



The newsletter for Clients of **hodgehalsall**

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Time called on non-payment of Holiday Pay



The House of Lords has confirmed the earlier decision of the European Court of Justice that workers who are denied holiday pay while on sick

leave can claim for an unauthorised deduction from wages. The ruling means that staff do accrue holiday pay whilst on sick leave and upon their return one of the following must occur:-

- staff should be allowed to take the period of holiday leave to which they are entitled or,
- staff should nominate a period of absence to be regarded as holiday and be paid for that period or,
- staff should be allowed to carry forward any unused holiday entitlement to the following year or,
- should the employment of the member of staff be terminated before all the holiday entitlement is

taken they should receive a sum in lieu of the untaken leave.

Potentially employees could now take claims back as far as 1st October 1998 (when the Working Time Regulations came into force) provided that there has been a series of failures to pay holiday pay and the claim is brought within three months of the last failure to pay.

For further information on this, or any other employment law matter, please contact Mark Robinson (markrobinson@hhlegal.co.uk) on 01704 531991.

HIPs - Government presses on despite criticism

Despite ongoing criticism of their many flaws the Government continues to press on with the controversial Home Information Packs (HIPs) and since 6th April 2009 further rules have come into force: -

No marketing may now take place until the complete HIP has been prepared. A grace period of 28 days was previously allowed.

Dubbed the 'Pointless Information Questionnaires' HIPs now require the

seller to complete a Property Information Questionnaire containing general enquiries about the property. Sellers should treat this form with extreme caution and consider legal advice as completing the form incorrectly may leave the seller open to a potential claim against them from the buyer.

HIPs must now contain search results as opposed to search insurance. However, as previously seen in our last update buyers should almost

always commission their own searches due to the numerous problems associated with the type of search results contained in HIPs.

Hodge Halsall is able to arrange a HIP for you at a cost of approximately £275-£300.

Please contact Paul Leadsom (paulleadsom@hhlegal.co.uk) on 01704 531991 should you have any concerns regarding HIPs and for a free no obligation quotation detailing the legal costs of selling your home.

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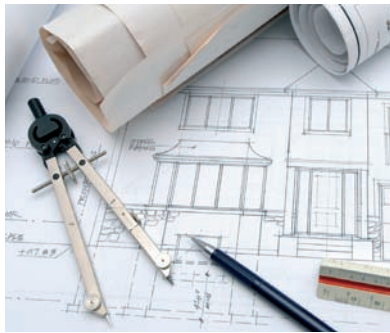
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Welcome to Hodge Halsall's Newsletter For Private Clients

This Newsletter is designed to summarize various areas of law that may impact upon you and your family. It is a periodic publication of Hodge Halsall LLP and is intended for legal guidance only. It is not to be construed as a substitute for legal advice. For advice specific to your circumstances please contact your Hodge Halsall representative.

We are interested in your opinion. If you have any suggestions about how we can improve Legal News or if you would like us to cover a specific topic please contact: Derek Alman at derekalman@hhlegal.co.uk or call 01704 531991.

Bad Planning?



If you are contemplating carrying out works to your property you will need to consider whether or not planning permission and building regulations approval is required.

Doors and Windows

Planning permission generally is not required for repairing, replacing or fitting doors or windows. However, since 1st April 2002 building regulations apply to glazing, of both doors and windows. Ensure therefore that the works are carried out by either a FENSA regulated contractor or that building regulations approval is first obtained.

Fences Walls and Gates

Planning permission is required if the particular structure is to be over one metre high and next to a highway used by vehicles, or over two metres in height anywhere else.

Building regulations approval is not required for fences, walls and gates.

Extensions, Additions and Conservatories

New limits and conditions came into force on 1st October 2008 with regards to extensions, additions and conservatories. The new regime applies largely to planning permission and whether or not this is required hinges mainly upon the dimensions of the proposed extension, its position on the house and its proximity to the boundaries of the property. The rules are complex and should be studied carefully when considering any kind of extension and addition.

Owners of listed buildings are advised to consult their local authority

as much of the information above will not apply to listed buildings.

