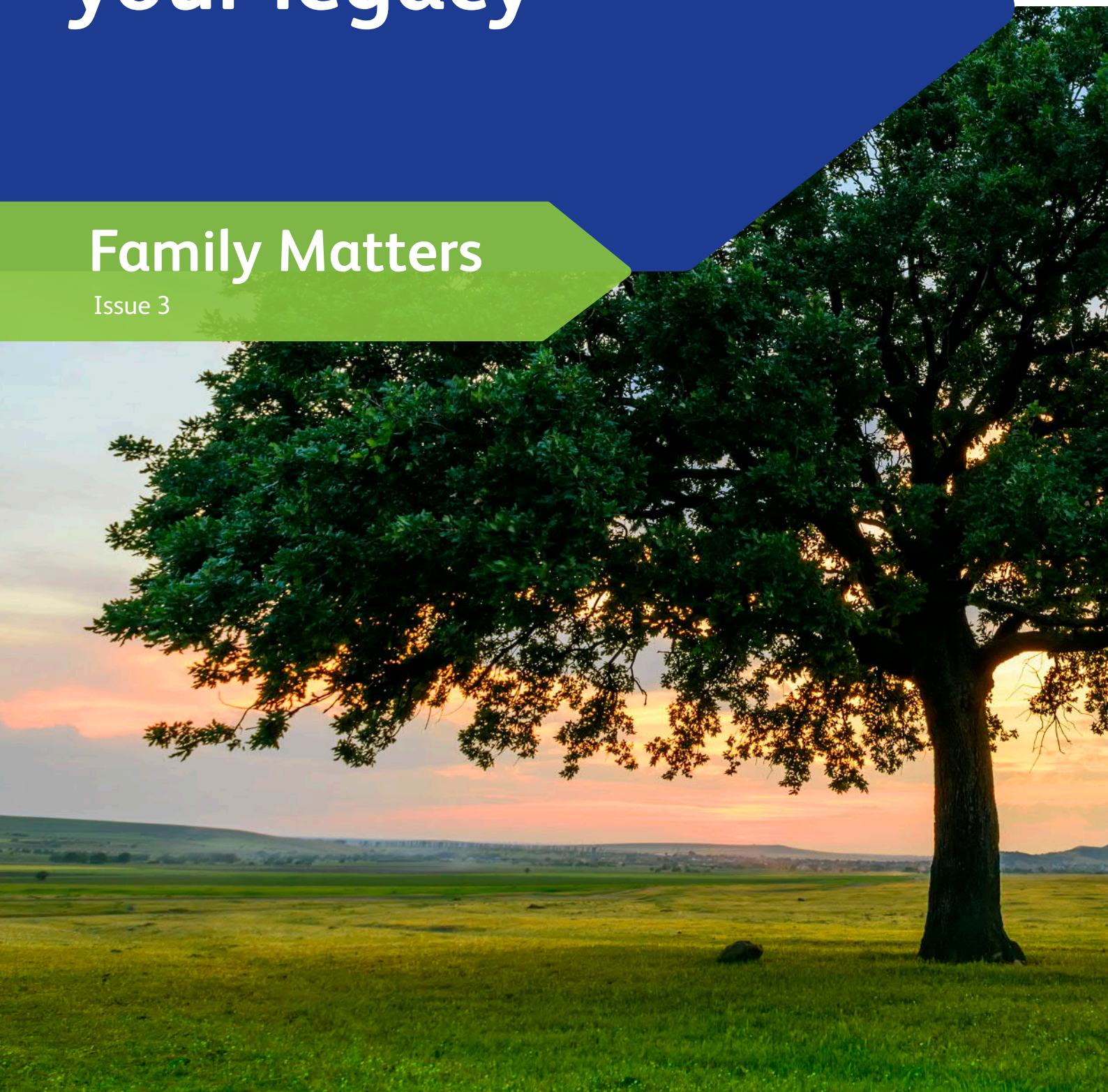
Brachers
With you all the way

Protect your legacy

Family Matters

Issue 3



Top Villas story of success

Brachers' client Top Villas was founded in 2010 by brothers James and Tom Mannings from their family home in Sandwich, Kent. It is now one of the leading luxury villa rental companies in the world, with over 4,000 holiday homes in more than 150 destinations. Top Villas now has offices based at Discovery Park in Sandwich and in Orlando, Florida. We recently caught up with James Mannings in our Discovery Park office.

