



Promotions

It is very pleasing to report on our recent round of promotions. The roll call is as follows. Back row, l-r: Adrian Price (senior associate, commercial property), Alex Davies (principal, family), Claire Campbell (senior associate, commercial property), Richard Bland (senior associate, residential property), Adrienne Young (senior associate, private client), Jacky Butt (principal, family). Front row, l-r: Caroline Fitzpatrick (principal, commercial property), Siobhan McDonnell (associate, dispute resolution), Kathy Betts (HR Manager), Michelle Fitzpatrick (senior associate, family) and Zoe Thompson (senior associate, dispute resolution).

Legal and financial planning seminar

TWM Solicitors has teamed up with HJP Independent Financial Advisers to present a joint seminar on 29 October about effectively planning your legal and financial affairs. Topics to be covered will include:

- The importance of making and reviewing your Will
- Inheritance tax, avoiding IHT and making the most of exemptions
- Meeting the cost of care home fees for an elderly relative or spouse
- Unlocking equity in your property without having to sell
- Lasting Powers of Attorney, allowing people you trust to make decisions on your behalf, should you no longer be able to
- Making the right investment planning decisions for you; balancing your attitude to risk and investment objectives.

The seminar takes place at lunchtime at Esher Rugby Club. For further details, please contact Michelle O'Connor in our marketing team, michelle.oconnor@twmsolicitors.com

Praise for TWM in 2010 Legal 500

In the new edition of The Legal 500, the leading independent guide to the legal profession, we have been recommended for our expertise in:

- Commercial property
- Corporate & commercial
- Employment
- Family
- Personal tax, trusts & probate.

Specific comments regarding the family team, which retains its top tier ranking for the 5th consecutive year, read:

'By far the best', TWM Solicitors LLP has expertise in all aspects of family law. Headed by the 'exceptional' Charmaine Hast, who is praised for her 'trust and integrity', the practice has recently undertaken several international cases. 'Nothing is too much trouble for the team.' Karin Walker 'always shows understanding, patience and sensitivity in the midst of highly emotional issues.'

Charmaine also appears in the list of leading lawyers in the south east.

In respect of personal tax, trusts & probate the citation read: "TWM Solicitors LLP's 18-strong team of 'experienced practitioners' includes a separate contentious probate practice".



Allison Crossman

New head of private client

We are delighted to announce that from 1 October Allison Crossman will head our private client team, succeeding Nigel Harding. Allison specialises in all aspects of administration of estates, trusts, Wills, Lasting Powers of Attorney and Court of Protection work. She joined TWM in 2008 and is based in our Cranleigh office.

Allison said about her appointment, "I am looking forward to building on Nigel's achievements, including the recent recommendation of private client in The Legal 500. With the ongoing support and experience of the team as a whole across all of our offices, I am confident we can achieve our goal of becoming the pre-eminent private client practice in Surrey and SW London."

FAMILY

Illegal “Self-Help” is not to be condoned

In the recent landmark case of *Tchenguiz v Imerman*, the Court of Appeal was asked to consider whether there can be any legal justification for permitting a wife to retain copies of documents which she had unlawfully obtained, on the grounds that to do so will assist in preventing a less than frank disclosure by her husband of his assets. Whilst recognising that there is a need to ensure that a husband does not avoid his liability on divorce by concealing assets, the Court unanimously ruled that a wife is not entitled to breach the husband’s right to protect the confidentiality of his documents and information.

This will effectively put a stop to the previously used practice of “self-help disclosure”, whereby a spouse could obtain documents illicitly and would not be penalised by the matrimonial courts, provided that the original documents were returned and force was not used. Accordingly, a wife could take a husband’s bank statement which he had left lying around, copy it and return the original to him but she could not break into a locked drawer or briefcase to get the statement.

In the *Imerman* case, the husband shared a work office and computer system with the wife’s brothers who accessed and copied the husband’s information and documents from a server in the office. The wife then sought to use the information and documents in the financial proceedings ancillary to the divorce. The Court of Appeal required all of the documents to be returned and restrained the wife from using any information she might have obtained from reading them. It found that the surreptitious removal of papers is a breach of the law of confidentiality, as well as possibly involving the criminal offence of theft or offences under the Data Protection Act, which cannot be justified on the basis of lawful excuse, self-help or public interest.

The Court of Appeal stated that not only have the matrimonial courts become sophisticated in detecting and dealing with dishonest financial disclosure, but that there are Court-regulated ways of discovering assets that a less than honest husband is trying to hide. The Court has powers to grant production and search orders and these are to be used in preference to self-help outside the law. The Court of Appeal rejected the argument that their decision would effectively give such a husband a licence to cheat.

