Willans LLP | solicitors

Law News

Newsletter for commercial clients

Summer 2024

Welcome...

to the latest edition of our newsletter for commercial clients, **Law News**. With insight into the worlds of employment law & business immigration, corporate & commercial, real estate, agriculture & estates 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?

Opening our door to a new charity partnership

We're delighted to announce our partnership with **Cheltenham Open Door**, to fundraise for the charity and support its food bank collection scheme over the next two years.

Willans is known for its commitment to charity and the local community, and over the past 15 years, we've raised over £115k for a number of local charities. After a vote to decide a charity partner for 2024-2026, our 110-strong team chose Cheltenham Open Door, which supports vulnerable, disadvantaged and lonely people through access to food, friendship, advice and support.

Employees on Willans' dedicated charity committee organise fundraising events throughout the year and to kick-start their new charity partnership, the committee has launched an internal donations collection competition to incentivise staff to gather as many donations as possible.

Laura Stone, co-chair of Willans' charity committee and a partner in the wills, trusts & probate team, said: "As a local business, it's our privilege to be in a position to offer our support to Cheltenham Open Door, so that they can help local people who are most in need. The charity is a lifeline for those going through difficult times and there is so much we can do to support them, through fundraising, volunteering at their centre and making donations."

Jane Sharp, chair of Cheltenham Open Door said: "As a charity that relies heavily on funding and support from individuals and organisations, we're very grateful to Willans for choosing us as their charity partner. We're really looking forward to working with the charity committee on the events and activities they have planned over the coming months and beyond."

To watch our announcement video, click here. ■

GLIDE: Inspiring diversity & inclusion in Gloucestershire businesses

In line with our commitment to diversity and inclusion, we're proud to be active members of Pride in Gloucestershire's GLIDE consortium – a network designed to support and inspire inclusivity in Gloucestershire businesses.

We were also pleased to headline sponsor Pride in Cheltenham 2024, which took place in May in sunny Imperial Gardens. This year saw the return of the Pride march, which took to the streets of Cheltenham for the first time in 10 years to celebrate and support our town's LGBTQIA+ community.

As well as enabling employers to deepen their understanding of LGBTQIA+ people and the issues they face, the purpose of GLIDE is for organisations to learn, share best practice on how to support employees and encourage business engagement with the LGBTQIA+ community and Pride in Gloucestershire.

"Our mission is to make Gloucestershire a great place for LGBTQIA+ talent to thrive in the workplace," says GLIDE lead, Emma Palethorpe.

"I've spent most of my career looking around the table at work and not seeing folk like me, nor seeing any evidence that my employer would 'have my back'. I have teenage children of my own and I wouldn't want them or their friends to have to go through that, so I'll do what I can to help create a world where LGBTQIA+ people can thrive."

After joining GLIDE, members are invited to attend quarterly hybrid meetings, and slide decks are shared following each one. Ad-hoc support is also provided wherever possible as GLIDE is keen to help meet the needs of all members.

Early in July, Willans hosted GLIDE's latest meeting which discussed creating employee network groups; their importance and how to get started.

One of our firm's LGBTQIA+ champions, senior solicitor-advocate, James Melvin-Bath said: "The next generation is very diverse and inclusive. A lot of business say that that describes them now, but I think you have to always be developing, always looking at yourself and asking: "what are we doing?" before you can say you are all of those things.

"Willans has been a key part of the Cheltenham community for over 75 years and we're always looking to improve how we engage with our colleagues, clients and other businesses. Our senior leadership team's commitment to supporting the LGBTQIA+ community runs to the core of what we do and is a pillar of the culture of our firm." ■

Business bowling in aid of Cheltenham Open Door

Wednesday 25 September | 6pm

Join us for an evening of bowling and networking at Hollywood Bowl in Cheltenham. Enter a team of four or eight for a night that'll include two games per person, a free meal and drink (soft, beer, wine), a fully stocked cash bar and more!

For more information and to book your team's place, click here.

How can farmers & landowners diversify their income streams?

