

Law News

Newsletter for commercial clients

Summer 2016

Moving up a notch

We are delighted to announce that the firm has made some significant promotions and we have retained our Lexcel accolade for the eighth year running.

We are under new leadership, welcoming a second female managing partner in succession, and have also promoted three solicitors, two of whom are female.

The firm has once again been awarded the Law Society's Lexcel quality mark as it meets the highest levels of client care and business management standards. Lexcel is a nationally recognised accreditation which assesses law firms through rigorous independent assessments every year.

Bridget Redmond joined Willans twelve years ago and became a partner within two years; ten years on she is now at the helm. Margaret Austen, who recently celebrated ten years at the top, is now a consultant.

Ruth Baker, who joined the wills, probate & trusts team from Harrison Clark in 2012, is now a partner. She has been recommended on merit by national independent legal guides for several years, and was one of only two private client lawyers in the South West to be considered 'associates to watch' in the 2015 *Chambers* guide. Last year she was also named one of *Cotswold Life's* '35 Cotswolds Professionals under 35'.



Jennifer Emerson, a member of the wills, probate & trusts team, and Nick Southwell of the litigation team, who is also an accredited mediator, have been promoted to associate solicitor positions.

Jennifer joined the firm in 2013 after relocating to Cheltenham from an Essex firm.

Nick Southwell qualified in 2006 and worked for a law firm on the south coast before moving to Gloucestershire. He joined Willans in 2014 from the litigation team at Tayntons LLP.

"The firm's aim is to recruit and retain the best lawyers, who can deliver the best service to clients, and these appointments are a reflection of this. Our staff are our most important asset. These are exciting times."

Rural 'trusted advisor' takes the reins

We have been joined by an exceptional local agricultural lawyer, recommended by national legal guides since 2005.



Robin Beckley, partner

Robin Beckley, a highly experienced agriculture and property lawyer well known to many in the rural sector, now leads our agriculture & estates department. He advises the firm's portfolio of agricultural sector clients which includes farmers, landowners, rural and equine businesses.

Bridget Redmond, commenting on his arrival, said: **"We're delighted that he has joined us. He is an exceptional lawyer and a great asset. We look forward to introducing clients to him over the coming months."**



We are delighted to be sponsoring these awards. Now in their 19th year, they put businesses in the limelight, unearthing and celebrating new talent and sharing the success stories of county firms and business people. You can enter your business or show your support for others on the awards website at: www.digital-thisis.co.uk/gloucestershire/businessawards. Nominations close at 5pm on 15 July.

Business immigration rules

Earlier this year the Home Office confirmed it will implement significant changes to business immigration rules which will make it more expensive for employers to sponsor migrant workers.

In order to employ migrant (non-EEA) workers, an employer in the UK must be registered with the Home Office and have a sponsor licence; in April of this year, there were 29,975 such employers.

This number has been steadily increasing as businesses require specialist skills from overseas, and more people migrate to the UK for work. The Office of National Statistics' most recent quarterly report showed that 290,000 people entered the UK for work during the year ending September 2015.

In April this year the Home Office confirmed it will be implementing significant changes to business immigration rules affecting individuals in Tier 2 (the category within which most skilled workers come to the UK). It is widely considered that the changes to be introduced this autumn and next spring will generally make it more expensive for an employer to sponsor migrant workers.

Key changes include an increase to the minimum salary which must be paid to experienced workers in Tier 2 (General). The threshold will rise to £25,000 in autumn 2016, and to £30,000 in spring 2017. There are also extensive changes affecting those visiting

the UK to work via an intra-company transfer (ie. those who already work within the same group of companies albeit overseas).

Overall, the most significant change is the Immigration Skills Charge. This will be introduced in April 2017 and will apply to all employers who sponsor migrant workers in the Tier 2 category (ie. general and intra-company transfers). The charge will be £1,000 per certificate of sponsorship per year and is therefore a substantial additional cost to employers. Lower rates will be payable by charities and smaller businesses.

As yet, the Home Office has not released the finer details of the application of this charge, so many questions remain in the air. We will share further information as it becomes available; in the meantime if you have a specific query about this, or business immigration in general, please contact our employment team who will be happy to advise.

Helen Howes
helen.howes@willans.co.uk



Helen Howes – advises businesses on immigration matters and assists them with securing sponsorship licences. She also has extensive experience in employee relations and negotiations.

Mediation – our new service



Nick Cox, partner

We have launched a new service which offers people an alternative to going to court.

Following the substantial increase in court fees, as well as the reduction in the number of courts, our accredited mediators can provide a flexible, quick and cost effective approach to resolving all civil and commercial disputes of any size.

