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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your business.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

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Judge and Priestley expands its Property Department with its first Head of Leasehold Enfranchisement

Judge and Priestley expanded its property department with the appointment of Daniel Tang as the firm's head of Leasehold Enfranchisement, specializing in the legal services of Lease Extensions, Enfranchisement, and the Right to Manage. Daniel also has experience in a wide range of residential property law including service charge litigation, tribunal applications and licence alterations.

"I am excited about the prospect of creating and developing a new department that is focused purely on providing Leasehold Reform work. It is still regarded by many as an area of great mystery and one fraught with pitfalls for the unwary. My aim is to ensure that our clients get the best possible advice and outcome for each situation and I believe this is best achieved by fully understanding our client's wishes whilst helping them navigate their way through the, at times, complex law." – Daniel Tang.

An ever evolving area of law, Daniel is devoted to keeping abreast of the new developments in the Leasehold Enfranchisement world and has the following to report:

"The case of Columbia House Properties (No.3) Ltd v Imperial Hall Freehold Ltd [2015] UKUT 45 (LC) sheds a new light on what costs the Landlord is capable of charging the leaseholders in a collective enfranchisement claim.

Under the Leasehold Reform, Housing and Urban Development Act 1993 ("Act"), it has generally been accepted that the Leaseholders must pay the Landlord's Legal and Valuation costs in relation to Section 33 of that Act. In this particular case, the Landlord had sought to also include their Managing Agent's fees in the sum of £12,366, which the Landlord argued were part of the costs due under this section.

One possible way costs could have been deemed unreasonable, is if the work and therefore the costs had been duplicated. In this case, solicitors as well as the managing agent were both involved in the verifications. It was successfully argued that as the Land Registry's own records were inaccurate, the cost of conducting a site visit to ascertain the number of car-parking spaces by the managing agent was justified.

Consequently, the Upper Tribunal overturned the First-Tier Tribunal's ruling that the costs were not payable as under Section 33, what the Landlord could charge for is encompassed in the statement, "deducing, evidencing and verifying the title to any such interest"."

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TV chef Ramsey loses dispute over business guarantee

The television celebrity chef Gordon Ramsey has lost a legal dispute after admitting that his staff often gave business guarantees in his name and used his signature without him knowing.

The issue arose after Mr Ramsey's company leased premises from businessman Gary Love. Mr Love had bought the premises when they were in a poor condition and started to convert them into a restaurant.

Mr Ramsey's company had agreed in principle to buy the freehold on condition that the redevelopment was completed. The agreement named Mr Ramsey as a guarantor and featured his signature.

The signature had been added by Mr Ramsey's father-in-law, who was the chief executive of Mr Ramsey's company. He used a signature writing machine to do it. The development did not proceed to the father-in-law's satisfaction so he withdrew from the agreement, prompting Mr Love to invoke the guarantee.

Mr Ramsey asserted that he was not bound by the guarantee because his father-in-law had no authority to place his signature on the document or to commit him to such an agreement. There had been no discussion about any guarantee and Mr Ramsey knew nothing about it. The father-in-law had since been dismissed from the company.

During the hearing, the court heard evidence that Mr Ramsey had given significant commercial responsibility to his father-in-law and trusted him totally. Mr Ramsey also acknowledged his own lack of business acumen, and that he knew that the signature writing machine was frequently and routinely used on legal documents.

The evidence also showed that he often gave a personal guarantee when his companies took over a new restaurant.

The court held that Mr Ramsey was bound by the guarantee because he had not demonstrated on the balance of probabilities that he did not know about it. It was also clear that the father-in-law had been acting within a general wide authority conferred on him by Mr Ramsey.

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Scheme helps create 60,000 new businesses

A government scheme is helping to create 450 new businesses every week, according to the latest figures.

The New Enterprise Allowance has so far led to the creation of 60,000 firms across the UK. The scheme is targeted mainly at jobseekers, lone parents and people on sickness benefit. Budding entrepreneurs with a good business idea can apply for financial support up to a total of £1,274, payable through a weekly allowance over 26 weeks.

They can also apply for government start-up loans administered by the Department for Business, Innovation and Skills. More than £130m has been loaned so far to nearly 25,000 new businesses.

The start-ups cover a wide range of fields from manufacturing, design, retail, IT and many more. More than 4,000 young people, over 11,000 disabled people, and more than 14,000 over-50s have been helped to create new businesses.

Starting a new business can be very exciting but it's important to make sure you do your homework first as there are so many things to consider.

