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Willans LLP | solicitors

Law News

Newsletter for commercial clients

Summer 2023

Welcome...

to the summer edition of our newsletter for commercial clients, ***Law News***. With insight into the worlds of employment law & business immigration, corporate & commercial, real estate and litigation & dispute resolution this issue provides plenty of legal perspective on the topics affecting you and your business.

As ever, we would be happy to help with any issues you're facing, so please don't hesitate to get in touch.

Bridget Redmond | Managing partner

What's in this issue?

Six promoted with business teams going from strength to strength

James Melvin-Bath

Helen Howes

Hayley Ainsworth

We are pleased to announce six promotions across the firm, including three in our business client teams.

Recommended by independent national legal guide *The Legal 500*, litigation & dispute resolution solicitor-advocate, James Melvin-Bath, becomes a senior associate. Senior partner and head of department, Paul Gordon, said: "James is an exceptionally talented lawyer who has demonstrated absolute commitment to his clients and to the firm."

Corporate & commercial's Helen Howes and employment law & business immigration's Hayley Ainsworth have also become associates.

Elsewhere in our *Chambers UK* and *Legal 500*-rated teams, three of our lawyers moved up a level – including two new partners in our wills, trusts & probate team, taking our partner count to 17.

Managing partner, Bridget Redmond, said: "It's a pleasure to congratulate our brilliant lawyers on their well-deserved promotions. Each displays the qualities that are at the core of our firm – outstanding legal brains and real client focus. We look forward to watching them all progress further in their careers at Willans."

To read the full article covering all six of our latest promotions, click here or scan the QR code (above). ■

The Brexit Bonfire Bill: where are we at?

Employment law & business immigration partner Matthew Clayton updates us on the EU law we may or may not be retaining at the end of this year.

The initial shock, a couple of months of uncertainty, and now a screeching U-turn that most F1 drivers would be proud of – the Retained EU Law (Revocation and Reform) Bill certainly caught our attention.

The first version of the bill (sometimes referred to as the 'Brexit Bonfire Bill') was intended not only to end the principle of supremacy of EU law but also to automatically repeal all EU laws at the end of this year, unless expressly retained. The government's ultimate plan was to replace it with new and improved – but likely very similar – UK law; however it appears the government has now realised the enormity of the task.

On 10 May, the government issued a statement confirming that the controversial sunset clause included in the initial proposal is to be abandoned. This means that, rather than repealing all retained EU law on 31 December 2023, the government is now only repealing certain, predetermined EU laws. The list of those retained that the government intends to repeal was published on 11 May. If you're struggling to sleep at night, you can find it by clicking here or by scanning the QR code on the image (right).

You will be pleased to know that only three very obscure employment law regulations are being repealed, so there will be no major changes come 1 January 2024. The bill is currently in the final stages of the legislation process, so keep an eye on our newsletter ***Dispatches*** for more updates. ■

Matthew Clayton
Partner, head of department
Employment law & business immigration

Matthew heads our highly rated employment law & business immigration team and has over 25 years' experience in his field.

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Subscribe to ***Dispatches***

Limiting the length of non-compete clauses?

Jenny Hawrot – partner in our highly rated employment law & business immigration team – looks into the proposed changes to non-compete clauses.

The UK government plans to introduce legislation that will place a three month limit on the length of non-compete clauses. This was announced on 10 May as part of a wider package of employment law regulatory reform.

The government hopes the proposed change will mean greater flexibility for up to five million UK workers who would be allowed to switch jobs, join a competitor or start their own business within a shorter time frame, while simultaneously widening the talent pool. The proposals came shortly after the US Federal Trade Commission announced its plan to ban non-compete clauses altogether at a federal level. This signals that we may be on the brink of a global shift away from these types of clauses.

What employers should know about the anticipated changes:

- the three month limit would only apply to non-compete clauses
- this would not affect non-solicitation or non-dealing clauses
- it would not prevent employers from restricting their employees' activities during any (paid) notice period or garden leave
- there would be no impact on confidentiality clauses
- the changes should not extend to LLP agreements or LLP members and the statutory limit would not affect non-competes in wider workplace contracts, such as equity arrangements, partnership agreements or shareholder agreements.

