

News and Views

Finalists announced for Toast of Surrey awards

The 2011 Toast of Surrey Business Awards attracted a record number of entrants this year and the judges were impressed with the range and standard of entries received.

That was the case in the category for Employer of the Year, sponsored by TWM Solicitors and we congratulate the finalists:

- DPA
- Maxim Eyes (UK) Ltd
- Menzies LLP

The winners will be announced at a gala dinner at the Yvonne Arnaud Theatre on 25 February.



Will Aid success

TWM Solicitors once again participated in November's national Will Aid month. We drafted Wills for more than 100 clients and raised over £10,000 for the Will Aid charities by asking clients for a donation to Will Aid, in lieu of charging a fee. The sum raised puts the Firm among the leading fundraising practices in the country under the Will Aid scheme.

For more information about Will Aid visit www.willaid.org.uk

Seminar dates

17 March - Recent developments in employment law

- Dealing with the default retirement age from 1 October 2011
- An employee's new right to additional paternity leave
- Managing ongoing sickness absence

23 June - Protection of family assets

- Wills that adapt to the lifestyle changes of beneficiaries
- The benefits of Lasting Powers of Attorney

For further details, contact Bryony Bennett in our marketing team - bryony.bennett@twmsolicitors.com



New Guildford home

We moved into our new Guildford office at 65 Woodbridge Road on 10 January. As previously reported the relocation provides enhanced facilities for clients, an improved working environment for our 75+ staff and room to meet our future plans for growth.



First for Breaking News

Charmaine Hast, Head of the Family Department, recently debated on Sky News whether Prenuptial Agreements are a help or a hindrance. In line with the recent Supreme Court decision which has upheld the validity

of Prenuptial Agreements that echo fairness, Prenuptial Agreements are considered the order of the day for marrying couples in certain circumstances. Charmaine is an advocate of Prenuptial Agreements. They remove a possible area of dispute during the marriage or civil partnership, so that couples and civil partners have no illusion as to what the financial consequences would be of the dissolution of the relationship. As the prospects of success in marriage and civil partnerships is so low, removing disputes over finances could possibly improve the statistics.

Charmaine confirmed during the debate that experienced practitioners have been able to guide clients on Prenuptial Agreements for some time and the decision in *Radmacher v Granatino* confirms the court's requirements.

Interestingly, instructions to draft Prenuptial Agreements have increased over the years and instructions for Postnuptial Agreements have increased substantially since the Privy Council recently approved this course of action.

TWM Family Department have for some time successfully dealt with a number of Prenuptial Agreement divorce cases involving foreign agreements which have been adjudicated on in the English court.

Employment **The new law on paternity leave**

The right to Additional Paternity Leave (APL) came into force in April 2010, and affects the parents of children with a due date on or after 3 April 2011. The mother is allowed to return to work without taking her full one year's maternity leave entitlement, and "donate" the remainder to the father, who can then take up to 26 weeks off work to care for the child.

The earliest the leave could start will be 20 weeks after the birth and it must be completed by the child's first birthday. The minimum amount of leave that can be taken is two consecutive weeks and the leave must be taken in one continuous block of complete weeks.

The father may be eligible for Additional Paternity Pay (APP) for any part of the leave which falls within the mother's 39-week maternity pay period. APP would be paid at the same rate as statutory maternity pay.

To exercise the APL right, both parents must provide signed declarations of their eligibility to the father's employer containing information about the father's relationship to the mother and the child;

the expected week of childbirth; the child's birth date; dates of leave; name, address and national insurance number of the mother; and the date the mother intends to return to work.

To receive APP, the father must provide information about the date the mother's maternity pay period began and the dates of the APP period. The father's employer will use this information to check the employee's eligibility and to calculate any money due.

Fathers on APL will have the same right as mothers following maternity leave to return to the same job and to be offered suitable available vacancies in a redundancy situation. They will also have the same 'keeping in touch' days.

Adopters, civil partners and partners (of either sex) will also be able to take APL.

Employers should ensure the APL Regulations are updated in policy documentation.

Francesca Tilley – francesca.tilley@twmsolicitors.com

Business law **Shareholders benefit from early agreement**

People generally start a company with their business partners or life partners on the basis of a 'gentleman's agreement'. If and when this working relationship breaks down, the parties can be left with no exit strategy, other than perhaps to wind up the company.

Shareholders can benefit greatly from a mechanism for dealing with future changes of circumstance. Generally, a shareholders agreement deals with the following areas:

- Object and scope of the venture.
- Borrowing and lending (initial and ongoing) or other contributions.
- The composition of the board and management arrangements.
- Approval of a business plan.
- Distribution of dividends.