With the new Labour government pledging to double onshore wind power and triple solar power by 2030 – and farmers increasingly looking to diversify their income streams – many more renewable energy projects are likely to be kickstarted in the coming years.

Given the long-term commitment, sums, risks and challenges inherent in any energy development, it is important that from the outset both developer and landowner are aware of what is required of each party, and what ought to be agreed to ensure a good relationship during every phase of a renewables project.

Pre-development phase

Once the developer has found an appropriate site for their scheme, and the landowner has accepted outline terms for the project, an 'option for lease' agreement is usually agreed between the parties. This agreement – which typically lasts between three and 10 years – provides the developer with (amongst other things) rights to access the property to conduct site investigations, and – when certain conditions are met – the right or obligation to enter into a lease of the site. In return, the landholder receives an upfront sum, known as an 'option fee'.

Operational phase

Once both planning permission and a grid connection offer are obtained, the developer will exercise its option to enter a lease with the landowner to govern the construction and maintenance of the site. The rental value will typically be tied to the power output of the scheme, and/or the area of land used to site the project. Where landholdings are split between multiple owners, rent will be apportioned, typically determined by the amount of land contributed and type of development on their part.

Restoration phase

Decommissioning of the project site will typically take place two to four decades after development. The lease agreement will set out terms for decontaminating and reinstating the site, which is to be the developer's responsibility at the end of the lease. During the lifetime of the agreement, a 'decommissioning bond' is usually paid by the developer to cover restoration costs.

Considerations

During the pre-development phase of the renewables project, the landowner will seek to ensure that they can continue farming operations. In some cases, these can continue during the operational phase, such as with the grazing of sheep under solar panels (which can also provide a benefit in terms of inheritance tax). In addition to being protected from decommissioning costs, landholders will also typically demand that disturbance to their property resulting from site investigations, installation of equipment and access is adequately compensated.

On the other hand, the developer will want to ensure that a landholder is restricted from doing anything during the pre-development phase which may undermine or disrupt development of their property. Additionally, they will seek to ensure that neighbouring activity by the landholder does not negatively affect the energy output of their project (by blocking light or air, for example) during the operational phase. They may also wish to be able to transfer or assign the option or lease to a group company or 'special purpose vehicle', to isolate financial risk.

Renewable energy schemes – whether wind, solar or battery storage – both help the UK meet its net zero targets and provide landowners with a reliable income stream for many decades. With the length of these agreements lasting upwards of 20 to 30 years, and long-term considerations needing to be factored in early on, it is advisable to obtain legal advice as early as possible. ■

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Adam Hale

Partner

Agriculture & estates

Adam's varied client base includes rural businesses and private landowners. He advises on issues affecting landowning clients, ranging from rural land management to transactional work, with a particular focus on the disposal of development land.

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.

Share buybacks: The consequences of getting it wrong

Share buybacks are an effective and popular mechanism that allows companies to purchase their own shares. However, the process is not without complexity.

The Companies Act 2006 sets out clear and prescriptive formalities that must be complied with. Failure to do so will result in the attempted buyback being void and may lead to directors breaching their statutory and common law duties.

Share buybacks

Share buybacks are a useful device for companies seeking to return surplus cash to shareholders, or to facilitate a shareholder exit. Although the Companies Act 2006 (CA 2006) generally prohibits companies from acquiring their own shares, a share buyback is an effective exception to this rule.

However, they are easy to get wrong. Companies considering this particular route should seek appropriate legal and tax advice before embarking on the process due to the severe consequences of getting it wrong.

If you are considering a buyback, contact our team of experienced solicitors for clear, expert guidance.

What should I consider before a share buyback?

How will the buyback be funded?

Not only does a company need to have the necessary cash available to pay for the shares being bought back, the directors also need to be confident that its accounts show that it has generated (and accumulated) distributable profits at least equal to the value of the shares to be bought back. There are some limited exceptions to this, but whether or not those exceptions can apply requires very careful analysis.