It is also worth mentioning that the government stated that such legislation will be introduced "when parliamentary time allows" – when that will be is anyone's guess.

For now, non-compete clauses of over three months remain enforceable, provided they are no wider than reasonably necessary to protect the employer's legitimate interest. However, it remains unclear when – and indeed, if – such legislation will be put forward, so watch this space. ■

Jenny Hawrot
Partner
Employment law & business immigration

Jenny helps clients with a full range of employment legal needs and is recognised by prestigious guide *The Legal 500*.

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The rise of the electronic signature

Real estate associate, solicitor Charlotte Cowdell explains how electronic signatures are now considered legally binding from a property perspective.

Our real estate team now regularly uses a platform in transactions that allows clients to sign their property documents digitally. This is not only convenient for the parties, but also helps speed up the transaction.

We previously reported in February 2020 in our article, *an e-sign of the times*, that electronic signatures were not considered good practice when executing property documents, and for the time being the requirement to execute such documents using a physical wet ink signature would continue.

The main reason for this was because most documents in property transactions are required to be submitted for registration or noting purposes to HM Land Registry, who – at the time – did not accept e-signatures.

Since the covid-19 pandemic, HM Land Registry have reviewed their approach and have confirmed they now accept electronic signatures for transfers of property ownership, leases, mortgages and other property-related dealings. They do, however, still require some documents to be signed in wet ink, such as lasting powers of attorney and statutory declarations.

Guidance issued by HM Land Registry confirms they will currently accept the following two forms of electronic signature:

- **Mercury signatures** – this approach allows a party to sign a signature page in wet ink in the physical presence of a witness (where applicable).

  The signature can then be captured by a scanner or camera to produce a PDF, JPEG or other suitable copy, allowing a final copy of the document and the signed signature page to be sent by email to a solicitor to arrange completion.

- **Conveyancer-certified electronic signatures** – this approach replaces a wet ink signature with an electronic alternative. Where a witness is necessary, they are still required to be present, but they too can sign electronically.

  The process involves a solicitor uploading the document to an online platform that sends a link to the signatories. Once they have completed the authentication checks, they can then sign the document electronically.

  For HM Land Registry purposes, the online platform needs to include a two-factor authentication (by email and mobile phone) to verify the signatories accessing the document and provide assurance that unique individuals have signed it. Once signed, a certificate will be produced and signed by the solicitor acting to confirm – to the best of their knowledge and belief – that HM Land Registry's requirements for the execution of deeds using electronic signatures have been satisfied.

HM Land Registry are also piloting the use of qualified electronic signatures (QESs). These allow signatories' identities to be verified by a qualified trust service provider – a replacement to the assurances a witness usually provides. HM Land Registry are looking at this more widely as part of the next stage of their work on electronic signatures.

Our dedicated team of real estate lawyers will be happy to discuss your requirements with you to ensure the signature method in your property transaction works for you. ■

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Charlotte Cowdell

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Real estate

Charlotte helps a range of clients on all types of commercial property transactions. She also has experience in charity law and is recognised by prestigious legal guide *Chambers UK*.

Emma Thompson

Associate, solicitor

Real estate

Recognised by independent legal guide *The Legal 500*, Emma helps local and national clients with all aspects of their real estate legal needs.

Helen Howes

Associate, solicitor

Corporate & commercial

Helen assists local, national and overseas clients on a variety of corporate and commercial needs.

Helen has recently been supporting multiple property clients with their property management companies.

Overview: family investment companies

A trend of late has been the increasing use of family investment companies. Corporate & commercial's Helen Howes gives an overview of what they are and their benefits.

What is a family investment company (FIC)?

A FIC is most commonly a private company limited by shares which has been specifically created by one generation of a family to accumulate wealth and facilitate passing it on to the next generation in a tax efficient way.

The share structure of a FIC and its constitutional documents (its articles of association) are specifically tailored to suit the family's needs and objectives. Very often the 'founding generation' will wish to retain control of the FIC and its funds. This is usually achieved by that generation retaining control by holding the shares with voting rights and appointing themselves directors. This enables them to determine when, how and if funds can be passed down to the next generation.

Why use a FIC?

The answer to this question would itself merit an article. With detailed financial and legal advice, a FIC can be a vehicle to accumulate wealth and manage the succession of that wealth to the next generation, whilst mitigating tax exposure (particularly in relation to inheritance tax) and retaining the flexibility to provide financial assistance to the next generation as the need arises.