According to the ADR Group, which we are members of, over 80% of mediations settle on the day or shortly afterwards, making it an attractive alternative to drawn out and costly litigation. A mediation normally takes place over one day with all parties present and can be arranged very quickly.

Mediation may also help businesses preserve commercial relationships with those with whom they are in dispute, as it needs a collaborative approach to reach a result.

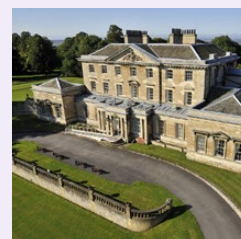
For more information on this service visit:
www.willans.co.uk/mediation

Client news

Nigel Whittaker and Alasdair Garbutt assisted national charity, **Sue Ryder**, in the sale of Hickleton Hall, a substantial Grade II* listed Georgian country house in South Yorkshire. It comprised 57 residents'

rooms and ancillary outbuildings, cottage and stable block. This beautiful building had been used by the charity as a care home for many years but became unfit for purpose. Sue Ryder sold the property to a developer for residential

use and will use the sale proceeds to provide up-to-date care within more modern facilities. The title was complex involving numerous parcels of land but the sale was successfully concluded towards the end of May.



Monitoring employee emails

The misuse of emails by employees can harm a business, for instance by way of reputational damage, poor performance or misconduct and lead to a number of other issues such as harassment, breach of confidentiality and discrimination. As a result, many employers want to monitor their employees' use of email.

Whilst employers have the right to protect their business, employees also have various legal rights that protect their privacy and personal data, not least the implied employment term of mutual trust and confidence. Employers do not, therefore, have carte blanche to snoop on employees' email activity.

There have been a number of cases of late which have dealt with this issue, and which highlight the importance of balancing the rights of employees with those of employers. Overwhelmingly these cases show that employers should only monitor employees' emails if:

- employees cannot reasonably expect their email communications to be private; and
- any monitoring is justified and proportionate.

If these factors are not present, employers may find themselves facing a claim for breach of the right to privacy under article 8 of the European Convention on Human Rights, and/or breach of the implied term of mutual trust and confidence.

If employers choose to monitor their employees' emails, they should follow the good practice recommendations of the Employment Practices Code published by the Information Commissioner's Office which suggests that:

- **Email use policy:** Businesses should have an email policy that sets out the circumstances in which monitoring may take place, the nature of the monitoring and how it will be used. This policy should be provided to all employees to ensure that they have a full understanding of the monitoring process and its implications.
- **Carry out impact assessments:** Before monitoring employees' activity businesses should identify the purpose and benefits of the monitoring and weigh these up against the adverse impact it may cause. Consider whether the monitoring is justified and proportionate and if the purpose can be achieved without it.
- **Limit the recipients of the monitoring results:** Businesses should ensure that only a limited number of staff have sight and knowledge of the information obtained through monitoring, and this information should be kept secure.

Of course, like many issues affecting employees, each case will be dictated by its own facts, but employers must always bear in mind their employees' right to privacy which should not be breached unjustifiably or disproportionately.

If you do not have a relevant email use policy in place you would be well advised to introduce one. Please call or email us if you think we can assist.

Jenny Hawrot
jenny.hawrot@willans.co.uk



Jenny Hawrot – an experienced employment lawyer who advises individuals and businesses on the full range of employment issues.



Simon Bridgens, solicitor

Insolvency update

In October 2015 the bankruptcy threshold for individuals was raised from £750 to £5,000, the first increase in 30 years. This means that those aiming to bankrupt an individual debtor can only do so if the debt is £5,000 or more, and the individual cannot pay. Debts under £5,000 should be pursued in the county court if an alternative agreement for payment cannot be reached.

However, the threshold for issuing a winding-up petition against a company has not increased from £750, and remains a useful tool for creditors.

Simon Bridgens
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Employment associate, solicitor Laura Davis recently helped **All of Us (Care) Limited** to join forces with leading dementia care specialists, Dr David Sheard and Peter Priednieks of Dementia Care Matters, to realise

their shared vision of developing an innovative model of care for those living with dementia. Corporate & commercial partner Theresa Grech advised on the intellectual property aspects of this exciting new venture.



Theresa Grech recently acted for **CGT Lettings Limited and Tewkesbury Residential Lettings plc** in relation to a reorganisation. This saw Sheila Heath, who had been at CGT for 20 years, retire from the business.

CGT Lettings Limited were first established in 1987 and have rapidly expanded (now having 5 offices) to become one of Gloucestershire's leading residential letting and property management companies.