Local Authorities can exclude properties or areas from what is known as the General Permitted Development Order (GPDO) with the result that most of the information set out above will not apply. Your solicitor will be able to help you find out if the GPDO has been excluded before you commence works.

Finally, it is also worth remembering that apart from complying with planning and building regulations legislation your property may also be subject to covenants (on both freehold and leasehold land) which could mean you also require the consent of a third party or your landlord to your proposed works.

If you require legal advice with regards to planning permission and/or building regulations please contact Paul Leadsom on 01704 531991 or paulleadsom@hhlegal.co.uk.

Voluntary Registration of Land



Registered land has a title guaranteed by the Land Registry, a Government body. Unregistered land is land which is not registered with the Land Registry and proof of ownership relies upon production of historical title deeds. Whenever a land transaction takes place, for example, a sale or mortgage of the land, an application to the Land Registry for first registration must be made.

Currently, just over 65% of land in England and Wales is registered and although registration is not compulsory until land is sold or mortgaged the Land Registry have recently undertaken advertising campaigns and offered incentives to land owners to voluntarily register and protect their land. Currently the Land Registry offer a 25 per cent discount on their usual fee for voluntary first time registration.

There are downsides to registration of land which include :-

- the value of the land at the time of application for registration is recorded on the title which is available for public inspection;
- details of any mortgages secured on the land are likewise therefore available for public inspection (though not the amounts owed);

By contrast, a number of benefits arise from registration including :-

- state guaranteed registration provides greater protection against claims by third parties with compensation available for inaccurate registration ;
- any problems in the title can be resolved at time of first registration with the Land Registry having a discretion to "cure" minor defects;
- the Land Registry produce a plan of the land based upon the Ordnance Survey map which will also detail rights of way and any

land affected by other rights, covenants or restrictions;

- rights and restrictions which affect the land are investigated and formalized;
- information about the land can be easily accessed from the Land Registry computer system;
- the risk of losing title deeds is removed;
- the process of land and property sale and purchase becomes faster and potentially less expensive.

The Land Registry is particularly keen that farmers and other land owners consider the benefits of voluntary land registration commenting that "once registered, owners have the title to their land guaranteed by the State and buying and selling is simpler and cheaper. Land owners also know the administration of their land holding is in good order with key information in one place and easy to access".

Hodge Halsall's property lawyers regularly advise clients on land registration matters and recommend voluntarily registration particularly at a time when incentives are being offered by the Land Registry. Please contact Gordon Hatton (gordonhatton@hhlegal.co.uk) on 01704 577171 for further assistance.

Making sure your nest egg goes where you want it to

Anybody who owns property, and who cares about what happens to their assets after their death, should make a Will. A Will can also be used to protect assets and reduce tax liabilities upon death.

One of the pitfalls of having no Will is that the intestacy rules apply and your Estate will be distributed as the law determines rather than in accordance with your wishes. Many married couples believe that upon the death of the first the survivor will inherit everything. Such an assumption is mistaken and intestacy rules dictate how inheritance is governed. Although the amount of the sums inherited under the intestacy rules is periodically increased the strict order in which relatives are entitled to inherit when a person has died without leaving a Will has not changed significantly since 1952.

The new rules

With effect from 1st February 2009 if a spouse or civil partner dies intestate leaving a surviving spouse/civil partner and children :-

- the surviving spouse or civil partner inherits the first £250,000.00 (previously £125,000.00) together with any jointly held assets and chattels;
- the children inherit 50% of the remainder when they attain the age of 18;
- the remaining 50% is invested to pay an income to the surviving



spouse/civil partner and, upon their death, the capital passes to the children;

If the deceased spouse/civil partner leaves no children but has surviving parents or brothers/sisters :-

- the surviving spouse/civil partner inherits the first £450,000.00 (previously £200,000.00), the chattels, jointly held assets and 50% of the remainder.
- the parents (or brothers/sisters if there are no surviving parents) inherit the remaining 50%.