For example, before starting off, you will need to decide on the best structure for your business. Should you be a sole trader, or would a partnership or a limited company suit your purposes better? There are other alternative structures, all of which have different advantages to offer depending on your circumstances.

You will also need to consider several other matters such as whether you need to lease or buy premises, or whether you need to employ people.

All these issues have legal implications so it is wise to seek professional advice before making important decisions.

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Stamp duty change 'will save buy to let investors £50m'

Buy to let investors could save a total of £50m a year because of the stamp duty reforms, according to figures from the Council of Mortgage Lenders.

The reforms, announced by Chancellor George Osborne in the Autumn Statement, swept away the much criticised 'slab tax' approach to stamp duty and replaced it with a more progressive system.

It means 98% of purchasers will now pay less stamp duty. Only those buying properties costing more than £937,000 are likely to pay more. The rates of stamp duty now only apply to the amount of the purchase price that falls within each band.

This means that a buy to let investor purchasing a house for £200,000 will pay nothing on the first £125,000, which is zero rated. They will then pay 2% on the next £75,000, making a total tax bill of £1,500. Under the previous system they would have paid 1% on the total purchase price, providing them with a bill of £2,000.

The new system therefore saves them £500.

Figures from the Council of Mortgage Lenders suggest 100,000 buy to let mortgages are being taken out each year with the average property costing in the region of £200,000.

With each of these properties now costing an average of £500 less in stamp duty, the total annual saving to investors should be at least £50m.

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Deposit error prevents landlord repossessing property

A landlord has been prevented from serving a possession notice because the tenant's deposit had not been placed in an authorised protection scheme.

This was in spite of the fact that the deposit had been paid before the Tenancy Deposit Scheme (TDS) regulations came into force.

The case involved a tenant who had started a tenancy in 2002 and paid a deposit. The tenancy was renewed in 2005. This was after the TDS regulations were introduced. However, the landlord didn't place the deposit in an authorised scheme as it had been paid at the start of the original tenancy.

In 2012, the landlord served a possession notice. The tenant claimed the notice was invalid because the deposit had not been protected in a scheme. The court, however, ruled in favour of the landlord because the deposit had been paid before the regulations applied.

The Court of Appeal has now overturned that ruling. It held that the wording of the regulations was clearly targeted at cases where the deposit was not being held in an authorised scheme, regardless of when the deposit had originally been paid.

This should not have caused any problem for the landlord. He could have cleared the way to seek possession in two ways: he could have placed the deposit in an approved scheme or he could have repaid it to the tenant. He did neither so the possession notice was invalid.

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Make sure your business has a succession plan

Handing over a family business to the next generation can prove surprisingly difficult for many people.

Research by the Family Business Place website suggested the issue can be so challenging that 62% of families would consider selling their business because of the difficulties of passing it on to family members. Another 55% said they felt succession issues could be a barrier to future business prosperity.

There can, of course, be concerns, especially when several family members may be involved. Difficult issues may arise such as who in the next generation should be in charge…do they have the necessary skills and enthusiasm to succeed…do they even want to take over…how should the succession be financed?

These questions can present difficulties but they can be overcome with a little forethought.

To ensure a smooth succession, it's vital to start planning several years ahead of your target retirement date. The first step is to hold meetings with those who will run the business when you leave so you can agree an exit strategy.

This could involve introducing a governance policy involving those who are going to take over. This would outline how company decisions should be taken and how disagreements should be resolved.

Ideally, this policy should be in place before you leave so that everyone gets used to the new decision making process while you are still there to iron out any teething troubles.

There will also be several other matters to consider. If you own a large share of the business, your successors may need to raise money to buy you out.

It may be that you agree to sell your shares back over several years so the firm's finances aren't put under too much pressure all at once. There could be tax implications so professional advice should be sought.

If you own the business premises, you will need to decide whether to sell or lease them back to the firm.

It's also important that those who remain in the business consider how they'll get by without you. It may be that your expertise can be passed on to the remaining directors, or they may have to replace you. In that case, a successor should be chosen before you leave.

If you have built up a close relationship with key customers then you should arrange for them to meet the other directors so trust can be developed and continuity assured.

Some entrepreneurs find it difficult emotionally to leave a business they have built up from scratch. If you feel that way then you might consider staying on as a part time consultant. This would provide stability for the firm and reassurance for its customers.

Throughout the succession planning process it's important to get advice from your accountant and solicitor, and possibly your bank manager.

Some people may worry that they are taking too much out of the business making it difficult for the next generation to succeed.