Starting up a new business can be a huge risk, what made you decide to take this step and what challenges did you face?

Initially we did not see it as a risk. I was working at a digital agency and Tom was working in the building industry. A few years previously we had set up a small holiday home rental website in our spare time.

Over the years we invested more time and expertise into this. It got to a stage when the company started generating a good regular income.

We both then decided to leave our full-time employment to focus on the new business. At this time we rebranded the company and Top Villas was founded.

What is the one thing you know now that you wished you knew when you started your business?

We should have tied up more suppliers from day one with legally signed contracts. Unfortunately, the days of verbal agreements and handshakes are long gone.

What made you choose Discovery Park as your headquarters?

We are local Sandwich residents, born and educated in the town. Discovery Park was an obvious choice with its amazing facilities and technology, prestigious address and wealth of great connections through like-minded people and businesses. The Discovery Park management team has been a great help to us since day one. Brachers are also located onsite which is very convenient.

Tom, left, James, right

What changes have made the biggest impact on your business since you started?

As much of our business is generated overseas, the decline in some economies around the world, especially in Brazil and Canada, had a direct effect on our sales in these areas.

More recently terrorism has affected us, especially as there have been instances in some of our key locations worldwide.

What impact, if any, do you think the UK leaving the EU is likely to have on your business? Have you noticed any immediate changes?

The biggest immediate impact has been the sharp decline in the value of sterling, which has made travelling abroad more expensive for UK citizens.

Guests are delaying their vacation plans in the hope that things will improve over the next 12 months. This has been most noticeable for travellers to the United States.

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

We have expanded our property portfolio to different countries and regions around the world, increasing over the last two years from 35 destinations to over 150.

We have also widened our reach to clients around the world. This will hopefully lessen the impact of any economic, political or social scenarios.

How has Brachers helped you?

Brachers has been a great help to us since day one with excellent advice and assistance with legal contracts, company terms and conditions and claims procedures. We have also used them for our own personal legal matters.

What is your strategy for the future of the business?

Top Villas is developing its own staff training facility and encouraging more experienced personnel to join us.

We are about to launch an industry-leading holiday home rental platform which we have spent the last two years developing in-house.
We are constantly evolving and attracting new partners and properties around the world.

Tom has now moved permanently to Orlando to oversee the expansion of our American division. This will include growing our Florida real estate company, property portfolio, concierge services and sales team.

We are also about to launch a dedicated agency and tour operator platform, with easy access to our booking systems. This will be branded as luxuryvillarentals.com.

Our main aim for the future is to become the leading global luxury home rental company.

Brachers' expert

When negotiating and preparing commercial contracts, you need to understand your bargaining strength, your commercial drivers for the business and tactics you need to get the right result.

We encourage our clients to involve us at an early stage so we can help with your strategic planning and guidance on legislation that you should consider.

Sarah Hewitt
Solicitor
01622 776459
sarahhewitt@brachers.co.uk

“I remarried after my first husband died. Is there an opportunity to increase the amount that can pass to our family free of inheritance tax?”

Christopher Eriksson-Lee responds...

A recent report revealed that the amount of Inheritance Tax (IHT) paid by British families has risen by more than 90% since 2010. Christopher Eriksson-Lee, Partner in Private Client explores the tax savings possible with careful planning.

All individuals have a nil rate band IHT allowance which is currently £325,000.

Since 2007 it has been possible to transfer the unused IHT allowance of a deceased spouse to the survivor. Before this scheme was introduced, married couples who left everything to each on first death wasted the IHT allowance of the first to die on the basis that everything passed to a spouse exempt beneficiary.

Transferable nil-rate band

Since 2007 it has been possible to transfer the unused IHT allowance of a deceased spouse to the survivor. Before this scheme was introduced, married couples who left everything to each other on first death wasted the IHT allowance of the first to die on the basis that everything passed to a spouse is exempt from IHT.