Where there is no surviving spouse or civil partner and the deceased dies without leaving a Will the order of priority in which other relatives inherit is :-

- surviving children (at 18)
- parents
- brothers/sisters
- grandparents
- uncles/aunts

Why making a Will is important

The rules of intestacy rarely meet the precise wishes of the deceased and rarely distribute the estate in a tax efficient manner. The application of the intestacy rules can be

inconvenient and expensive for the family of a deceased person and can lead to expensive disputes. Problems caused by intestacy include :-

- as no executors have been appointed the family of the deceased are left to sort things out as best they can;
- common law spouses have no statutory entitlement to inherit and will have to make a claim against the estate under the Inheritance (Provision for Family and Dependents) Act 1975 which is both expensive and time consuming;
- only naturally and legally adopted children of the deceased have an entitlement leaving step-children and foster children with no claim;
- children will inherit at age 18 which many parents will consider is too young;
- serious complications can arise where the deceased was in business;
- if the Estate is liable for Inheritance Tax the opportunity to make arrangements for tax planning is lost.

For further information on making a Will please contact Geoff Dootson (geoffdootson@hhlegal.co.uk) or Sarah Parkinson (sarahparkinson@hhlegal.co.uk) at our Southport office on 01704 531991 or Gordon Hatton (gordonhatton@hhlegal.co.uk) at our Ainsdale office on 01704 577171.

Divorce and the Credit Crunch – Part 2

In the last issue of Legal News we looked at the options open to couples looking to divorce during the current economic downturn and where a "clean break" divorce may be beneficial to the more affluent party. Here we investigate whether a divorced party can re-open a "clean-break" financial settlement after an agreement has already been reached.

A former spouse who agreed a settlement in better times may suddenly find the value of their assets at a substantially lower figure due to the financial crisis and may look to the Courts for a more equitable deal. This was the case recently in Myerson v Myerson where Brian Myerson attempted to re-open his settlement with his former wife after he saw a collapse in his company shareholding following the financial meltdown. The Judge however refused to allow the deal to be reviewed stating that Mr Myerson was an experienced businessman who fully understood the agreement he had entered into and

which conversely did not allow for his wife to claim for any increase in his wealth. The Judge said that price fluctuations in property, shares or other assets, however extreme, was not a ground for re-opening a settlement.

Given the volatility in the housing and share markets Courts are looking ever more closely at there being a balance in any settlement between risky assets and those with a more guaranteed future value. Settlements which laden one party with all the risk will be viewed unfavourably by the Court. There needs to be a degree of fairness.

It may be possible to amend a settlement where payments from income continue to be made by one party to the other. Where a spouse has been made redundant, or had a significant reduction in salary, the Courts may order payments to be reduced. Courts may not be so willing to reduce payments where a spouse

has enjoyed many years of steadily increasing bonuses, without adjustment to the settlement, only to make application for a reduction as soon as bonus payments are hit by the recession. Furthermore, as seen in the recent case of McFarlane v McFarlane Courts can also increase settlements. Mrs McFarlane claimed for increased maintenance from her ex-husband when his annual earnings rose to over £1 million following his rise to the top of the partnership at Deloitte. The Court agreed with Mrs McFarlane and awarded her a 40% increase in her maintenance payment, from £250,000pa to £350,000pa.

The complex nature of many financial settlements within a divorce mean that it is vital that professional advice is sought. Hodge Halsall deal with all financial aspects of divorce and for a confidential discussion of your current situation please contact Clare Ellison (clareellison@hhlegal.co.uk) or Julia Jones (juliajones@hhlegal.co.uk) on 01704 531991.

The Mental Capacity Act

The aim of The Mental Capacity Act is to provide a framework to empower and protect those who may lack the capacity to make decisions for themselves.

The Act makes clear who can take decisions, in which situations and how they should go about this. It enables people to plan ahead for a time when they may lack capacity.

The Act replaced Enduring Powers of Attorney (EPAs) with Lasting Powers of Attorney (LPAs). It also covers issues about personal welfare such as healthcare treatment and where a person lives as well as every day decisions about personal care.

The Act is based upon five principles :-

1. Every adult has the right to make his or her own decisions and must be assumed to have such capacity unless it is proved otherwise
2. An individual must be given all practical help before being treated as not having the capacity to make his/her own decisions
3. In cases where an individual makes what might be seen to be an unwise decision, they should not be treated as lacking capacity to make that decision

4. Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests
5. Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms

The Court of Protection

The Act provides for the Court of Protection to make decisions in relation to the property, affairs, healthcare and personal welfare of adults (and children in a few cases) who lack capacity.