200 quizzers LINC together for fundraiser



More than 200 people from county businesses tested their wits at our charity quiz in May. The successful evening raised a record £4,866 for the law firm's charity of the year, LINC. On the evening auctioneer Simon Chorley from Chorley's helped

us raise around £1,450 through a charity auction of prizes donated by local businesses.

The Willans trophy was retained for a third consecutive year by Cambray Property Management; Warwick Butchart Associates were in second place and Read Maurice came third.

James Grigg, family partner and quiz master, said: "We were delighted to attract such a large turnout for the fourth year running. Manor by the Lake was bursting at the seams and the atmosphere was great. Thank you to everyone who supported the event and, more importantly, LINC. This money forms part of our total fundraising efforts for the year which will be used to help pay for the refurbishment of their ward ensuite rooms."

Photos taken on the evening can be viewed at: www.southwestbusiness.co.uk/galleries

Boosting British enterprise

The Enterprise Act 2016 gained royal assent in May. A key feature of the act is the introduction of a small business commissioner to help small firms handle disputes with larger businesses over issues such as late payment. The commissioner will also have resources to provide general advice and information to small businesses.

Other measures include:

- a requirement under every contract of insurance for insurance companies to pay claims to businesses within a reasonable time.
- extending the government's target to cut red tape and introducing annual reporting requirements for regulators to show the impact their actions have on business.
- the introduction of targets for apprenticeships in public sector bodies and establishing an institute for apprenticeships, to ensure they meet the needs of businesses.
- extending the primary authority scheme to improve access for small businesses and entrepreneurs to regulatory advice and to save them money.

- capping business-rate rises, improving the business rates appeals system and stopping business ratepayers from having to share the same information with both local government and the Valuation Office Agency.
- powers for government to fund new broadband projects across the country for the benefit of industry and local communities.
- stopping six-figure taxpayer-funded exit payments in the public sector.
- funding powers for UK Government Investments Limited to oversee the sale of government assets in a way that will benefit the taxpayer.
- decentralising powers to allow local authorities to decide whether or not to extend Sunday trading hours.

Essentially all of the measures introduced under the act are designed to encourage the start-up and growth of small businesses to help boost British enterprise.

Sophie Martyn
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Sophie Martyn – advises clients on general aspects of corporate and commercial law, and has a particular interest in science and technology.

Client news

We recently completed a complex deal for the selling shareholders of **Space Catering (UK) Ltd** who have sold a controlling stake in the company to leading catering equipment supplier Nisbets PLC.

Our corporate & commercial partner Paul Symes-Thompson led the transaction on behalf of the selling shareholders with the help of commercial property partner Laurence Lucas, employment solicitor

Jenny Hawrot and corporate & commercial solicitor Sophie Martyn. The holding company of Space Catering (UK) Ltd is one of the top five design and build companies in the UK

with turnover in excess of £15 million and around 80 employees. The top 100 Gloucestershire business celebrated its 15th anniversary in 2015.



Alasdair Garbutt – a commercial property specialist who is experienced in sales & acquisitions, development transactions, landlord and tenant and property management matters.

I predict a riot

Whilst the probability of a riot in Cheltenham is hard to imagine, a number of our clients have properties in London and other cities throughout the country.

On 23 March 2016 the Riot Compensation Act 2016 received royal assent. It is yet to come into effect but when it does it will repeal the old 1886 Act and create a new scheme allowing compensation to be claimed from the appropriate local policing authority for property that is damaged, destroyed or stolen in the course of a riot. It applies to property that was not insured, or was under-insured, against loss or damage.

There is a £1 million cap on compensation in any one claim and consequential loss is not recoverable, such as rent which would have been received had the property not been damaged. Costs incurred for things like alternative accommodation are claimable.

The riots in London and other cities in 2011 were the catalyst for this new act as previous legislation was found wanting. If law and order breaks down due to a riot and the police cannot control this and damage is caused, then the police become liable to pay out those affected.

In view of the limits of compensation, property owners may wish to review their insurance policies for damage caused by riot.

Alasdair Garbutt
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Extending the powers of telecom providers

The government has finally published a response to the recent consultation which it carried out on major reform of the Electronic Communications Code.

This is the legislation that governs the relationship between landowners and electronic communications providers that need access to land to install and maintain equipment such as mobile phone masts.

The government announced in the Queen's speech that it proposes to implement the changes in the Digital Economy Bill.

