

SPRING/SUMMER 2015

NEWSLETTER No. 14

WELCOME TO OUR LATEST NEWSLETTER

ROGER'S RETIREMENT / ALLISON'S ARRIVAL

As mentioned in our last newsletter Roger Petch, our senior partner, has now retired to spend more time with his family and on his boat! We wish him well in his retirement. We have been extremely fortunate to have found Allison Longhurst as a replacement for Roger in the Conveyancing Department.



Allison is an Associate Legal Executive specialising in Residential Conveyancing. She deals with all aspects of the Conveyancing process involved in buying and selling houses and she also specialises in Matrimonial Conveyancing. As many of her Clients and Colleagues are aware she is also one of the main Organisers for Europe's longest running International Motocross, known as The Ken Hall Trophy Motocross which is held at Langrish near Petersfield over the August Bank Holiday and which has been running for the last 48 years. She also has a little dog called Merlot who takes up the rest of her spare time.

The partners have decided not to have a senior partner but to share these duties. Samantha Small heads our Family and Contentious Probate Department, Patrick Hunter heads the Probate and Commercial Conveyancing Department and Charlotte Oldham the Conveyancing Department, supported of course by the remaining members of staff.

COMIC RELIEF – RED NOSE DAY – BIKE AND BACHE

At Mackarness & Lunt we had a fantastic day on Friday 13th March with the office packed to the rafters with cakes for sale and with members of staff cycling outside on a static bike from 10:00 a.m. to 4:00 p.m. Not only did we have great fun indulging in the cakes and burning off the calories afterwards, but due to the generosity of those buying cakes or sponsoring us to cycle or donating while we cycled, we raised a fantastic £900 for Comic Relief. Thank you to all those who supported us.

PETERSFIELD RUGBY CLUB

Mackarness & Lunt are delighted to confirm that we will be sponsoring the Petersfield Rugby Club for the 2015/2016 season, during which we hope the Rugby Club will have every success.

LIFETIME SPOUSAL MAINTENANCE

The attitude of the courts to spousal maintenance appears to be changing. Historically the dependent spouse (typically the wife) was claiming spousal maintenance on what was a joint lives basis, i.e. until the first party's death. This could result in very lengthy Orders for spousal maintenance, which did not necessarily encourage the previously dependent spouse to seek their own independence and pursue their earning ability.

The other disadvantage for the paying party is that if they had already made provision for the spouse by way of a Pension Sharing Order, they often felt as though they were paying twice during their retirement, having already given up a share of their pension, then to have to pay spousal maintenance out of the remainder of their income.

The Court of Appeal has recently rejected the challenge of one ex-wife who sought to challenge a decision reducing her future maintenance from her former husband. Whilst the judgment is not yet available, the Evening Standard reported Lord Justice Hitchen stating that divorcees with children aged over seven years should work for a living, seeking a job like a number of other women with children, rather than viewing the Maintenance Order as a "meal ticket" of which they could live off for years to come.

This very much supports the approach of the Matrimonial Causes Act 1973, which is clear that the Court in any such circumstances should look at bringing the financial claims of one married party against another to an end at the earliest possible opportunity, encouraging financial independence of each party. This judgment will once given, certainly give hope to those currently with lengthy Spousal Maintenance Orders that they may seek to reduce, particularly in the run-up to retirement and where the dependent former spouse has not been making significant efforts towards independence.

GRANDPARENTS SEEKING COURT ORDERS TO SEE GRANDCHILDREN

Simon Hughes, the Justice Minister, has confirmed that there were seven applications a day by grandparents for a Court Order to see a grandchild after divorce or separation of the children's parents last year.

Unfortunately, the fact remains that grandparents have no automatic rights to be part of their grandchildren's lives, irrespective of how involved they may have been prior to the child's parents' separation.

There are many options available to families in such a dispute, including mediation and therefore an application to the Court should really be seen as a last resort utilised by anxious grandparents wishing to have contact with their grandchild or children. Particularly as many grandparents may be retired and therefore have limited income, the changes over the last two years in relation to legal aid have resulted in grandparents in these situations no longer able to receive the financial support of Legal Aid to pursue a Contact Order. This has either discouraged individuals from progressing a case or in some cases has resulted in expensive court fees when negotiation or mediation may have been possible.

