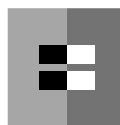


# one step ahead

spring 2007



## Wortley Byers

The business minded law firm

### Home Information Packs

With effect from 1 June (unless it is postponed!) the sale of any home in England and Wales must have a HIP (Home Information Pack) available for inspection as soon as it is offered for sale. Estate agents therefore are under a legal obligation to provide this and there are huge numbers of companies seeking to provide a HIP as a means of introducing and directing the provision of numerous aspects within the conveyancing chain.

The contents of a HIP have been reduced since first proposed by the Government but the essence of this change lies in Sellers now becoming responsible for a number of costs whether they have a buyer or not. Most significant is the cost of local authority and water searches which must be incurred before a buyer is found.

Government policy has allegedly been based upon a desire to reduce the number of abortive transactions where the late provision of information causes people to change minds, pull out or unsuccessfully renegotiate. The Government's argument that this system would speed up the transaction is at best unproven and in a worst case scenario may reduce the size of the market leading to wholly unintended social and economic changes.

It is right, however, to recognise this change as part of a development towards electronic conveyancing which if fully implemented and efficiently run will change the way homes are bought and sold. By rendering homes as a product with a form of up-to-date log book

comprising legal disclosures, searches and energy certification a well prepared buyer with finance organised in advance should be able to move more quickly and with a good deal less trauma. Strangely enough that is already the case.

Wortley Byers often move people at short notice but it depends upon the clients and market circumstances.

So what does the HIP include? Disclosure of the legal title, a draft form of contract, disclosure forms and the contents list that would definitely be sold with the property. Searches must be provided within 14 days or an explanation given for non performance certificate. The 'new cost' to a seller therefore are searches on their own property, the energy certificate and some very basic disclosures which until June are only made to a genuine prospective purchaser with intentions of buying the property. The scheme theoretically benefits the first time buyer who may not incur as much cost but that is proving an illusive concept. They are the most vulnerable sector of the market who need advice at every level. Wortley Byers are currently considering a number of options including the Law Society/MDA HIP model together with independent providers of energy certificates.. It is no longer necessary for a full Home Condition Report to be included within the HIP. The Government still intend to make this a requirement when enough people have been trained to provide such reports.

The roundabout continues to turn on this subject. Our residential team will be happy to advise and provide quotations.



**Wortley Byers is delighted to welcome Aaron Cane to its already established and experienced Commercial Property Department.**

Aaron qualified as a solicitor in 2005 having trained at Stanley Tee in Bishops Stortford.

He specialises in a broad range of commercial property transactions ranging from development projects, investment work, secured lending and landlord and tenant work, as well as licensing.



**The firm is also delighted to welcome Marion Searles to its successful Residential Property Department.**

Marion is a Conveyancer having specialised in residential conveyancing for many years.

Prior to joining us, Marion worked at a firm of Chelmsford solicitors for a considerable number of years, followed by 10 years in the Residential Department of Budd Martin Burrett, also in Chelmsford.

## holiday pay



How much holiday do you give your employees? They are entitled to a minimum of 20 working days a year if they work full time including bank holidays although many employers choose to offer more.

However, the Government is consulting on increasing this to 28 days. About 6 million people may benefit from these plans. Statutory annual leave entitlement would be increased in two stages, rising from 20 to 24 days on 1st October 2007, and from 24 to 28 days on 1st October 2008.

Research by the DTI found that groups standing to benefit most from the changes include women, part-time workers, low-paid workers and

## data protection prison sentences

The Information Commissioner's Office continues to warn businesses about fake notices demanding money to register under the Data Protection Act 1998 (DPA).

The warning comes after Liverpool Crown Court sentenced four men to prison for their involvement in fake data protection agencies. Francis Boyd pleaded guilty to dishonestly obtaining £401,545 from businesses demanding a payment to register under the Data Protection Act. Between 1 March 2004 and 17 March 2005, Michael Boyd, Paul Barton and Mark Deary worked together obtaining £206,596 in a similar fashion. Francis Boyd was sentenced to two and half years in prison, Michael Boyd to 8 months, Paul Barton 12 months and Mark Deary 18 months. Passing sentence, the judge said this was "a well planned and

## Apple v Apple

When the Beatles were a pop band, Apple computers sold devices and most people did not own computers, there seemed little overlap between their trade marks 'apple'.

However times and technology changed and in the 1990s they entered into an agreement after litigation as to who would use the 'apple' mark and where. The Beatles were to have it for music. Roll forward some years to the launch of the 'ipod' and downloading of music to it and Apple computers were very much closing into Beatles territory.

In February 2007, they settled their litigation over whether Apple computers had breached that original 1991 agreement. It was announced that they have now entered into a new agreement concerning the use of the name 'Apple' and apple logos which replaces their 1991 Agreement.