The government's statement includes the following key proposals:

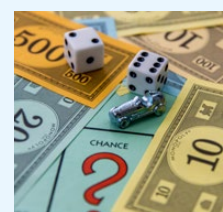
- there will be major changes to the method of valuing rents to be paid by the operators. Communications providers will be given similar rights to utilities companies, reducing their rental expenditure and thereby creating greater incentives for investment, including in areas where previously costs have been prohibitive.
- operators will have new automatic rights to upgrade and share, and the code will make it clear that communications providers cannot be charged extra for changes where there is minimal adverse visual impact or burden on landowners.
- re-assignment of code rights will be enshrined to ensure that if infrastructure assets are sold and transferred between communications providers, there will be no option for landlords to negotiate new terms for existing contracts.

- 'contracting out' of the code will be prevented, and code rights will continue to apply even where there is a change of ownership in land. There will be no need to register the code rights.

There are various other proposals which are all designed to increase access to land for communications providers and reduce the costs of maintaining an infrastructure presence.

At present, it is not intended that the new communications code will be retrospective. Landowners should therefore be proactive in making sure that any existing contracts which are at the point of renewal are dealt with quickly under the current regime, in order to avoid any potential reduction in rental income.

Susie Wynne
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How to play Monopoly and win

Paul Gordon, litigation partner with an intellectual property specialism, was on the main stage at this year's Gloucestershire Business Show, talking about how businesses can use intellectual property for financial gain. He teamed up with two other county professional services firms, Wynne Jones IP and Randall and Payne accountants, who collectively explored what intellectual property is, why it is important and how it can add value, make money and facilitate the funding of inventions.

Lips are sealed

A trade secret can be a formula, practice, process, commercial method or compilation of information that is not generally known or reasonably ascertainable by others, which gives a business a competitive advantage in the marketplace.

In November 2013, the European Commission proposed a draft directive for the protection of trade secrets ('the directive'). The European Parliament voted to adopt the directive with no further amendments and this was formally done by the European Council on 27 May 2016.

The directive aims to harmonise the protection of trade secrets across EU member states and to establish a minimum standard of protection in three main areas:

- A new definition of a 'trade secret': information will be considered a trade secret if it is secret, has commercial value because it is secret and the person in control of the information has taken reasonable steps, to keep it secret. The definition includes 'know-how and business information' and therefore is designed to protect not only technical information but also commercial and strategic information.
- Greater protection for victims of trade secret misappropriation including:
 - stopping the unlawful use and further disclosure of misappropriated trade secrets
 - removal of goods from the market that have been manufactured on the basis of a trade secret that has been illegally acquired; and
 - the right to claim damages for losses arising from the unlawful use or disclosure of the misappropriated trade secret.

- Reduced disclosure of trade secrets during legal proceedings to a limited group of individuals, who are to be bound by an obligation of confidentiality and non-use during and after the proceedings.

It is hoped that the directive will encourage cross-border research and development and knowledge transfer within the EU. This could benefit UK businesses with factories overseas and those engaged in international research and development.

The directive may also benefit smaller companies that can't afford to invest in intellectual property rights such as patents, trademarks or registered designs and which rely more on trade secrets. Of course, once adopted, all member states including the UK will be obliged to interpret existing laws on confidential information in line with the directive.

In the UK, there is no definition of a trade secret and the law relating to confidential information has developed through case law rather than statute. Therefore, it will be interesting to see how the UK courts interpret existing case law in light of the directive.

(Please note that this piece was written prior to the EU referendum.)

Sophie Martyn
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Coffee morning at Lilian Faithfull Homes

Some of our wills, probate & trusts team visited Lilian Faithfull Homes' Faithfull House one Friday morning in May, and spoke with families and residents over coffee and delicious cake. The charity, which now has four homes in the county, has been providing specialist elderly care for 70 years.



Trespassers beware



The "brilliant" Susie Wynne is noted for her extensive commercial property experience.

The Court of Appeal has confirmed that a landowner does not need to take physical or legal action to prevent rights being acquired, so long as he has made his position clear regarding authorised use of land through visible signage.

In the most recent case, the owners and users of a chip shop had parked for many years without permission on an adjoining landowner's car park. The landowner had, however, displayed clearly visible signs stating that it was a 'private car park' for the use of specific persons only. This was deemed to be sufficient to prevent the chip shop owners and their customers from gaining rights by 'prescription' (long use) to park there.

The Court of Appeal recognised that most people do not seek confrontation, and do not have the means to bring legal proceedings. Putting up clearly visible signs is an appropriate, peaceful and inexpensive way of making it clear that the property is private.

The court confirmed that they did not see why people who choose to ignore clear signs should be entitled to obtain legal rights over that land.