To get around this problem, married couples would place the nil-rate band IHT allowance of the first to die into a discretionary trust for the benefit of a class of beneficiaries which included their spouse and children. In this way, the first to die used his or her nil-rate band which would otherwise have been lost.

When the transferable nil-rate band scheme came into effect, commentators called into question the use of nil-rate band discretionary trusts as it seemed there was little need to preserve something that could be passed on and used by the second spouse to die in due course. However, this is not always the case, and in fact the use of nil rate band discretionary trusts is essential in overcoming the “un-transferable” nil-rate band problem.

The un-transferable nil-rate band issue

The concept of the “un-transferable” nil-rate band is best addressed by way of an example:

If James died leaving everything to his wife, Susan, then James’ unused nil-rate band would transfer to Susan so that she ends up with a double nil-rate band of £650,000.

If Susan then remarries, and leaves everything to her second husband Peter, only Susan’s unused nil-rate band of £325,000 can be claimed by Peter’s executors on his death.

Only half therefore of Susan’s double nil-rate band can be passed on, and the other half, inherited from James’ estate amounting to £325,000, cannot be transferred.

This is called the un-transferable nil-rate band and represents a loss of £130,000 in a charge to IHT (ie: 40% of £325,000).

Use of multiple nil-rate bands

To prevent the above scenario arising, a nil-rate band discretionary trust can be useful. Susan can leave the unused nil-rate band IHT allowance inherited from James’ estate into a discretionary trust (naming Peter and his other descendants as beneficiaries). Susan then leaves all of the rest of her estate to Peter either outright or on a life interest trust basis and Peter then acquires Susan’s transferable nil-rate band on his death, which, as well as his own individual IHT allowance, gives Peter a double nil-rate band (£650,000).

Peter can also benefit from the nil-rate band discretionary trust in Susan’s will appointing Peter as a beneficiary, which means the wider family effectively benefit from three nil-rate bands (£975,000).

If both husband and wife are a widow and widower, four nil rate band IHT allowances (£1.3m) can potentially be used by carefully incorporating a nil rate band discretionary trust structure in their wills.

With carefully drafted trust wills, tax savings can be achieved for remarried widows and widowers.

Christopher Eriksson-Lee
Partner
01622 776465
christophererikssson-lee@brachers.co.uk

“Gotta catch ‘em all”... but what if they fall?

Farmers and landowners may well have noticed a sudden increase in the numbers of young people enjoying the great outdoors as a result of the latest craze – Pokémon Go

But what if, in their eagerness to catch a jigglypuff or slowpoke, they are injured by tripping over a protruding tree trunk or deteriorated pathway? Would you be liable? Do you have to carry out regular checks on rights of way across your land to ensure they have trouble-free Pokémon hunting?

The short answer is no. The House of Lords (now Supreme Court) decided in the case of McGeown –v- Northern Ireland Housing Association (1994) that a landowner owes no duty under the Occupiers Liability Act 1957 to maintain a public right of way passing over his land in respect of nonfeasance (i.e. just letting it deteriorate). Although there could be liability for misfeasance (e.g. if a hole is dug in the middle of the right of way).

There of course have been reports of eager Pokémon Go-ers trespassing onto private land in their quest to catch them all. Certain landmarks and places of interest have been designated Pokestops or Gyms which could attract a regular number of people to that place. So where does the law stand on injuries to trespassers?

There may be a potential liability under the Occupiers’ Liability Act 1984 (OLA) which states that an occupier of a property owes a duty to a person who is not a visitor (i.e. trespasser) if he is aware of a danger or has reasonable grounds to know that one exists. Clearly the 1984 Act recognises it would be unfair to hold occupiers liable for injury to trespassers whom they do not know are present or are likely to be present.

In our Pokémon example, if you are the owner of private land and have had cause to stop people from entering the land, then this would arguably arm you with knowledge that although not invited to be there, and therefore are not visitors, that people are likely to trespass. The duty is to take care as is reasonable in all the circumstances. Setting traps to ward people off would probably see you fall foul of the Act, as could unguarded machinery or defective premises.