- Transferability of shares in different circumstances.
- Provisions for unwinding a deadlock in a 50:50 venture.
- Minority protection provisions such as minority shareholders having veto rights on certain matters.
- Restrictive covenants on the company/participants.
- Confidentiality.

Taking advice early and putting a shareholders' agreement in place can help both to provide the business with a stable platform for long-term success and to ensure that the expectations of the shareholders in making their investments are met.

Sonali Khanna – sonali.khanna@twmsolicitors.com

Family

The Ministry of Justice has outlined major changes in family law practice which will take effect from 6 April 2011. Any couple intending to issue Court proceedings on issues relating to children and/or financial matters will first need to confirm that they have considered the possibility of mediation. The pre-application protocol setting out the details came out on 10 February.

From April, it will no longer be possible to simply "fire off" an application to the Court without considering first whether a more conciliatory approach could be taken to deal with the relationship issue which has arisen.

Mediation is a way of resolving disputes between separating couples which maintains communication and allows issues to be discussed under the guidance of a mediator. During the process of mediation the couple will attend meetings and identify those issues they are unable to agree upon.

Mediators are neutral and will not take sides. They are not advisors and will not give advice to either party. They will recommend that legal advice is obtained alongside the mediation process. Many mediators are also family lawyers, able to provide legal information within the mediation process if this is appropriate.

Once the couple have agreed acceptable proposals, the mediator will prepare a summary of those proposals, including the financial information, for the couple to discuss with their lawyer. Once both parties have received legal advice and if they are still both happy with the proposals, the lawyers will convert that summary into a legally binding document.

The principal benefit of mediation is the maintenance of communication between the couple which, in particular, is beneficial for their children. The process can progress far more quickly than any application to Court. Each of the couple retains their own lawyer, but their reference to that lawyer should be minimal so for much of the process they are sharing the cost of a mediator between them. This is generally far more cost effective.

For certain individuals, it will be clear from initial meetings that mediation will not be suitable and the matter will require the assistance of the judiciary which itself should become more efficient with the court time which is freed up by these proposals. At TWM, we are able to help and advise on either path that prevails.

Karin Walker – karin.walker@twmsolicitors.com

Residential property **Building Regulations**

Building Regulations approval is required for most major works and alterations carried out to a residential property. Three common situations that crop up as an issue when dealing with a sale or purchase are to do with windows, boilers and electrics.

Windows

Since 1 April 2002 all replacement windows must comply with building regulations for glass safety and thermal efficiency. For all windows installed after this date there should be a Building Regulations Certificate or FENSA Certificate.

If windows are replaced or renewed during the course of building works which are being monitored and signed off by the Council's Building Control officer, they may be covered by the final Completion Certificate for those works. If this is not the case, a FENSA certificate must be issued by the installer. For further information see <http://www.fensa.org.uk>

Boilers

Since 1 April 2005 the installation or commissioning of a new gas boiler must be notified to the local authority. Anyone carrying out such

works must be registered with Gas Safe, and unless the installation is being supervised by a Building Control officer as part of larger works, a Declaration of Safety Certificate or Building Regulations Compliance Certificate must be issued.

For further information see <http://www.gassaferegister.co.uk>

Electrics

Since 1 April 2005, most residential property electrical works must be notified to the local authority as complying with Building Regulations and you should check with your local Building Control department whether the works should be notified to them. Works must either be signed off by a Building Control officer or be carried out by someone registered under the competent persons scheme. They will then issue a completion notice to you and the local authority, confirming compliance with building regulations.

For further information see: <http://www.planningportal.gov.uk/permission/commonprojects/electrics/>

Jonathan Potter - jonathan.potter@twmsolicitors.com

Commercial property **Town and Village Greens**

Should developers be concerned when purchasing open land that may have been accessed by the public? As a local resident, can you frustrate development of land that you and others have used to exercise dogs or to play games?

Most of us know a little about Common Land, but less about the Town or Village Green (TVG). The law permits anyone to apply to register land as a TVG where a significant number of people in a particular area have taken part in pastimes and sports for more than 20 years. Registration as a TVG will permit continuing enjoyment of that use.

Even if planning permission has been obtained, this poses a disastrous risk for a developer where the land has been used "as of right" for "lawful sports and pastimes". This can include recreational activities such as sports, dog walking and picnics.

The timing of the application is critical, and the recreational use must continue until the application is made; or, if the use has ceased, then the application must be made within one of the 'grace periods', which are two years before the date of the application (if use ceased after April 2007), or five years (if use ceased before April 2007).