Susie Wynne
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Help combat property fraud

Property transactions involve large sums of money which are an attractive target for fraudsters, and sadly, mortgage and property fraud is on the increase. It is estimated that over 18 million UK households could be failing to protect themselves from identity fraud.

Properties most vulnerable to fraud are those which are empty, tenanted or mortgage free. If you are away from your home for long periods of time, or are currently in a care home or the property is let, then your property may be at risk.

Fraudsters target properties where the owners are not readily available. They 'steal' property by impersonating the true owner and either mortgaging or selling the property and disappearing with the proceeds.

The key points to help prevent property fraud are to:

- make sure that you have registered the property's title at the Land Registry, and that your contact details are correct and up-to-date, so they can contact you if they need to send a formal notice or advise you of changes to the register. Each person can provide them with up to three addresses. In addition to a UK postal address, you can provide an email address and, if relevant, an overseas postal address. If you would like a member of our residential property team to do this for you, please let us know.
- use the Land Registry's free property alert service specifically created to help owners of registered properties detect property fraud. Through this alert service, the Land Registry will email you each time there is significant activity that may result in a change to the register of a property you are monitoring. To register, you need a valid email address (or postal address if you are not online) as well as the address or title number of

the property that you want to monitor. (You can create alerts for up to 10 registered properties in England and Wales.)

- make use of the new form of restriction introduced by the Land Registry. This is noted on the title register for the protection of absent owners. It is designed to help prevent forgery by requiring a conveyancer or solicitor to certify that they are satisfied that the person transferring or mortgaging the property is the same person as the true owner. As standard practice, Willans applies for this restriction every time one of our clients uses our services to purchase a buy-to-let property. If you have a buy-to-let property and are not sure if the restriction has been entered you can check with the Land Registry. Please let us know if you would like a member of our residential property team to do this for you, and if necessary, to register a restriction.

If you think you have been a victim of property fraud you should seek advice immediately by either contacting a conveyancer or the Land Registry.

Yasmine Machin
Yasmine.machin@willans.co.uk



Yasmine Machin – an experienced licensed conveyancer who worked at the Land Registry for many years, she handles a full range of residential property matters.

2016 employment law seminars

"Excellent advice and guidance; very worthwhile attending."

Thursday 22 September 2016, 9.00am - 1.30pm
Handling grievances & conflict management:
'Back to school' employment law workshop
 Cheltenham (£30 pp includes lunch)

Tuesday 1 November 2016, 7.30am - 9.00am
Everything you ought to know about employment contracts
 Cheltenham (£15 pp)

More information
 Please visit www.willans.co.uk/events



Inheritance tax and the family home

Since the Budget in April this year many clients have said that due to the changes in inheritance tax (IHT) they believe they do not need to worry about any tax planning. But is this correct?

Ignoring any reliefs for agricultural and business property, IHT is currently charged at two rates:

- 0% on the first £325,000 (the nil rate band)
- 40% on everything in excess of £325,000.

If any of the nil rate band is unused on the first death of a spouse or civil partner then on the death of the survivor the unused part can be transferred to the second estate. This is called the transferable nil rate band and is how surviving spouses and civil partners can have estates of £650,000 before becoming liable to IHT.

From 6 April 2017, an additional residence nil rate band (RNRB) applies so that less IHT may be paid when the family home is left to children, grandchildren and some other individuals.

The value per person of the RNRB is initially £100,000 rising by £25,000 over the following four years to reach £175,000. It is transferable too, so

after April 2021 married couples and civil partners may be able to benefit from a combined nil rate band and RNRB of £1 million.

It can be claimed if all of the following apply:

- you die on, or after, 6 April 2017
- you leave an estate worth less than the upper limit of £2 million. (Between £2 million and £2.2 million the relief tapers down until it is no longer available.)
- you leave your home to qualifying beneficiaries such as direct descendants and some other individuals such as stepchildren or foster children.

To ensure that you maximise the tax-saving effect of the RNRB we strongly recommend that you review your will, or make a will if you do not already have one.

The conditions for claiming the RNRB are complicated and you should get expert advice to ensure that your family can benefit from the enhanced nil rate band inheritance allowance in the future.

Simon Cook
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Partner Simon Cook – a private client practitioner with over 22 years' experience, he deals with all aspects of wills, probate & trusts work.

More news on our website www.willans.co.uk

Contact

For advice on any of the issues covered in *Law News* or any other area of law, these are the people to contact in the first instance.

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Employment law

Matthew Clayton matthew.clayton@willans.co.uk

Litigation & dispute resolution

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