A High Court decision of Buckett –v- Staffordshire County Council (2015) dismissed a claim where a young boy who had trespassed on school grounds was injured when he jumped onto a skylight. Although it was foreseen that children were likely to trespass, the skylight’s “structure, makeup and location” did not constitute a danger. The case did highlight the importance of keeping good maintenance records because the claimant in this case was unable to establish that the skylight was defective. Had he been able to do so, then the duty arising under Section 1(1)(a) of the OLA would have likely been triggered.

Finally, if you embrace the Pokémon Go craze and happily invite people on to your land then your duty would be under the Occupiers’ Liability Act 1957 which is to take such care as in all the circumstances of the case is reasonable to see the visitor will be reasonably safe in using the premises for the reason which he or she is invited or permitted to be there.

Take particular note that the Act specifically refers to children being less careful than adults. As can be seen in the above case, a good recorded system of inspection and maintenance can assist in showing compliance with the act.

Mark Gore
Associate
01622 680409
markgore@brachers.co.uk

Protecting your child's inheritance

It is essential that financial provision for your children on your death is structured in a way that will help them manage the assets more sensibly.

There are three ways to structure financial provision for your children upon your death.

Outright gifts

An outright gift leaves assets to your children without restriction. If the child is under 18, then they will not be able to receive the gift left to them until they reach 18, meaning that the legacy should be held by the executors of your will as trustees until this time.

Age contingent gifts

Another option is to make the gift to your children contingent on them attaining a certain age, usually either 21 or 25 (depending on your preference).

The idea here is that if you die before your children reach the age at which they become entitled, the executors of your will (as trustees) will hold the assets you leave for your children until they reach the required age.

The trustees can distribute money to the children before they attain the specified age at their discretion, but when the child reaches the required age, they inherit the remainder of the balance of their share outright.

Discretionary trusts

The third option is a discretionary trust which gives your trustees the absolute discretion and flexibility to apply trust money to a class of beneficiaries.

Here the trustees have the power to forward the capital and income from the trust at their entire discretion to any one or more of the beneficiaries (which would include your children and your other descendants) as and when they feel it appropriate.

With this option, a letter of wishes can be prepared giving your trustees some guidance on how to administer the trust. For example, you could give guidance on when you would like your children to inherit various assets and which assets you would like them to specifically have.

Who should be the trustees?

It is recommended that you appoint people you trust implicitly to be the trustees, as their role comes with a lot of power and responsibility.

It is also a good idea to appoint the guardian of your children as a trustee because the money may be needed for the children's benefit (such as school fees).

Amy Lane
Solicitor
01622 776427
amylane@brachers.co.uk

> "If you need to appoint trustees, it's a good idea to appoint the guardian of your children as a trustee because the money may be needed for the children's benefit."

New stamp duty rates take force on second homes purchased

We are now into the sixth month since the Government brought in legislation imposing an additional 3% surcharge on Stamp Duty Land Tax (SDLT) payable upon the purchase of additional homes. SDLT is the tax which is paid if you buy a property in England, Wales and Northern Ireland over £125,000.

The legislative changes came into force on 1 April 2016 and means that you will pay higher SDLT if you purchase an additional property for £40,000 or more in England, Wales or Northern Ireland. The higher rate is also payable if you buy a residential property in England Wales and Northern Ireland and already own one outside of these countries.

The higher rate adds an additional 3% on the standard rate which is quite a hike. So for a property brought at £500,000 as an additional property, the SDLT payable has doubled from £15,000 to £30,000.

The Government did make an exemption which is that if somebody owns more than one home and is replacing their main residence by selling their existing main residence simultaneously, then the 3% surcharge will not be payable. Furthermore, if that person does pay the 3% surcharge on an additional property which they will use as their main residence and subsequently sells their previous main residence within 36 months from the date of purchase of the new property, they can claim a refund of the additional tax paid.

The obvious casualties caught by the surcharge rules are landlords with buy to let properties and people buying second homes. But in the last 5 months, we've seen the impact this has had on others who didn't realise that they would be subject to the surcharge.

One group affected are those living in rental accommodation who own one or more buy to let properties and intend to purchase a home as their main residence. The legislation states that if somebody is a landlord and is living in a rental property themselves, they will have to pay the surcharge if they did not sell their previous main residence within the last 3 years. So if you've been living in a rental property for 5 years and own a buy to let property and now want to purchase an additional property as your main residence then you will have to pay the 3% surcharge.