For example, a FIC will typically have in issue different classes of shares to different generations or to specific individuals. This enables the founding generation (if they are directors of the company) to have flexibility as to when and if to declare dividends and to which class of share, thereby enabling them to help different shareholders at different times and with different amounts. Income can also be drawn by way of a salary to directors or by way of debt (essentially by withdrawing cash from the company in the form of interest or loan repayments).

Is it different to a discretionary trust?

Yes. Advice should always be sought to ensure the most appropriate structure is selected for what is trying to be achieved.

In very general terms, a discretionary trust may be better for small funds or for holding assets for beneficiaries not yet born or identified, whereas it may be preferable to use a FIC to hold large capital sums and make long term investments whilst producing an income for shareholders. Detailed financial and legal advice should always be obtained.

How is a FIC set up?

Either by incorporating a new company in the same way as for any new company or by converting an existing company – although this could bring its own tax implications so – as detailed above – financial and legal advice should be sought to ensure the most appropriate structure is adopted.

Our highly rated corporate & commercial team will be willing to help if you have any questions about family investment companies. ■

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Home is where the Wi-Fi is

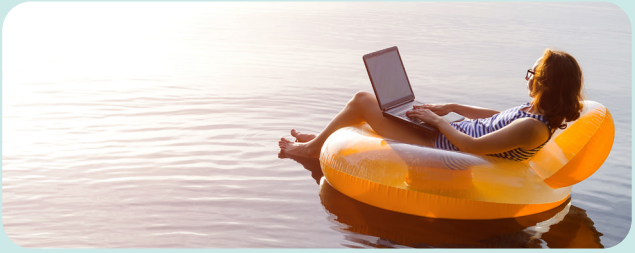
Rapid technological advancement and societal challenges in recent years have significantly changed the way we work. The increase in hybrid and remote working arrangements is broadening our possibilities, opening new horizons which many of us never thought were possible. One of them is the new employment trend referred to as a 'workation' – a blend between work and vacation.

Workation is a type of flexible working arrangement where the employee continues to work from their holiday location without the need to use their paid leave entitlement. This is usually a short-term arrangement (one to four weeks) allowing employees to work from a different location to usual or, alternatively, prolong their stay there after a holiday, using their free time to explore and enjoy.

However, both employees and employers should not just blindly give in to the TikTok trend claiming that, for remote workers, 'home is where the Wi-Fi is'.

There are a couple of issues to think of first, including whether workation will have any tax implications on either party, if employers can uphold their contractual obligations as to benefits and pension, or whether they can comply with health and safety obligations. There are also certain data privacy risks involved.

The general rule here is that the longer the stay, the higher the risks. Our expert employment law team is here to provide any advice you may need in this area, so please do get in touch.



ICO's new guidance on responding to data subject access requests

Klára Grmelová – solicitor in our employment law & business immigration team – looks into the latest guidance when it comes to responding to DSARs.

On 24 May, the ICO published its updated guidance for businesses and employers on responding to data subject access requests (commonly referred to as 'SARs' or 'DSARs').

Based on the right of access outlined in the UK GDPR, data subjects have the right to request a copy of their personal information from organisations.

Over the last couple of years we've witnessed an increase in the number of DSARs submitted by current or former employees, with many of them being made as the employment relationship gets litigious.

The ICO said they have received over 15,000 complaints related to DSARs in the last 12 months. Although not all of them were employment-related, the ICO believes that some employers misunderstand the nature of DSARs and underestimate the importance of a proper response to them.

They have now, therefore, issued updated guidance that should assist businesses and employers to 'not get caught out'.

The new guidance clarifies certain points, such as that there are no formal requirements when making a DSAR and that workers can submit one verbally or even via social media. It also comments on the position of DSARs made in the context of grievances or put forward during without-prejudice negotiations. A helpful Q&A is also included.

View it here or by scanning the QR code (above).

