criteria as set out in the Act. As a general rule, there must be a tenancy of a premises occupied by the tenant for business purposes.

Provided the criteria are satisfied and the tenancy is not otherwise excluded from the Act's provisions, the tenant will have a statutory right to a new lease at the end of the current lease term.

'CONTRACTING OUT'

It is common for the landlords of commercial tenancies to include a clause in the lease which contracts it out of the Act. If that is the case, the tenant will not benefit from the security of tenure provisions and there will be no guarantee of a new lease at the end of the current term.

In addition to the lease clause itself, a set statutory process must be followed to ensure compliance with the Act. Failure to follow these steps can result in the lease being protected.

Both as a landlord and as a tenant, the security of tenure provisions of the LTA 1954 can have a big impact on your business. For further information, please contact our commercial property team.

Brachers advises on MBO for leading healthcare business

JAMES BULLOCK

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MATTHEW SIMMONDS

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Brachers recently advised on an MBO for leading healthcare business UK Medical Ltd.

The Corporate team at Brachers has advised on a management buyout (MBO) of UK Medical Ltd, from its US parent company Becton Dickinson & Co ("BD"), a $10billion revenue global medical technology group.

UK Medical Ltd, a leading healthcare company based in Yorkshire, specialises in the supply of interventional medical devices to the NHS and the private healthcare sector. Its products are used in minimally-invasive image-guided procedures to diagnose and treat diseases in various organs of the body. The company has a particular focus on devices used in breast radiology, urology, interventional radiology and cardiology.

Speaking at the announcement of the buyout, Ian Aaron, MD of UK Medical, said: "This is a great deal for both companies and we look forward to a continued and long partnership with BD."

Mr Aaron continued: "We have exciting plans to grow the business and to partner with the NHS by supplying products that add value, improve patient care pathways and at the same time provide excellent value. We are very excited to be making a difference to patients and to the NHS."

James Bullock, who led the Brachers team, commented: "Having worked with Ian and the UK Medical team for many years, I am personally delighted to see the successful completion of this MBO. Ian has been pivotal to the success of the business over the years and now has the platform to drive it forward and achieve great things!"

Don Gray and David Bellamy from BHP Corporate Finance acted as lead advisors to the UK Medical management team. Don Gray, partner, commented: "We are absolutely delighted to have worked with Ian and his team to deliver the buy-out from BD."

Funding for the transaction was provided by HSBC. Chris Alsop, Relationship director, added: "This is a great business in a strong and growing sector – we are very pleased to support the management team in this buyout.''

Founded in Sheffield in 1987, UK Medical was originally bought by US healthcare company CareFusion in 2012. Carefusion itself was subsequently acquired by Becton Dickinson in 2015.

> "I am delighted that UK Medical is once more an independent business and I would like to thank the teams at Brachers, BHP and HSBC for helping me achieve a long-held ambition.
>
> Ian Aaron, UK Medical Ltd

Protecting your legacy:

Avoid family disputes by getting a plan in place early

When a disputed Will arises, it is vital to deal with it quickly. Inheritance disputes are understandably difficult, particularly when a family member has had promises made to them...

No two cases are ever the same and as a result, it is notoriously difficult to predict the outcome if they are not resolved, and they do end up before the courts. Two 2016 farming cases last year illustrate the point well.

Mr and Mrs Davies had farmed a 547 acre dairy farm in Wales since the early 1960's. They had three daughters, one of whom (Eirian) worked on the farm, on and off, most of her life, but finally gave up outside work to work the farm full-time in 2008.

The following year she was promised the farm by her parents and even shown a draft Will giving effect to that promise. Naturally, Eirian had a high level of expectation that she would inherit the farm ahead of her sisters. In 2012 however, she and her parents fell out, and Eirian ended up in litigation about the promise made to her, in which she asked the court to award her £3 million plus (the farm having been valued at £3.15 million, after Capital Gains tax). Eirian argued that she had reasonably relied on her parents promise to her detriment.

Continued >

The first Judge who heard the case, awarded Eirian £1.3million, commenting that that was "a fair reflection of [her] expectation and detriment". The Court of Appeal disagreed, slicing the award to £500,000 and valuing Eirian's 'expectation' element at only £150,000 of that £500,000 sum, whilst making the point that when it comes to expectation, judges will 'do the best that we can' to put a value on something which is not capable of precise valuation, namely… 'expectation'.