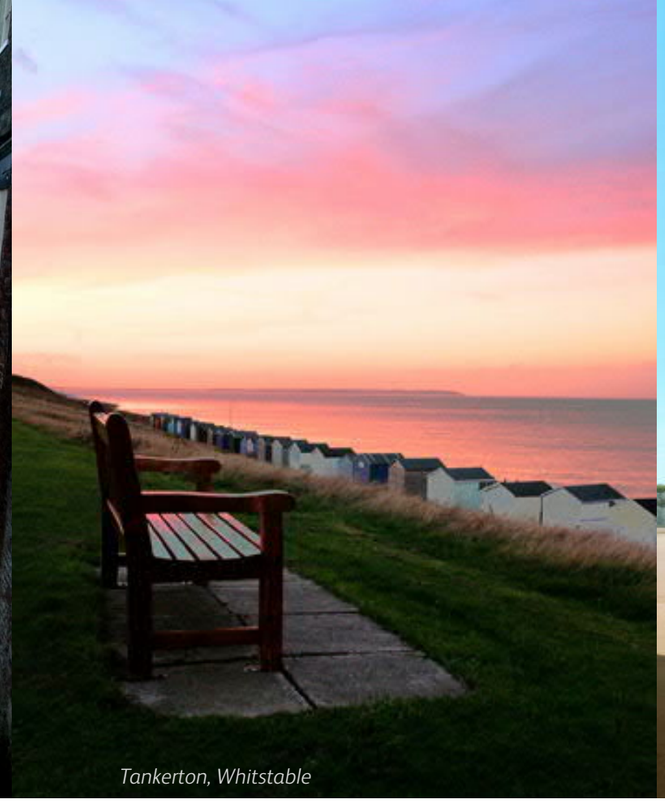
To many, this seems to unfairly discriminate those who have chosen to live in rented accommodation. A possible solution to this is for the landlord living in rental accommodation to move into the buy to let property for a period of time and designate this as his main residence and then sell at the same time as purchasing the new main residence

The treasury estimates that this additional tax will raise £625 million this year alone. Brachers will be keeping a close eye on the impact the SDLT surcharge has on the property market in the coming months.

Sara Smith
Associate
01622 680401
sarasmith@brachers.co.uk


Dover Castle


Canterbury


Tankerton, Whitstable


Botany Bay

Explore East Kent this Autumn

From cobbled streets to cultivating coastlines, stunning sights to superb shopping, and awe-inspiring artwork to award-winning attractions, the picturesque towns and cities of the Garden of England provide a great array of things to see and do. We're celebrating 3 years since our Sandwich office opening this autumn, and to commemorate we've rounded up some of the best places to visit in East Kent.

Dover, Deal & Sandwich

England's most charismatic cliffs, gorgeous gardens, and history-rich ports make this a must-see stretch of Kent coast.

In Dover, drink in the iconic beauty of its world-famous White Cliffs and bring history to life with a trip to Dover Castle overlooking the Port of Dover.

In Deal prowl the battlements and captain's quarters of Deal Castle before meandering through its award-winning high street, mazy smugglers' lanes and independent shops.

Head to Sandwich and feast on a host of medieval architecture, or follow floral aromas to the peace and tranquillity of The Secret Gardens of Sandwich.

Canterbury

Winding cobbled streets and the old city wall set the scene for a visit to historic Canterbury.

The Cathedral has been at the heart of the city since it was founded by St Augustine in 597. Explore the vast World Heritage Site and stand in the exact spot St Thomas was murdered back in 1170, inspiring Chaucer to write The Canterbury Tales. His stories are magically recreated in The Canterbury Tales attraction, along with information about Chaucer, in dioramas that recreate the sights, smells and sounds of this period.

Explore the city in peace as you enjoy a punt with Canterbury Historic River Tours. Each boat is captained by a knowledgeable oarsman, giving a view of the city from the vantage point of the River Stour and revealing many otherwise hidden gems.