Under this new agreement, Apple Inc. will own all of the trademarks related to 'Apple' and will license certain of those trademarks back to Apple Corps (the Beatles' company) for their continued use.

workers from minority ethnic communities.

Now may be a good time to check whether your employment contracts comply with current holiday pay legislation and also other statutory obligations. Many smaller employers do not realise they break the law by not having written employment contracts or terms and conditions of employment and that workers denied this can obtain lump sums in damages.

As changes in maternity pay come into force on 1st April 2007 and employment law is a fast moving field, it may be a good time to have contracts checked. Contact us if you would like us to do this for you or on any other employment law matter.

If you use self employed workers, agency staff and consultants it is worth taking some legal advice to ensure the contractual arrangements with them are watertight.

sophisticated enterprise." It was a 'scam cloaked with the appearance of officialdom'. Philip Taylor, Solicitor at the Information Commissioner's Office, said: "We are very pleased with this result. It sends out a very clear signal: if you run a bogus data protection agency you will be investigated and prosecuted."

Many businesses however do need to register with the ICO's office itself directly because they use personal data about individuals or have mailing lists etc., which require such registration. Therefore, although bogus third party agencies should be avoided, those involved with businesses should always consider whether a registration is necessary. Whether registered or not, businesses have obligations to comply with the Data Protection Act 1998.

In addition, the ongoing trademark lawsuit between the companies will end, with each party bearing its own legal costs, and Apple Inc. will continue using its name and logos on iTunes. The terms of settlement are confidential.

Commenting on the settlement, Steve Jobs, Apple's CEO said, "We love the Beatles, and it has been painful being at odds with them over these trademarks. It feels great to resolve this in a positive manner, and in a way that should remove the potential of further disagreements in the future".

Neil Aspinall, manager of Apple Corps said, "It is great to put this dispute behind us and move on. The years ahead are going to be very exciting times for us. We wish Apple Inc. every success and look forward to many years of peaceful co-operation with them".

The Beatles have yet to make any of their songs available via digital download although this may now happen. For those involved in business it is essential to keep a watch on use of trade marks, names and logos by competitors and check all names carefully before picking a new product or brand name.

## paternity leave - who is going to hold the baby?

From 1st April 2007, mothers and fathers may be battling it out as to who will take maternity or paternity leave because of The Work and Families Act 2006. The act applies to children born or placed for adoption on or after 1st April 2007.

The main paternity leave changes are:

- Employees with parental responsibility will be permitted to take up to 26 weeks' extra paternity leave in addition to the standard two-week entitlement by using some or all of any unused maternity leave entitlement (12 months) from the mother. So parents are going to have to decide between themselves

which of them may take some of the leave for that six month period. In some cases the mother might take the first 6 months and the father the second six months for example.

- If an employee 'borrows' a period of additional entitlement from the mother, then he must give eight weeks' (previously four weeks') notice before returning to work.

Additional Statutory Paternity Pay will be £112.75 per week from 1st April 2007, or 90% of the employee's weekly earnings if 90% is less than that sum.

Paternity leave is granted to biological fathers

and all those with parental responsibility only if he:

- Has at least 26 weeks' service by the end of the 15th week before the baby is due;
- Is fully involved in the child's care and upbringing; and
- Will support the mother or care for the baby.

So no sabbatical or six months on the golf course. However, some families employ a nanny even during the mother's maternity leave and it is thought this will remain acceptable whether the mother or father takes the leave.

## trade marks

Your business may use valuable trade marks but you have not registered them. We can help you protect your logo and trade names by registering either a UK trade mark or a mark which covers the 25 EU states called 'Community Trade Mark'.

If you are involved in export or import of goods you may also be advised to take legal advice on trade mark issues. Importing goods without permission can be an infringement of the Trade Marks Act 1994. If you purchased the goods from the owner of the trade mark in the European Economic Area or a licensee of the owner then you are free in most cases to import the goods into another EEA state.

However, if you wish to bring them in from elsewhere such as the USA then you will need permission. If you do not obtain permission you may be taken to court. We can advise on the European rules on free movement of goods and exhaustion of trade mark rights. If you are a trade mark owner and wish to stop unapproved imports we can also provide advice. In 2007 Bulgaria and Romania may join the EU which will extend the EEA territory to the 25 EU states and the two other EEA states making a total of 29 countries in which the single European market will operate.

If you have not registered a trade mark at the trade mark registry you may still be able to stop others pretending their business is connected to yours by using the law of 'passing off'. Again we can advise you on this.

## charities – all change

Many of our clients are involved with local charities. Some set up organizations and need advice on getting charitable status. Others are involved with what are called 'unincorporated associations', such as play groups, tennis clubs etc, where there is no limited company and are unaware of the liabilities that there can be in such situations.