In the event that a grandparent is not having contact with their grandchild, we can make an approach to the parents to seek agreement by negotiation, or to encourage them to attend mediation as a third party to see if an agreement can be reached. It is important to note that Legal Aid does remain available for mediation in qualifying circumstances.

COURT FEES TO RISE BY UP TO 600%

Government increases to some civil court fees came into effect on Monday 9th March. The increases affect monetary claims, the fees for which are graduated depending upon the value of the original claim. However, these fees are increasing considerably, in some circumstances in excess of 600%.

The Law Society and other legal professional bodies have raised criticism for the level of the fee increases. There is considerable concern that not for profit organisations or smaller businesses will suffer considerably, as they will quite simply not be able to afford to recover debts owed to them. There is concern that the larger corporate enterprises may take advantage of such increased court fees, acting almost as a deterrent to smaller business becoming involved in litigation to recover their outstanding accounts.

There will also be an increase in fees for possession claims and a wide variety of general applications in both the Family and the Civil Courts.

However, therefore, it is likely that more applications will be made for fee exemptions or for a reduction in the court fee, on the basis of the financial circumstances of the individual issuing proceedings either in the Family Court or in the Civil Courts.

DRIVING LICENCES

From 8 June 2015, the paper counterpart to the photocard driving licence will not be valid and will no longer be issued by DVLA. The counterpart was introduced to display driving licence details that could not be included on the photocard. These details include some vehicle categories you are entitled to drive and any endorsement/penalty points. (This does not affect photocard licences issued by DVA in Northern Ireland).

What this means for you

If you already hold a paper counterpart, after 8 June 2015 it will no longer have any legal status. You should destroy your paper counterpart after this date but you still need to keep your current photocard driving licence.

Paper driving licences issued before the photocard was introduced in 1998 will remain valid and should not be destroyed.

If you need to update your name, address or renew your licence, you will be issued with a photocard only.

From 8 June 2015 penalty points (endorsements) will no longer be shown on driving licences. This information will be held on DVLA's driver record, and can be checked online, by phone or post using the DVLA's new 'view driving licence' service.

If you're looking to rent a car while abroad this year, be aware the changes which threaten to put the handbrake on many summer holidays.

Many car hire companies still insist on examining the paper counterpart.

Don't get caught out! Visit the DVLA website the day before you leave, and input your licence and National Insurance numbers to receive a unique one-time passcode (valid for 72 hours only). For all the latest, visit the [DVLA website](#).

VALUING ASSETS FOR TAX PURPOSES

The method of valuation of shares, securities and strips for capital gains tax (CGT), corporation tax and income tax purposes has been changed by the [Market Value of Shares, Securities and Strips Regulations 2015 \(SI 2015/616\)](#) with effect from 6 April 2015. The statutory instrument does not apply to inheritance tax (IHT).

The value now used for most CGT purposes is the figure one-half of the way up from the lowest to the highest closing prices of the day.

However, the value for IHT purposes is still the 'quarter up' price at the date of the chargeable event. There is no valuation method specified in s160, Inheritance Tax Act 1984, so 'quarter-up' remains an acceptable basis for valuing listed shares and securities for IHT purposes. For an estate on death s274, Taxation of Chargeable Gains Act 1992 determines that where a value has been ascertained for IHT purposes, that value is to be used as the acquisition cost for CGT so on death the valuations remain aligned.

HMRC has said it will clarify the position by amending the guidance at IHTM18093 in due course.

HMRC is aware of the discrepancy in valuation methods for CGT and IHT purposes and is assessing the impact of the change before considering any amendments to align the two valuation methods.

LANDLORDS

Landlords have less than two months to register old deposits, or run risk of four-figure fines and a struggle to remove tenants!

Landlords and letting agents are being urged to act over historic tenancy deposits, or face hefty fines, after new legislation introduced a deadline for the money to be protected.

Following the Deregulation Act – the Government's plan to remove red-tape across a range of policy areas that was passed into law last month – landlords have until 23 June 2015 to protect deposits that were taken before 6 April 2007. These are tenancies which have continued after the original agreement passed.

Landlords face fines for not registering this money with a scheme such as the Deposit Protection Service, MyDeposits or the Tenancy Deposit Scheme. Fines are unlimited and are worked out at three times the initial deposit.