Whitstable & Herne Bay

Journey just seven miles from Canterbury to coastal Whitstable, frequently dubbed the Pearl of Kent.

Enjoy the port's funky, bohemian air, with its bustling seafood eateries, picturesque lanes, delis, artisanal bakeries, boutique shops and art galleries. Soak up the atmosphere in a welcoming pub on the seafront, or test out some famous Whitstable oysters!

Two miles away, a few surprises await at distinctive Herne Bay. A hit with visitors since the Victorian era, its legacy lingers in the bandstand, fragrant seafront gardens and distinctive 80ft Clock Tower.

Broadstairs, Ramsgate & Margate

A world-class art gallery, retro revival, delectable dining, plus 15 beautiful beaches and bays - a revitalised corner of Kent awaits in its north east. The lively seaside resorts of Margate, Broadstairs and Ramsgate have rich cultural traditions with links to Charles Dickens, JMW Turner and Augustus Pugin. Margate's mix includes Turner Contemporary and Dreamland, recreating the vintage splendour of yesteryear.

Ramsgate's attractions vary from its Micro Museum and the Ramsgate Tunnels, to Pugin's home of The Grange and St Augustine's Church. Climb the cliff-top path towards Broadstairs and stop in at the Dickens House Museum, set in the home of a woman who inspired David Copperfield's Betsey Trotwood. Alternatively, why not simply stop to admire the creamy chalk stacks of Botany Bay and the sandy shores of Viking Bay?

For more information about Kent, please visit www.visitkent.co.uk

Be prepared when entering and negotiating a settlement agreement

Catherine Daw, Head of Employment provides some key factors for you to consider if offered a settlement agreement.

What is a settlement agreement?

A settlement agreement is a legally binding contract which can be used to terminate an employment relationship, on agreed terms, at any point during the course of employment. It can be used to settle a dispute and/or a potential claim and will usually involve a payment being made to the employee in consideration for the individual giving up the right to go to the employment tribunal with any claim.

How to begin discussions

Settlement agreements are often started through what are known as 'protected conversations.' These can be initiated by either the employee or the employer and must be entered into with a view to negotiating termination of the employment.

Providing there is no improper behaviour, such as the employer putting undue pressure of the employee to enter into the agreement, these discussions will not be able to be referred to in any later claim of ordinary unfair dismissal. This allows the employer and employee to enter into such discussions frankly.

What must an employee be conscious of when presented with an agreement?

There are certain requirements for a settlement agreement to be valid. For example, it must be in writing, it must relate to a specific claim and legal advice must be sought by the employee.

It is important that the most is made of the meeting with the legal advisor, which is often partly paid for by the employer, to ensure that all the terms of the agreement are fully understood and any areas of uncertainty dealt with. If an employee is unhappy with the agreement, the legal adviser can help negotiate the terms.

An employee must always remember the strict time limit for issuing an unfair dismissal claim; three months minus one day from the date of dismissal.

What strategies are available to an employee when negotiating?

Employees are likely to want to assess how strong any claim is and how much compensation/damages would be received in the event of success.

The stronger the claim, the more bargaining power an employee will have to push for more favourable terms. When assessing the amount of any payment in the settlement agreement, bear in mind that the first £30,000 of any genuine compensation payment can be tax free but other payments are likely to be subject to tax and National Insurance.

Employees may prefer to begin negotiations on the basis of goodwill, reminding the employer of their length of service and contribution to the company.

When making an important decision that affects you and your family, our employment team can support you and help you understand your legal rights. If you would like any advice on settlement agreements, please do not hesitate to contact us for a free consultation.

Catherine Daw
Partner
01622 655291
catherinedaw@brachers.co.uk

Company incorporation: is it enough?

Shareholders' agreements do require some careful thought and tailoring to the requirements of a particular business. However, the advantages of providing stability and protecting family members' interests should definitely outweigh the time and effort involved in having one prepared.

What is a shareholders' agreement?

On incorporation a company will adopt Articles of Association to deal with the administrative structure of the company and its basic management. A shareholders' agreement is distinct from the Articles and creates a contract between a company's shareholders.