In the area of charities there is a new Charities Act 2006 which will make some important changes to the law on charities. The Act means that all organisations will only be entitled to charitable status and the accompanying tax breaks, if they are established for one or more of 13 charitable purposes:

- The prevention of relief of poverty
- The advancement of education
- The advancement of religion
- The advancement of health or the saving of lives
- The advancement of citizenship or community development
- The advancement of the arts, culture, heritage or science
- The advancement of amateur sport
- The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- The advancement of environmental protection or improvement
- The relief of those in need by reason of youth, age, ill-health,

disability, financial hardship or other disadvantage

- The advancement of animal welfare
- The promotion of the efficiency of the armed forces of the Crown; or the efficiency of the police, fire and rescue services or ambulance services
- Any other purposes charitable in law

Any purpose that is currently regarded as charitable will remain so but when these provisions of the Act come into force, any organisation wishing to be registered as a charity will have to demonstrate that their activities, or proposed activities, provide a benefit to the public.

There is provision for a new legal form for charities, the Charitable Incorporated Organisation(CIO), which will be regulated by the Commission and will have many of the advantages of a company limited by guarantee, such as limited liability and the ability to enter into contracts in its own name, without the added burden of companies law regulation.

The income threshold for mandatory registration for charities will be increased to £5,000.

The Act is a major new piece of legislation with many provisions which cannot be summarised here. Please contact us for further information.

## personal injury

Employers need to ensure they have full employers' liability insurance cover. Indeed some commercial contracts with consultants and others include a clause requiring that this be so.

A recent judgment has meant that the cost of care in big personal injury claims will rise. This is causing worries for some insurance companies and others.

In *Thompsonstone v Tameside and Glossop Acute Services NHS Trust* the court awarded periodical payments. These are often a sensible award to make as a person who is very seriously hurt may live for a long or short period which is unknown. Regular payments remove the problem of having to assess life expectancy for a lump sum. In this case the court did not link annual increases to the retail prices index

but instead ordered that payments should be varied by reference to an annual survey of hours and earnings. This index relates to the average earnings of care assistants and home carers, which have historically risen faster than the general rate of inflation.

Following amendments to the Damages Act 1996, it became mandatory for courts to consider periodical payments in all claims for future pecuniary loss and allowed them to make orders for periodical payments, irrespective of whether the parties agreed. Provision was made under section 2(8) for variation of the amount of the annual payment by reference to RPI. Section 2(9) of the 1996 Act lets the court modify the effect of section 2(8) by substituting an alternative index to RPI.

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This firm is regulated by  
the Law Society.

## Animal Welfare Act 2006

The new Animal Welfare Act 2006 is regarded by the Government as the most significant animal welfare legislation for nearly a century.

It aims to:

- reduce animal suffering by enabling preventive action to be taken before suffering occurs
- place on people who are responsible for domestic and companion animals a duty requiring them to do all that is reasonable to ensure the welfare of their animals
- extend the existing power to make secondary legislation to promote the welfare of farmed animals to non-farmed animals, bringing legislation for non-farmed animals in line with that for farmed animals
- deter persistent offenders by strengthening penalties and eliminating many loopholes in the current system. For example, those causing unnecessary suffering to an animal will face up to 51 weeks in prison, a fine of up to £20,000, or both
- simplify the legislation for enforcers and animal keepers by consolidating over 20 pieces of legislation into one
- extend to companion animals welfare codes agreed by

Parliament, a mechanism currently used to provide guidance on welfare standards for farmed animals

- strengthen and amend current offences related to animal fighting
- increase the effectiveness of law enforcement for animal welfare offences
- increase from 12 to 16 the minimum age at which a child may buy an animal, and prohibit the giving of pets as prizes to unaccompanied children under the age of 16.

Anything which occurs in the normal course of fishing is exempted entirely from the Act. However, all fish for which a person is responsible (such as ornamental fish and farmed fish) will be protected by both the cruelty offence and the duty to ensure welfare. The Act bans all mutilations of animals. The Act will increase from 12 to 16 the minimum age at which a child may buy a pet. This provision is intended to prevent purchase, without parental consent and to ensure that proper thought is given to subsequent care and welfare. If you need any advice on the new Act, please contact us.

## DTI crackdown on alleged company fraud

Department of Trade and Industry investigators and police have launched a three-county crackdown on 30 companies alleged to have defrauded legitimate businesses of over £10 million in January 2007.

In dawn raids across Nottinghamshire, Derbyshire and Leicestershire, investigators searched offices, homes and vehicles for evidence of fraudulent trading.

Codenamed Operation Barber, the searches involved some 200 officers from specialist police search teams and the DTI. Officers executed 31 search warrants, seizing items including computers, mobile phones and business documents. Companies searched include manufacturers, wholesalers, storage premises, accountants and property companies.

The case is about alleged commercial frauds, in which it is alleged that companies established lines of credit to buy easily disposable goods, and then went into liquidation having sold the goods without paying creditors. It is therefore a case relating to buying and selling. Of the 30 companies that are the subject of the investigation, 14 have ceased trading with combined debts of more than £10 million.