Check the company's articles of association

Under the CA 2006, there is no requirement for a company's articles of association to authorise the company to be able to purchase its own shares. However, it is crucial that the articles of association are examined carefully to ensure they do not restrict or prohibit the company from purchasing its own shares.

Will shareholder approval be obtained?

Whilst a share buyback may be agreed in principle between the company and its shareholders, a formal resolution of the shareholders (excluding the shareholder whose shares are being bought) must be passed to approve the terms of the buyback agreement.

Are the shares fully paid?

A private limited company can only buy back shares that are fully paid. Where a company has partly paid shares, it should ensure that – prior to undertaking a buyback – the shares are fully paid up.

What are the consequences of a void buyback?

Where a company has attempted to undertake a share buyback but has breached the requirements of the CA 2006, the law is very clear: it will be void.

This may mean that despite the company having paid for them, the shares which were subject to the buyback may still be owned by the selling shareholder (who will be entitled to receive any dividends on shares of the same class that were declared after the void buyback), and the selling shareholder owes a debt to the company equal to the cash that has been transferred to them.

Ineffective buybacks are often not discovered until a company is being prepared for sale and when historic buybacks are scrutinised as part of the buyer's due diligence process. This can substantially delay a sale as a void buyback cannot be rectified by resolution and documents cannot be backdated to reinvent history; the process will need to be unravelled (if possible) and the buyback be implemented from scratch (in the correct manner).

But what are the common mistakes that can cause a buyback to be voided? Our corporate & commercial experts go into more detail in the full version of this article, which you can find by clicking here. ■

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Tipping Act to be introduced later this year

The new 'Tipping Act' will come into force on 1 October 2024.

The new Employment (Allocation of Tips) Act 2023 – also known as the 'Tipping Act' – is to be introduced on 1 October 2024. This was confirmed by the commencement regulations laid before Parliament on 30 July 2024. The act was originally scheduled to come into force on 1 July 2024 but was delayed in anticipation of the results of the general election. The extension provides businesses with additional time to prepare for the upcoming changes.

Under the new legislation, businesses that receive tips from customers will be required to comply with the new legal requirements for allocating and paying tips, gratuities, and service charges to their workers, including those on zero-hours contracts and eligible agency workers.

The Tipping Act covers both monetary and non-monetary 'tips' received or controlled by the employer. For instance, this may also include casino chips or certain vouchers. However, tips received directly by workers, without employer control, will not fall under the scope of the new legislation.

Those affected will be required to:

- pass on all tips and service charges to workers without deductions, except in very limited scenarios (for example, deduction of income tax)
- allocate tips to workers in a fair and transparent way
- have an appropriate written policy on the allocation of tips in place and readily available to workers
- maintain records of tips distributed, which must be provided to workers upon request.

Businesses will welcome that the Tipping Act will be accompanied by the Code of Practice on Fair and Transparent Distribution of Tips, which is also due to come into force in October this year. The code of practice aims to provide businesses with more clarity on what can be considered a 'fair and transparent' allocation of tips.

Businesses that fail to meet the requirements may face tribunal claims and financial penalties of up to £5,000. If the employment tribunal finds that tips have not been allocated fairly and transparently, it may issue an order requiring the business to revise the previous tip allocation and compensate not only the complainant, but all affected workers.

Those affected should review and amend any current policies they have in place. If no policies are currently in place, it is time to introduce them ahead of 1 October 2024.

If you need guidance following the latest updates, please get in touch with our team of expert employment lawyers. ■

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Klára Grmelová

Solicitor

Employment law & business immigration

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

Employment law seminar: Coming soon!

Our employment law experts will be hosting a seminar in the coming months, perfect for HR professionals and senior managers. Keep an eye on our website and social media platforms for more information.

The Renters' Rights Bill: The end of the current housing regime as we know it?

The government made it clear during July's King's speech that rental reform is a priority of theirs, and that there will be a new Renters' Rights Bill.