The company may also be a party to the agreement. It will cover a much wider range of issues than the Articles and can deal with specific issues unique to the business sector such as agriculture and family run businesses.

What are the benefits of a shareholders' agreement?

Issuing or transferring shares to family members (or others) can mean relinquishing a degree of control over the business.

A shareholders' agreement can help owners address this issue by ensuring their approval is required for critical decisions related to the business (so called reserved matters). If desired other shareholders / family members can also be given a say on certain decisions.

A concern for any family run company is that shares may end up being held by someone who does not meet with the other shareholders' approval.

The agreement can create control over who may hold shares in the company by placing restrictions on the transfers of shares and stipulating what happens if certain trigger events arise (e.g. the death of a shareholder).

Further, whilst family disputes are an uncomfortable thought, they are not uncommon. It is important that any issues are anticipated and can be fully resolved by reference to a well drafted agreement.

What else can be included in a shareholders' agreement?

The short answer to this question is "anything". There is no restriction on the types of issues that can be dealt with (but we recommend they are limited to company matters!). An exhaustive list is outside the scope of this article but a couple of common provisions are:

- **Management and running of the company -** this will cover the method of appointing and removing directors, approval of any capital expenditure, and other financial issues. It is important that each shareholder has a clear understanding of how they should be contributing to the business and what rights to expect in return.
- **Payment of dividends -** this will ensure each shareholder understands the basis on which dividends will be declared and paid. It is common for shareholders to hold different classes of ordinary shares so dividends can be paid to some shareholders but not others. This provides flexibility over how profits can be allocated between family members.

Tim Turner
Solicitor
01622 776441
timturner@brachers.co.uk

Mark Leeson
Partner
01622 655283
markleeson@brachers.co.uk

Spotlight with Mark Leeson

Mark is a Partner in our Family team with over 26 years' experience. He is also a member of the Association of Contentious Trust and Probate Specialists and advises on will and inheritance disputes.

What made you want to become a lawyer?

I wanted to help assert equal treatment and spent the first part of my career undertaking publicly funded work helping the most vulnerable through domestic violence and divorce.

What do you enjoy most about your job?

Meeting new people and hearing their background and the occasions when you can help someone move to a better place.

What made you choose to work in Family Law?

I am interested in people and family law is about doing the right thing in a particular case for that particular individual. The wide discretion given to the court allows the court to do what is fair in most, if not all, cases.

You are a trained mediator and collaborative lawyer, what is the difference between the two?

As a mediator I see couples together to help them have a conversation about the issues they need to resolve on the breakdown of their relationship. It is my role as a mediator to help them talk about the arrangements they will need to make and hopefully help them to a point where they can agree on what is to be done. I will provide information but I will not give advice to either party.

In the collaborative approach arrangements are agreed in a series of roundtable meetings where both parties will have their solicitors present. The solicitors work together cooperatively to help the couple have the discussions they need to have to agree arrangements.

You also specialise in will disputes, what drew you to this area of the law?

When someone has died and a dispute arises, the whole family can be drawn in. The dynamics of this type of dispute are frequently similar to those that we see on separation and divorce, where the arguments are rarely limited to the people we see in the office. The same skills are required to see where the various interests lie and how best to balance them for a fair result.

This is a complex area of law, how do you make sure you get the right result for your clients and what are the challenges?

We will always try and achieve the right result, firstly, by negotiation avoiding the cost and stress of litigation. With my background in alternative forms of dispute resolution we will always consider whether those are appropriate. However, it is also important to be ready to make the judgement that litigation is necessary when other avenues have not been successful. Good and open communication with the client about what they want to achieve and the proportionality of each step is key.

If you weren't a lawyer what would you be?

I have always enjoyed being out in the country amongst wildlife of all kinds. If I wasn't a lawyer I think I would be a park ranger in one of our National Parks.

Who has influenced you most professionally?

When I was developing as a young lawyer I spent a lot of time before Richard Polden and Chris Lethem who were then both District Judges at Tunbridge Wells County Court. Both showed great compassion and sympathy to the parties.

They were both careful to ensure that the parties before them not only understood the decisions they were making but also why they were making the decision. Their quality, I believe, improved the practice of the lawyers that appeared before them. It certainly did mine!