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EMPLOYMENT

Equality Act 2010

The Equality Act 2010 has two main aims: to harmonise discrimination law and to strengthen it. It brings together and re-states existing discrimination legislation concerning sex, race, disability, sexual orientation, religion or belief and age, aiming to adopt a unified approach where appropriate.

It also makes some significant changes. These include: a power to introduce regulations to make gender pay discrimination more transparent; new types of disability discrimination; and broader definitions of direct discrimination and harassment.

The vast majority of the Act’s provisions will come into force on 1 October 2010, but there are a number that the Government is still considering how to implement.

The provisions coming into force on 1 October 2010 include:

- The Act’s basic framework of protection against direct and indirect discrimination on the grounds of any protected characteristic. Individuals are protected against less favourable treatment because of a protected characteristic and from being disadvantaged due to a condition, rule, policy or practice that applies to all employees but particularly disadvantages a group of people who share a protected characteristic.

As a reminder, the protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- A new concept of “discrimination arising from disability”, to restore the protection lost following a recent House of Lords’ decision.
- Preventing employers from asking pre-employment health questions, except in specified circumstances.
- Preventing employers requiring employees to keep their level of pay secret from their colleagues.
- New powers for employment tribunals to make recommendations in relation to an employer’s workforce as a whole, rather than just in relation to the individual who brought the claim.

This list is only a summary of the changes and further provisions of the Act will come into force at a later date. We will keep you updated on developments.

If you would like further guidance on the steps you need to take to comply with the changes, please contact a member of the Employment Team.

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BUSINESS LAW

Terms and conditions available on request

In the recent case of *Rooney & Another v CSE Bournemouth Ltd*, the Court was asked to examine the question of whether the commonly used phrase “terms and conditions available on request” is sufficient to incorporate those terms and conditions in a contract between the parties.

CSE are an aircraft maintenance company and their practice was for the scope of maintenance work to be defined on a work order form that contained a statement “terms and conditions available on request”.

The respondent party (*Rooney and another*) were the registered owner of an aircraft that had been leased to a third party company and CSE were required to carry out maintenance works under the maintenance support contract. CSE were negligent in the works that they carried out, with the result that the aircraft sustained damage on a subsequent flight.

The case came before a High Court judge who held that it was

reasonably arguable that the work order was a document intended to have contractual effect. However, the judge held that the statement “terms and conditions available on request” did not incorporate CSE’s standard conditions of trading into the contract because the phrase conveyed no more than that there were terms and conditions available on request.

On appeal by CSE, the Court of Appeal reversed the decision of the High Court and held that the test was to see whether reasonable people would have understood the words used as referring to contractual terms upon which CSE had agreed to work. The Court of Appeal held that the High Court was correct in holding that the work order form was a contractual document. However, the Court of Appeal considered that in the business context it would be odd if a contractual binding order, such as a work order form, contained no commercial terms but only left them for inclusion at a customer’s request.

The Court of Appeal held that it was at least arguable that a reasonable person would have understood the words used as referring to contractual terms upon which CSE had agreed to carry out the work on the aircraft.

Generally, standard conditions of a contract may be incorporated by oral or written express agreement, (in which case no problem arises), by implication (as was the case here), or from a course of dealing between the parties.

The Court of Appeal’s decision in this case reiterates the current legal position that even if terms are merely referred to in the contractual document, then they may be incorporated even if the other party has not had sight of them.

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PRIVATE CLIENT

Lifetime planning

Complaint to Pensions Ombudsman highlights importance of making death benefit nomination.

The Deputy Pensions Ombudsman has partially upheld a complaint against AEGON Scottish Equitable’s decision-making process when allocating a lump-sum death benefit. The complaint was made by the daughter of a deceased scheme member who had not completed a death benefit nomination form.

Under its scheme rules, AEGON had discretion to pay the benefit to any one or more persons on a prescribed list. AEGON paid the benefit to the deceased’s partner, based on information supplied by the partner’s son. It did not ask the deceased’s daughter to verify this information. The Deputy Pensions Ombudsman held that when exercising discretion under the pension scheme rules to select the recipients of a lump-sum death benefit from a prescribed list and to decide how much to pay each beneficiary, the scheme administrator must properly consider all potential beneficiaries. It must also consider only relevant matters and follow a reasonable process to obtain relevant information. AEGON had these duties despite a scheme rule stating

that in selecting any beneficiaries the scheme administrator would not be “acting as a trustee”.