Should you need any advice regarding DSARs, our employment law experts are here to help. ■

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Our business immigration team has just assisted ***Good Sustainable Retail Limited*** – trading as ***Good*** – in successfully obtaining a sponsor licence. ***Good*** provides sustainable alternatives to fast fashion, selling pre-owned vintage, designer and high street clothing in contemporary and inviting stores. ***Good*** are growing rapidly having just opened their fourth UK store in the busy London Bridge Station, so we are delighted to have helped expand its recruitment pool and look forward to supporting its growth in the future.

Klára Grmelová

Solicitor

Employment law & business immigration

Klára helps clients on a range of employment law and business immigration-related matters, including sponsor licence applications and management, as well as data subject requests.

Hayley Ainsworth

Associate, Solicitor

Employment law & business immigration

Hayley helps clients with a wide range of business immigration and employment matters, from tribunal proceedings to employee relations.

Webinars: catch up or book now!

Are you and your business aware of updates taking place in the business immigration world? Our experts provided guidance and key practical tips in our recent webinar that you can catch up on by clicking here or scanning the QR code to the right (top).

You can also book your spot at our free employment law webinar (17 October) by clicking here or scanning the QR code (bottom). Here, you will find more details on what our highly rated team will be covering in our autumn update.

Catch up

Book now

Can't sell your property due to the ground rent? Is your service charge too high?

Property litigation specialists Nick Southwell and Bethen Abraham discuss what could be holding you back from selling your property.

The Leasehold Reform (Ground Rent) Act 2022 came into force in June 2022 to ensure ground rent does not exceed one peppercorn per year. This only applies to new leases and currently does not apply to those already existing. Because of this, existing leases will likely be subjected to increasing ground rent – a common cause of dispute between leaseholders and freeholders.

If you want to sell your property but your ground rent is over £250, you may struggle. Why? Mortgage lenders are reluctant to lend on properties where the ground rent exceeds £250 and therefore this may preclude you from being able to sell your property to non-cash buyers.

Often, the lease will set out the calculation for ground rent increases, but the freeholder may depart from the calculation because they're unaware of this particular provision or they're simply looking to 'try their luck'. The lease will also set out how to dispute the ground rent increase, but it can be very tricky to understand and there are typically tight deadlines imposed.

So, if you have received a ground rent increase notice and you want some advice on disputing the figure, it is essential that you contact us as soon as possible to avoid missing the deadline!

Other problems may include high service charges. These typically cover the communal costs and maintenance of the property and/or site. Again, the lease should set out the services chargeable, but the service charge sometimes includes additional services which may be challenged by the leaseholder.

Perhaps, for example, your service charge is being divided equally between your property and other properties, but the other properties are of much higher value than yours. Or are you paying a service charge for internal maintenance for flats, but your property doesn't enjoy any internal common space?

Service charges can be disputed at the same time as ground rents, or separately.

For further advice in this area or for help in disputing your ground rent and/or service charges, get in touch with our property litigation specialists to book a consultation. ■

Nick Southwell

Partner

Litigation & dispute resolution

Nick is a partner in the litigation team who advises both businesses and individuals on resolving disputes, particularly those concerning property.

Bethen Abraham

Trainee solicitor

Litigation & dispute resolution

Bethen helps clients with residential possession issues, building disputes and disputes involving vehicles, but also works on other contract-based claims.

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Protecting business assets in a divorce

For those who put considerable time, effort and money into setting up and running a successful business, it is important that this investment is protected as much as possible. However, one area often overlooked is protection in the event of a marriage breakdown.

Marriage creates various rights and responsibilities between spouses. In the event of a divorce, all assets owned by both parties are potentially subject to division in a subsequent financial settlement. This includes business interests, even if these are the product of one spouse only and have little to do with the marriage itself.

Our family law expert Joeli Boxall explains what can be done to protect your business assets in the full article, which you can read by clicking here or by scanning the QR code (above).

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Companies House: the impact of late filings

For any business, effective governance is crucial. Corporate & commercial partner Chris Wills explains the importance of having your documents in order.

One of the fundamental principles of company law is that a company is a legal entity separate from its owners and directors, capable of entering legal relationships in its own name and with its own rights and obligations separate from the individuals who own and run it.

Whilst the company may be viewed as a separate legal 'person' in its own right, others must still act on its behalf. This is why the role of a director is so important, and it is essential that a company's directors understand their duties and where they lie.

In addition to managing the general day-to-day running of the company, a director is legally responsible as the 'human agent' and must ensure that certain obligations are met.