The Court also has the power to make declarations about whether someone has the capacity to make a particular decision.

The Court of Protection can:

- decide whether a person has capacity to make a particular decision for themselves
- make declarations, decisions or orders on financial/welfare matters affecting people who lack capacity to make such decisions
- appoint Deputies to make decisions for people lacking capacity to make those decisions
- decide if an LPA or EPA is valid

- remove the Deputies or Attorneys if they fail to carry out their duties
- hear cases concerning objections to register an LPA or EPA and make decisions about whether or not an LPA or EPA is valid

Deputies

A Deputy is someone appointed by the Court of Protection to act and make decisions on behalf of someone who lacks capacity. The Court appoints Deputies when there is no valid LPA or EPA in place. The Deputy Order sets out the extent of the powers granted to the Deputy which might relate to finances or personal welfare. The Deputy has a duty to follow the key principles set out in the Act and only to make those decisions authorised by the order of the Court. The Deputy must always act in the best interests of the person lacking capacity.

Issues relating to mental capacity and the Court of Protection can be complex and legal advice should be sought in appropriate cases. Partners in Hodge Halsall have experience of acting as Deputies and Attorneys, please contact your most convenient Hodge Halsall office for further assistance.

Pet Legacies



When Leona Helmsley signed her Will in July 2005 she excluded two of her grandchildren "for reasons which are known to them" but left a trust fund to her pet dog Trouble of \$12m. Following court proceedings brought by the disinherited grandchildren claiming that their grandmother did not have mental capacity when she signed her Will a settlement was reached reducing Trouble's trust fund to \$2m and granting bequests to the disinherited grandchildren. Although Trouble may have been a particularly lucky beneficiary over the years many domesticated animals have been the recipients of massive legacies. Tinker the cat, inherited £450,000 from the estate of Margaret Layne an elderly lady from London who had found him as a stray and Beryl Reid, the actress, who died in 1996 left her cottage on the Thames worth

£900,000 to a friend on condition that he looked after her six cats.

British concern for animals was worth £65million in legacies to the RSPCA in 2008.

Pets cannot be left money or property directly but some options exist for catering for pets following the death of their owner. These include leaving :-

- a legacy to a friend or relative with a request that they look after your pet
- your pet to a beneficiary in a Will together with a cash sum to be used for its maintenance.

The difficulty with both these possibilities is that somebody suitable must be available to look after the pet and it is impossible to know in advance whether the pet will be cared for by the person to whom the legacy or pet has been left. Other options include leaving:-

- a pet with cash for their care to the RSPCA who will care for your pet and endeavour to find a new home for it. Another charity the Cinnamon Trust assists elderly and terminally ill pet owners and can provide practical help with day to day pet problems,

long term care for pets whose owners have died or moved into care and who also operate a fostering service for pet owners who are hospitalized.

- a legacy to executors to deal with according to instructions provided in a "letter of wishes". This can be stored with the Will, can be used to identify who you would like to look after your pet and if the choices later need to be changed another letter can be written to replace the old one whilst the Will remains unaltered. Sufficient funds should be put aside in a Trust to cover the anticipated lifetime of your pet and details provided as to what is to happen to any unspent funds once the pet has passed away.

For further information on making a Will please contact Geoff Dootson (geoffdootson@hhlegal.co.uk) or Sarah Parkinson (sarahparkinson@hhlegal.co.uk) at our Southport office on 01704 531991 or Gordon Hatton (gordonhatton@hhlegal.co.uk) at our Ainsdale office on 01704 577171.

We use the word 'Partner' to refer to a member of the LLP. Hodge Halsall LLP registered Office: 18 Hoghton Street, Southport, Merseyside PR9 0PA Tel: 01704 531991. Also at: 2 Liverpool Avenue, Ainsdale, Southport PR9 3LX Tel: 01704 577171. Partners: Mark P Robinson, Judith Bond & Gordon Hatton. Hodge Halsall LLP is a Limited Liability Partnership registered by the Solicitors Regulation Authority, registered No. OC328351

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