The background to the complaint highlights the importance of completing (and updating, if necessary) a nomination form for a pension death benefit which the scheme administrator may take into account when exercising its discretion to select recipients of the benefit.

This case highlights the need to seek advice as to the many different ways death benefits can be managed, both for tax efficiency and ensure that they pass to the right people.

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COMMERCIAL PROPERTY

Leasehold property - repair or improvement?

Responsibility for carrying out repairs is one of the most common sources of dispute between a landlord and a tenant, and while careful drafting is required to define the extent of the leasehold property which will be subject to a repairing covenant, disputes will often arise as to the meaning of the word ‘repair’ itself.

Most leasehold repairing covenants will require the tenant to keep the premises in good ‘repair’, but will not require the tenant to ‘improve’ the premises. Frequently however, the boundary between the two terms becomes blurred, and the recent case of *Craighead v Homes for Islington Ltd & Anor* has provided useful clarification and guidance as to whether works will amount to a repair or an improvement.

The case involved the question of whether a landlord could replace single glazed windows with double glazed windows and recover the cost via the service charge. The tenants claimed that the replacement windows amounted to an improvement and therefore the costs were not recoverable, and the landlord argued that the works were necessary in order to properly carry out the repairs.

In finding for the landlord, the Lands Chamber of the Upper Tribunal recounted a useful list of factors to take into account when deciding whether works constitute a ‘repair’, including the nature and extent of the defect, the likelihood of a recurrence if alternative remedies were adopted and the comparative cost of alternative remedial works, and held that on the facts of the case, the works amounted to a ‘repair’ (notwithstanding that there was a clear element of improvement), the costs of which could be recovered via the service charge.

This case provides an important illustration that ‘repairs’ and ‘improvements’ are not mutually exclusive, and an element of improvement will not necessarily prevent works from being classified as repairs. Before entering into a lease therefore, it is important to give careful thought to any potential liability that might arise under a leasehold repairing covenant and take advice as to the various ways of dealing with such liability, in order to expressly deal with issues of repair at the outset and avoid a potentially expensive dispute arising later.

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l-r Karin Walker, Emilie Berge, Peter Stevens

Lyon Bar international conference

Peter Stevens, Karin Walker and Emilie Berge attended the Lyon Bar international conference in Lyon on 10 September.

The conference included presentations covering:

- International commercial arbitration
- Collaborative law and mediation
- The role of the solicitor at the police station
- Commoditisation of legal services
- Competition and confidentiality in online banking.

Karin Walker gave the presentation on collaborative law which was well received by the 120+ conference delegates.

The conference provided an opportunity to reinforce existing relationships and to develop new ones with French lawyers as well as others from Germany, Hungary, Belgium, Luxembourg and Spain.

The conference also enabled the team to promote the services now offered to French nationals who have interests in the UK and this received an encouraging response. For further details, please visit our web site and click on the French flag.

New trainees

Embarking on their legal careers are our new crop of trainees, l-r Emilie Berge, Patrick Lundie, Sean Hilton and Helen Fisher. We are delighted to welcome them to the Firm.



TWM helps raise £3k at SAA lunch

A lunch co-sponsored by TWM in aid of Surrey Air Ambulance raised nearly £3k for the charity. Guest speaker was former MP, Edwina Currie who entertained guests at the ladies lunch held at the William Bray in Shere, owned by former F1 driver Julian Bailey.

TWM 10th Anniversary

Thank you to everybody that came to our 10th anniversary celebrations at Hampton Court Palace. It seems a while ago now, but the setting and the weather marked the occasion perfectly.

In another activity marking 10 years, 16 members of staff took part in a cycle challenge, starting at our Wimbledon office and ending at Reigate; a total of 57 miles. The ride was in aid of Surrey Air Ambulance, the Firm's chosen charity and took in our other offices in Epsom, Leatherhead, Guildford and Cranleigh as well as a whistlestop visit to the helicopter base at Dunsfold.

We are delighted to report that to date in excess of £2,000 has been raised, which is enough to help the Surrey Air Ambulance potentially save a life.



Post script - Cranheads reign

The final word goes to the Cranleigh and Leatherhead offices, who combined forces (hence Cranheads) to form an awesome team that walked off with the 2010 TWM inter-office rounders trophy.

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 across the south east.

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

Cranleigh	Richard Bland	01483 273515
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Guildford	Adrian O'Loughlin	01483 565771
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For further information about TWM Solicitors, please visit our web site: www.twmsolicitors.com