This follows the previous government having abandoned their attempt to reform legislation surrounding residential rental properties – known as the 'Renters (Reform) Bill' – just before the general election.

Proposals

The government have confirmed their intention to abolish no fault evictions (Section 21) and to reshape the statutory grounds for fault evictions (Section 8).

Put simply, the government wants to make it more difficult for landlords to recover possession from good tenants, and easier in respect of troublesome tenants.

The new bill also includes some key proposals, namely:

- extending Awaab's Law to the private rental sector
- encouraging tenants to challenge rent increases
- encouraging parties to better engage with alternative dispute resolution instead of using the courts.

Abolished no fault evictions

Section 21 will no longer be available for landlords to evict tenants on a 'no fault' basis. We rarely see landlords seek to recover possession when there aren't any issues, but Section 21 allowed landlords to do so in a non-contentious way.

As the grounds for possession in fault-based evictions have changed, we expect more landlords to be forced to recover possession on the basis of rent arrears, breach of tenancy, sale or otherwise.

Given that the contentious court process is far more time-consuming and costly to deal with, we eagerly await the government's proposals to improve capacity in the housing courts.

Rent increases

Contractual rent increases will be removed, and all increases to rent will only be able to be dealt with by service of a prescribed notice once a year.

This means that landlords will need to think carefully when they initially set the rent under a tenancy agreement, and they will need to ensure that any proposed rent increases are reasonable and reflect the market.

Ombudsman

Tenants will be able to raise concerns over their housing through the Housing Ombudsman. The aim of this new process will be to allow tenants and landlords to resolve disputes without reference to the court.

Again, we will need far more detail of how these schemes will operate before we can take a view, but we would welcome a more collaborative approach to allegations levied against landlords in contrast to the current system.

Awaab's Law

The Social Housing (Regulation) Act 2023 introduced a new section of the Landlord and Tenant Act 1985, which added an implied term to all social tenancies for the landlord to comply with all 'prescribed requirements' relating to relevant defects. This formed the framework of Awaab's Law.

For a more detailed look into Awaab's Law and what it could mean for landlords, check out our **full article** by clicking here.

Summary

We are in for a period of massive change in housing law. That being said, we have been expecting many of these changes for several years, so it is refreshing to receive some further clarity.

Over the coming months, landlords will need to pay close attention to legal updates and be ready for some extensive changes towards the end of the year.

Our expert team will provide updates when we can, so keep an eye on our website and social media platforms. You can also subscribe to our newsletters to receive the latest editions directly into your inbox.

If you need help seeking to recover possession of a property or dealing with disrepair generally, please contact our specialist property lawyers. ■

James Melvin-Bath

Senior associate, solicitor-advocate

Litigation & dispute resolution

James advises clients across a range of litigation areas, particularly landlord & tenant and contentious probate matters.

Bethen Abraham

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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Updates to stamp duty land tax

Following the spring budget earlier this year, there have been changes to stamp duty land tax. With a new government having since been elected, there could be more updates on the horizon.

Stamp duty land tax (SDLT) is payable on both residential and commercial properties, however the thresholds and rates involved are different.

The threshold for paying SDLT on commercial property is £150,000. SDLT is then charged at 2% up to £250,000, and anything above £250,000 the rate of SDLT is 5%.

The threshold for paying SDLT on residential property is £250,000. SDLT is then charged at 5% up to £925,000, and 10% up to £1,500,000. Anything above this is charged at 12%.

There are also various reliefs available, including charities, groups and multiple dwellings. There are additional charges for residential property if it results in more than two properties being owned, if the buyer is not a UK resident or is a company.

Recent updates to SDLT

In one of his last acts as chancellor, Jeremy Hunt announced in his spring budget that multiple dwellings relief (MDR) for SDLT was to be abolished. This came into effect on 1 June.

Introduced in 2011, MDR was a partial relief against SDLT for those purchasing two or more residential properties in a single transaction. This meant tax was payable on the purchase price divided by the number of dwellings, thereby accessing a lower band of tax and not the cumulative total of the purchase price.