Since 2007, landlords have had 30 days from receiving a deposit to register it with a scheme.

The Deposit Protection Service is free, but landlords don't hold the money. The Tenancy Deposit Scheme is free to sign up for but costs up to £21.95 per deposit. Landlords can keep the deposit during the tenancy using TDS, meaning they could earn interest that outstrips the £21.95 cost. MyDeposits also let landlords hold the money – but it costs £24 per deposit, with a joining fee of £20.

Those who have had tenants for several years - where the agreement has kept rolling over - are the most likely to be caught out. These landlords may not have been aware they needed to register deposits.

It's not just fines landlords face. Those who fail to register historic deposits could find it difficult to remove tenants when the time comes, as they would have failed in their deposit protection obligations.

Not all landlords are affected by the legislation. Live-in landlords, those with tenants paying £100,000 a year or more, company lets and student accommodation directly offered by universities or colleges, are not included in the law.

The deposit legislation came into force in April 2007 to help settle disputes at the end of a tenancy, just as a buy-to-let boom was reaching its pre-crisis peak. Julian Foster, managing director of the Deposit Protection Service, said: 'The DPS welcomes these changes, which provides much needed clarity over the protection of older deposits.' It brings an end to confusion over the management of deposits taken before the legislation came into force that have been retained by landlords past their original tenancy period. 'The DPS will now help landlords and agents act in time to protect older deposits.'

The Act has also clarified the uncertainty created by a June 2013 decision by the Court of Appeal in the *Superstrike v Rodrigues* case, over the need for landlords to provide 'prescribed information' upon every renewal or the tenancy becoming periodic.

The Act states that if the prescribed information has been validly given in relation to an initial tenancy, it does not need to be given again in respect of replacement tenancies - except where circumstances or details change.

Prescribed information is the information that a landlord must by law make available to the tenant about the Deposit Protection Scheme, protecting their deposit and other specific details about the deposit and tenancy.

The DPS recommends landlords and letting agents take independent legal advice in order to understand how this and other changes in the Deregulation Act 2015 affect their particular circumstances.

ISA ALLOWANCE POST DATE OF DEATH

Up until 6 April 2015 when an ISA saver dies, their spouse or civil partner can only invest any inherited savings in their own ISA subject to the normal annual subscription limit. In addition, an individual cannot transfer to their own ISA any non-cash assets (such as stocks and shares) they inherit from a deceased spouse or civil partner.

However as from 6 April 2015 the ISA Regulations have been amended to provide an additional ISA allowance for the spouse or civil partner of an ISA saver who died on or after 3 December 2014. The amount of this allowance will be equal to the value of the deceased person's ISA savings at their date of death, and will be in addition to the surviving spouse or civil partner's normal ISA subscription limit.

Regulations set out the time period within which this additional allowance can be used, as well as other rules, including those concerning: the eligibility of the surviving spouse or civil partner to the additional allowance; the process for making additional subscriptions; and the option, in certain circumstances, for an individual who is eligible for the additional allowance to transfer to their own ISA non-cash assets previously held by their deceased spouse or civil partner.

SCAMS

A scam is a type of fraud that criminals use to trick you into giving them money and personal details. Sometimes criminals will use the names of law firms, solicitors or other individuals to make their scam seem genuine, either with or without their knowledge.

There are internet and email scams that can infect or harvest information from your computer. There have been phishing emails purported sent out by the Law Society which contain an attachment called "Notification Regarding a Fraudulent Activity" – when the recipient opens the attachment, a virus infects the computer.

There have also been cases where someone purporting to be from the bank telephone and ask for private information. If you say you will call back to check who they are, they keep the line open so when you dial the bank's number, they can take the call and reassure you that it is ok to divulge the information they want.

Our firm is a potential target for such scams. In the same way that we are constantly on the lookout for money laundering or mortgage fraud warning signs, we must always be vigilant and never divulge passwords, bank details or any confidential information without being completely sure that we should do so.

Disclaimer

This newsletter has been prepared to highlight some key issues. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at May 2015 and may be affected by subsequent changes in the law. Additional information and updates are available from time to time on our [website](#).

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I would be interested in future newsletters

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If you do **NOT** wish to receive any further updates or communications from us, please notify Diane Anderson by [email](#) or phone on 01730 265111.