What is the issue?

Directors – as part of an array of statutory duties and responsibilities – have an obligation to file certain documents with Companies House. It is their responsibility to ensure that these documents are produced for each financial year and that they are filed with Companies House in a timely manner. Failure to make such filings can result in Companies House taking action to issue a strike-off notice if it considers the business is no longer operational because the documents have not been filed.

More specifically, under s386(1) Companies Act 2006 ('the act') all limited and unlimited companies – whether they are trading or not – are under a duty to keep adequate accounting records which, amongst other things, display and explain the company's transactions and reveal the company's financial position at that time.

Under the act, these accounts must give a 'true and fair' view of the financial status of the company and must be filed at Companies House within a specified time frame. Failure to file these accounts within these time frames can result in civil penalties being levied against the company.

As touched upon above, as a separate legal entity, a company provides a shield to its directors and safeguards them against certain liabilities. However, there are situations where this shield may fail, and the director may be liable in their personal capacity.

Whilst a company that fails to file their accounts at Companies House may be liable for civil penalties or be removed from the register, a director can also be fined in the criminal courts (s451 of the act). It is common for company directors not to anticipate this, especially in a large company where financial matters are delegated, causing them to have little or no involvement in matters such as the preparation of the accounts. Regardless of this fact, the director may still be liable for a fine in the magistrates' courts.

What should I do?

It is evident that not filing documents in a timely manner can have a considerable impact on your business and that practical steps should be put in place to ensure that the company is able to file its accounts when they are due. In some limited situations, a company can apply for more time to file its accounts, however an extension will generally only be given if Companies House deems the reason for late filing to be exceptional. It is therefore important not to rely on this.

Directors should also ensure they instruct an accountant in good time, as the collating of documents may take a while.

It is important to note that if the accounts filed do not fulfil the Companies House requirements, they will be returned to the company to be amended. If these amended accounts are filed outside of the deadline, the business will still get a penalty for filing them late. Because of this, it is advisable to allow time for any amendments or delays.

To help directors remember to file accounts on time, directors can register for email reminders from Companies House.

Do you have any questions regarding Companies House that may require legal expertise? If so, please contact our corporate & commercial team. ■

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Chris Wills

Partner, head of department

Corporate & commercial

Recognised by *The Legal 500* and *Chambers UK*, Chris leads our highly rated corporate & commercial team and has over a decade of experience. He works with a range of clients, from start-ups to multi-million pound companies with a global reach.

Our corporate & commercial team has been busy advising directors and shareholders of businesses where relationships have broken down, offering clear and pragmatic advice in emotionally charged situations.

Jennifer Cockett

Associate, solicitor

Wills, trusts & probate

Jennifer works closely with individuals and families who are planning ahead for their future. She helps them to protect their assets and ensures their loved ones are looked after should something happen.

The residence nil rate band and business relievable assets

Jennifer Cockett from our highly rated wills, trusts & probate team explains what the RNRB is and how it could be of use to business owners.

The residence nil rate band (RNRB) is an additional inheritance tax allowance that can be claimed alongside the usual nil rate band allowance. The RNRB allowance is currently a maximum of £175,000 and is transferable between spouses.

In order to claim the RNRB, certain criteria must be met, including the existence of a qualifying residential interest which is then inherited by a lineal descendant.

Another element of the RNRB allowance is that it begins to be tapered away where the value of the deceased's estate exceeds £2 million. This is at a rate of £1 for every £2 an estate exceeds this figure.

However, in calculating the value of the deceased's estate for the purpose of the RNRB, it is important to realise that this includes the value of assets that qualify for either business relief or agricultural property relief, even though by virtue of these reliefs, the assets do not attract inheritance tax. You may therefore end up in a situation where you are invested in assets that are not taxable for inheritance tax purposes, but result in your estate losing the RNRB.

Whilst this is not necessarily something to be concerned about – as you would still be deriving benefit from having the business or agricultural assets – it is something you should be aware of as too often it is assumed that – because these types of assets attract inheritance tax reliefs – they do not have any effect at all on the overall inheritance tax calculation.

If you would like more information about the RNRB or certain requirements, please do not hesitate to contact our highly rated wills, trusts & probate team. ■

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Contact

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

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