The previous government didn't believe that MDR had supported residential investment, eventually leading to its abolition. In any transaction where contracts were exchanged prior to 6 March 2024, however, the purchaser will still benefit from MDR even if the transaction completes after 1 June 2024.

Purchasers of six or more dwellings will still be able to apply non-residential rates to their SDLT, meaning the rate will be capped at 5%.

Following July's general election result, we will await any updates from the new government (if any) to SDLT and its reliefs. If you have any questions or queries, get in touch with our highly rated real estate experts. ■

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Li Garrod

Associate, solicitor

Real estate

Li is an associate, solicitor in our *Legal 500*-rated real estate team. Having worked with individuals and corporate clients, she has extensive experience advising upon and dealing with a range of commercial property law and complex residential matters.

TUPE: New rules are now in effect

Changes to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) are now in effect for transfers taking place on or after 1 July 2024.

The new rules relating to TUPE allow businesses to consult directly with employees in certain circumstances (provided no representatives are in place), previously only applicable to micro-businesses, to all transfers involving fewer than 10 employees.

Duty to inform & consult

The purpose of TUPE is to protect employees in situations where the business they are employed by is changing hands or certain services are transferred to a new provider. These regulations impose specific duties on both the transferor (i.e. the seller of the business or the current provider of the services) and the transferee (i.e. the incoming business) to protect employees affected by the change. One of these duties is the obligation to elect employee representatives and to inform and consult with employees via those representatives. A failure to comply with this obligation exposes both the transferor and the transferee to pay compensation equivalent to up to 13 weeks' uncapped pay per employee.

Micro-businesses exception extended

Previously, businesses with 10 or more employees had to elect employee representatives, while businesses with fewer than 10 employees could inform and consult directly with the affected employees, without having to elect representatives.

However, from 1 July 2024, the duty to consult with representatives will not apply where the transfer takes place on or after 1 July 2024, and where:

- businesses have fewer than 50 employees (up from 10); or
- businesses of any size are transferring fewer than 10 employees.

However, this exception only applies provided there are no recognised trade unions or elected representatives already in place. It is also important to note that the new rules are only applicable to transfers taking place on or after 1 July 2024. Any transfers that occurred before this date, should have complied with the previous rules.

This long-awaited change is certainly welcomed by many employers, as it allows for a more streamlined process by enabling direct consultation with employees, especially in transfers involving a smaller number of employees.

If you have any questions or queries regarding the latest changes, please get in touch with our team of employment law experts.

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Simon Cook

Partner, head of department

Wills, trusts & probate

Simon heads our highly rated wills, trusts & probate team. With 30 years' experience, he specialises in complex estate planning, lifetime trusts and vulnerable beneficiaries, as well as the creation and administration of personal injury trusts.

How can a family investment company help you pass on wealth to your children?

For families looking for a secure and tax-efficient way to manage and pass on wealth to their next generation, a family investment company (FIC) may be a suitable alternative to a trust or a simple outright gift to children.

The first transfer of funds to a FIC is not subject to an IHT charge unlike a trust, meaning that the first transfer is not limited to £325,000 (or £650,00 for a married couple).

A FIC is a private company whose shareholders are typically family members and/or family trusts. The use of a company means that the structure is flexible and can provide a tailored approach, with different rights attributed to shares issued to parents and children, as appropriate. The articles of association and shareholders' agreement can be prepared to meet the precise needs of the family.

Benefits of a FIC

- *Preservation of wealth:* growth of the company would remain with family shareholders (or family trusts), entitling them to income or capital from the FIC.
- *Flexibility:* there is flexibility in the types of assets that can be held and incorporated into the setup/structure of the company.
- *Control:* donor(s) can still receive benefits and keep control over assets while passing wealth down to future generations.
- *Tax advantages:* alongside the inheritance tax benefits, a FIC's corporation tax is low in comparison to trust rates.

If you have any questions or wish to discuss whether a family investment company is the right approach for you, please get in touch – we would be delighted to help. ■

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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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