The application must include a map which clearly identifies the

land that has been used. Supporting evidence should be gathered, including witness statements and any written correspondence.

There is a risk of a TVG being established if owners of open land have previously tolerated recreational use of the land. What can be done to reduce the risk of a successful registration application?

- If the 20 year period has been reached, the land owner could consider placing notices on the land which identify what use of the land is permitted (so that it is no longer "as of right"), or alternatively put a stop to use altogether, perhaps by fencing.
- If the 20 year period has been reached, a developer could wait for the grace period to expire before commencing works, or alternatively start the works immediately and hope that an application is not made.
- The land owner can challenge the use of the land and demonstrate that there is no right of access on to it.
- Before committing to a purchase, a developer should carry out appropriate due diligence in order to determine the likelihood of a successful application being made.

Michael Jones – michael.jones@twmsolicitors.com

Private client **What is a "lifestyle" Will?**

A lifestyle Will is a phrase devised by us to describe a Will with a flexible framework to adapt to changes in the lifestyle or circumstances of beneficiaries.

People making Wills often know who they want to benefit from their estate. The solicitor's role is to review the wishes of that person, to explain the consequences from a taxation and personal perspective of executing those wishes and to highlight problems that the client may not have been expected to foresee.

As well as flexibility, the lifestyle Will can be structured to protect against some of the issues that can arise in later life. For example:

(i) A beneficiary may no longer be able to look after themselves and would then need to consider the possibility of paying care home fees. It may be that any inheritance faces the possibility of being used up in providing that care. By keeping what would have been their inheritance in a protected environment, this may have the

effect of reducing the value of the beneficiary's assets when financial assessments are taking place to assess the individual's eligibility to receive assistance with the cost of their care.

(ii) In the event that the survivor of a married couple remarries and that relationship fails, it is possible on divorce that a substantial part of the estate will be available to the new partner to the detriment both of the original surviving spouse and also the family in general. By putting the estate of the first spouse to die in a protective structure, the assets taken into account in any divorce proceedings after the first death should be reduced, and after the divorce those assets that were originally in the first estate will remain and be capable of being used for the benefit of the surviving spouse and the family in general.

Clearly everyone's circumstances are different and lifestyle Wills are necessarily bespoke documents as a result.

Adrian O'Loughlin - adrian.o'loughlin@twmsolicitors.com

Sarah's success

We are delighted to report that Reigate family lawyer, Sarah Bostock, has been elected Chair of Young Surrey Resolution. Resolution is an independent group which campaigns for the improvement of family law and the family justice system and is committed to developing and promoting the highest standards of practice.



New lawyers

We are delighted to welcome Jolanda Peters and Francesca Tilley to the Firm.

Jolanda joined the commercial property team following completion of her training at a London firm. She enjoys going to the gym, cooking and socialising with friends and family. She also likes to travel as and when time permits.

Francesca has joined our employment team as a newly qualified solicitor from SNR Denton in London. Her arrival brings the employment team up to 4 and means clients benefit from a team with a full range of experience depending on their needs. In her free time Francesca enjoys travel, reading, swimming and is a keen theatre goer.



Jolanda Peters and Francesca Tilley

Legal experts in family

Charmaine Hast and Karin Walker, Principals in our family team, have been invited to be included in the forthcoming edition of 'Legal Experts'. The guide is produced by Legalease, publisher of The Legal 500, who have for 6 years recommended TWM's family law team as a leading practice in the south east.

Stamp Duty Land Tax increase

From 6 April 2011 the rate of Stamp Duty Land Tax payable on completion of the purchase of a residential property over £1million will rise to 5%. If buying or selling in this price bracket it would be prudent to try to complete before this date, otherwise there may be some last minute price negotiations.

Flying high with Surrey Air Ambulance

Our charity of the year is Surrey Air Ambulance and such is the enthusiasm for this charity we have decided to extend our support. In August 2009, we set ourselves a target of raising £10,000 by the end of 2010. However, we have already not only achieved that target, but exceeded it significantly, raising an amazing £17,000, enough to fund 11 separate missions.

News and Views is TWM Solicitors' quarterly newsletter for clients and contacts. The articles included in this publication are necessarily brief and because the law may change subsequently, it is essential legal advice is obtained prior to proceeding.

TWM Solicitors is a full service law firm. It is the second largest firm based in Surrey and its approach centres on achieving success for its clients.

If we can help with a legal issue, please do not hesitate to contact one of our team:

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For further information about TWM Solicitors, please visit our web site: www.twmsolicitors.com