On the other hand, those taking over may feel guilty that they aren't paying their parents enough. Independent professional advice can ensure that the agreement is fair to everyone.

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Court awards builders over £100,000 in compensation

Contract Law

A building firm that was left more than £100,000 out of pocket when a customer cancelled a development project has been awarded damages by the High Court.

The compensation was awarded even though the firm didn't have a signed contract.

The issue arose after it won a tender to build an extension to a house. During negotiations over final pricing, the customer was sent a blank copy of the proposed contract and the JCT Standard Building Contract which included an adjudication agreement.

These were never signed.

During pre-contract meetings, a price was agreed, together with a commencement date and a 33-week contract period. The firm attended the site to start work and took delivery of equipment and materials.

However, because of changed circumstances, the customer wanted to put the job on hold and instructed the firm not to proceed. The firm claimed for aborted costs and the adjudicator ruled in its favour.

The customer claimed that no contract had been agreed so the adjudicator had no power to make such a decision.

The High Court ruled in favour of the firm. It said that in deciding such matters, the court had to apply an objective test as to whether the sides had to all outward appearances reached an agreement. That certainly appeared to be the case in this instance.

The judge said: "By their words and conduct the parties had reached a binding agreement on the essential terms of a contract, including as to scope, commencement and completion, contract sum, payment mechanism, the mechanism for change, valuation procedures and on the terms of the JCT form."

The customer was therefore liable to pay the firm £104,852 to cover its costs and lost profits.

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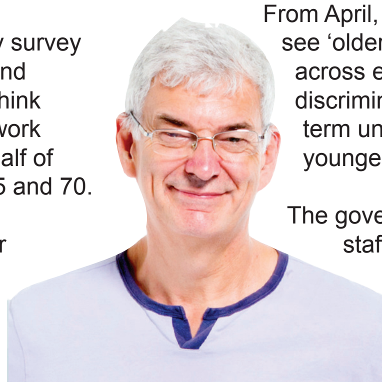
Employers urged to help older staff stay in work

A government minister has urged employers to keep up with changes in society and help older staff to keep working beyond the normal retirement age.

Minister for Pensions Steve Webb said: "How we all look at retirement is changing and the way in which government and business help older workers needs to keep up with the times."

Mr Webb's comments followed a YouGov survey of 2,000 people over the age of 50. It found that nearly two-thirds of them no longer think that working full time and then stopping work altogether is the best way to retire, and half of them would like to be in work between 65 and 70.



Nearly 40% said that working part time or flexible hours before stopping work altogether would be the best way to retire.

A further 25% said they would be interested in taking a few months off and then returning to work as an alternative to full retirement.

However, the survey also found that many older workers believe they are sometimes treated unfairly. A total of 23% feel they are viewed less favourably than younger workers, and 15% of those not currently retired report experiencing age-based discrimination in the workplace.

Among those who have been unemployed at some point since turning 50 but are currently working, 53% said employers were not interested in hiring them because of their age.

From April, the government is rolling out a project that will see 'older workers champions' introduced into Jobcentres across every part of Britain. They will help tackle the age discrimination that can lead to much higher levels of long-term unemployment among over-50s than among their younger counterparts.

The government is also urging employers to support older staff in the workplace, such as by making changes to working patterns or finding alternative roles for those with age-related health difficulties.

Pensions Minister Steve Webb said: "The message from older workers is clear; employers need to keep up with changes to society and we have to ensure over-50s have the skills in place to continue developing their careers throughout their working lives."

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Director not liable to pay £1.5m despite false statement

The importance of carrying out due diligence before making large purchases was highlighted in a recent case before the High Court.

It involved a company that bought an aircraft for £3.5m. In April 2011, they discovered that the aircraft had been involved in a hard landing in 2009 before they bought it.

This had resulted in it being grounded while repairs costing £70,000 were carried out. The incident was recorded in the log at the time and reported to the insurers. The Federal Aviation Authority (FAA) in the United States was not informed as there was no legal obligation to do so. The company sold the aircraft at a loss of £1.5m. They then tried to recoup this loss from the aviation company that had sold it to them.

They alleged that a director of the company had told them that the aircraft had never been involved in an accident.

The judge, however, ruled against them. He held that although the director had made a false statement, he had not done so fraudulently because he didn't think the hard landing incident amounted to an accident as it didn't have to be reported to the FAA.

There would have been no reason for him to lie as the incident had been recorded in the logs. These would, or should, have been inspected by the purchasers as part of the normal "pre-purchasing due diligence".

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