Hot on the heels of Davies v Davies, came Moore v Moore where a son (Stephen) who had been promised the family farm by his father fared much better than Eirian: he was awarded the entirety of his father's share in the family farm.

The court considered that his father's change of heart in redrafting his Will so as to share the farm between Stephen and his sisters would have produced an unconscionable outcome for Stephen, who had devoted his entire life to working the farm in the expectation that he would inherit it, and in so doing, had given up the chance to do something else with his life.

The question of how the family farm is passed to the next generation puts the farming community in something of a unique position when it comes to estate planning matters, and clients should therefore consider carefully the impact of any promises made and expectations created.

Brachers specialises in estate and rural business planning, helping farming families and land based businesses plan carefully for the future. Should any issues arise from Will, inheritance and estate disputes, please contact Deborah Cain.

DEBORAH CAIN

Deborah is a Partner at Brachers specialising in disputes and litigation concerning or connected to Wills, trusts, the estates of deceased persons, and all other inheritance/post death related issues.

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Farm and estate focus:

The future of farm subsidies in light of Brexit

SARAH WEBSTER

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In the lead-up to Brexit, there has been much discussion on the future of farm subsidies in Britain. How much will farms be subsidised post Brexit? And will the new trade agreement allow UK farmers to compete with EU farmers still benefitting from the Common Agricultural Policy (CAP)?

Currently, agriculture accounts for almost 40% of the EU's budget, and from this the UK receives approximately £3 billion in annual subsidies. The majority of this is funnelled into the Basic Payment Scheme via the Common Agricultural Policy.

In the short term, UK farmers should be safe in the knowledge that while a domestic agricultural system is drawn up and implemented, the government has pledged to keep overall subsidy payments at the same level until 2022. However, beyond this date there is uncertainty and it may be the case that some farms simply will not be viable under a new system. Of course, with a new system comes the opportunity to improve on the old for the better.

The current Environment Secretary, Michael Gove, has said that he wants a 'green Brexit', where farm subsidies 'must be earned'.

This indicates that simply owning large areas of land will not be sufficient to claim entitlements and farmers must satisfy a number of criteria, such as agreeing to protect the environment and enhance rural life.

Turning to the issue of trade, if Britain does not agree a trade deal with the EU, any trade would fall under the World Trade Organisation's trading rules. UK farmers, their suppliers, and everyone else involved in the chain could be faced with new tariffs and taxes to sell produce abroad. Whatever system the government decides to implement, it must be effective if UK farming is to compete in the global market.

Our Agricultural & Rural Business team can work closely with you to help you secure your future. Contact Sarah Webster for more information.

How to cover long-term care fees

MARY RIMMER

Mary is a Senior Associate in the Private Client team. Mary specialises primarily in providing advice on Wills, tax and estate planning, powers of attorney and estate administration. She has particular expertise in inheritance tax planning for clients with businesses and/or agricultural assets.

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With the use of effective Will planning, you can help protect your family and your estate from care fees, should you need to pay for care in the future.

There are some steps you can take with the use of effective Will planning, to ensure one half of your estate is ring-fenced from being absorbed in care fees.

LIFE INTEREST WILL TRUSTS

Trusts within your Will take effect on your death, and are achieved through clauses in your Will. Life Interest Trusts are particularly useful in a number of scenarios, especially when you are concerned about future care fees.

The Trust takes effect when the first spouse passes away and places their assets within a trust environment. This could include half of any jointly owned property.

Doing this allows the surviving spouse to continue to live in the property and obtain an income from the invested trust assets. This can include:

- interest from bank accounts
- dividend payments
- rental income.

It also protects half of your joint estate from any redirection by the surviving spouse, through an unconscious decision such as care fees.

Life Interest Trusts are flexible, offer a protective environment and whilst the administration of the trust is slightly more complicated than leaving everything outright to the surviving spouse on first death, this needs to be weighed against the asset protection the trust structure offers.

It may be the time to consider reviewing your Will and discussing your options with a member of our specialist Will team.

Our specialist Personal Affairs team

As we get older we find we face new challenges. We can sometimes find it difficult to cope with our personal affairs in the way we used to and not everyone is fortunate enough to have a family member nearby who can help. Fortunately, this is something our specialist Personal Affairs team can help you with.

Many people are surprised that solicitors deal with such things, but we regularly deal with the following on behalf of our clients:

- managing bank and building society accounts;
- liaising with financial advisers to ensure the most efficient management of your savings and investments;
- arranging payment of household bills;
- sourcing and arranging care packages;
- advising on benefit entitlement;
- arranging for suitable contractors to undertake maintenance or repairs to property;
- booking appointments for service and maintenance of domestic appliances;
- organising and booking holidays, birthday parties and other social events; and
- personal shopping.

As an attorney or court appointed deputy, Brachers Trust Corporation is able to deal with your personal affairs with the minimum of fuss and the greatest attention to detail. We can deal with the administration of your day to day affairs on an ongoing basis, or deal with individual requests as and when required.

Whether you live in your own home or have moved to residential care, we will meet with you when we receive your initial enquiry, so we can get to know you and your individual situation before we do any work. Once we begin working for you, an annual visit will be arranged when we can have a catch up and discuss any change in your circumstances or requirements. In addition, we can of course arrange to visit you at any time if you have any worries or concerns.

If you would like any further information on how we can help you manage your personal affairs, please contact Christine Bass on 01622 690691 or email christinebass@brachers.co.uk.

Brachers successfully defends GP in High Court clinical negligence trial

A clinical negligence case which the presiding judge described as being "as difficult an exercise as I can recall in quite a few years" ended in a successful acquittal for Brachers' client, "Dr K".

HARRIET HUMPHREY

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The nine day trial earlier this year centred around a claim by a patient "Mr M" who alleged that Dr K failed to refer him to hospital when he was suffering from an ischeo-rectal abscess – and that as a result of the delay in his obtaining hospital treatment, he developed a serious infection and septic shock that ended in him losing his lower left leg, along with other serious complications.

The events in question dated back to 12 and 14 October 2012, when Mr M had two appointments with Dr K. The first was by telephone and the second in person. Mr M alleged that on both occasions, he should have been referred to hospital. He disputed that on 14 October Dr K had undertaken a rectal examination or, alternatively, had not done this properly.

In between his two appointments, Mr M went to A&E himself, but left before any blood tests were performed. Mr M's claim was also brought to the Hospital Trust for failings in the hospital.

After Mr M's second appointment with Dr K on 14 October, he called an ambulance later that day and was taken to hospital where he was diagnosed as having an ischeo-rectal abscess that was drained. However, he became acutely unwell, required further surgeries, a long stay on ITU and debilitating injuries.

THE DEFENCE

Brachers maintained a robust Defence throughout for Dr K that he was not under any obligation to refer Mr M to hospital after either of the two appointments, having obtained independent GP expert evidence.

The Judge in this 9 day trial, Lord Justice Foskett, found that Dr K had not breached his duty of care to Mr M on either 12 or 14 October 2012 in failing to refer him to hospital.

It was considered that his condition as presented to him on those occasions did not warrant this. It was accepted that a rectal examination was carried out on 14 October 2012. Accordingly, this claim was successfully defended in full for Dr K.

LJ Foskett did find that the Hospital Trust had breached their duty of care to Mr M and that with earlier treatment, he would have avoided his injuries.

This was a highly complex clinical negligence claim with LJ Foskett noting: 'The resolution of the factual and medical issues in this case has been as difficult an exercise as I can recall in quite a few years of dealing with cases of this nature.'

Brachers' Clinical Negligence team, proud to be top ranked in leading Legal directory

The Legal 500 UNITED KINGDOM TOP TIER 2016

With You

FOR LIFE AND BUSINESS

Brachers

With you all the way

About Brachers

Brachers is an award winning law firm, providing valuable legal support and business advice to individuals, companies and other organisations across Kent and beyond.

We're committed to building lasting relationships, offering advice that is right for you and takes account of today's economic challenges.

Our aim is quite simply to be with you all the way and help you succeed.

Brachers
With you all the way

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