

one step ahead

summer 2007



Wortley Byers

The business minded law firm

dispute resolution department



Wortley Byers' team of experienced litigators are able to deal with both complex and routine litigation for individuals and businesses.

Whether you are facing a potential or actual claim we will provide you with clear and concise advice on the steps available to protect your interests. We can advise you if alternative dispute resolution, arbitration or adjudication might offer you a better outcome than conventional litigation.

If litigation is required, then our experience and advice will assist you in preparing your case to secure the best possible outcome.

congratulations to David McGuire

David McGuire successfully completed 'a highly challenging course' and has achieved the Certificate of Accreditation as a Mediator from CEDR (the Centre for Effective Dispute Resolution).

As a Mediator, David will assist disputing parties in resolving their differences and reaching an agreement. By reaching their own agreement parties can remove the risk of litigation, save thousands of pounds and reach a commercially acceptable decision. In order to gain the accreditation, David had to take

part in a five day course that reviewed dispute resolution, provided training in those methods and compared mediation with other types of assisted negotiation. Throughout the course David had the opportunity to learn and practise mediation skills. Two of the five days were assessed and once David had successfully completed the five days, he had to complete three written assignments.

Gaining accreditation with CEDR is particularly impressive as CEDR are widely acknowledged as the

We can deal with substantial, multi-party actions in the High Court whilst more routine matters are dealt with cost effectively at the right level.

We are able to assist with the full range of disputes that arise out of day-to-day business activities, including contentious employment and debt collection. Our Insolvency Unit advises on all aspects of insolvency and recovery providing services for creditors, debtors and insolvency practitioners.

Our Family Department has provided specialist advice for many years on all aspects of family law including divorce, financial issues and the breakdown of relationships where the parties are unmarried.

Ros Plumb in our Family Department is a member of Resolution whose code of practice commits to resolving disputes in a non-confrontational way. We believe that family law should be dealt with in a constructive way designed to preserve people's dignity and to encourage agreements.

Wendy Beach

Wortley Byers is delighted to welcome Wendy Beach to its Dispute Resolution Department.

Wendy is a commercial litigation solicitor with more than 15 years experience. Wendy recently joined us from a national practice. She deals with all commercial disputes including contract, professional negligence and administrative law. Wendy advises on the control of companies, director's duties and partnership disputes. Wendy has considerable experience in all aspects of insolvency and frequently acts for receivers and liquidators in recovery actions. If Wendy can assist you with any dispute, please contact her on 01277 268 321.

leading commercial mediation trainer.

The use of mediation as a means of settling disputes is now widespread particularly because it is actively encouraged by the courts and parties that decline mediation are often faced with adverse costs orders. The skills David has developed as a Mediator enhance his ability generally as a litigator and specifically in arranging mediation both for clients and as a Mediator. If David can assist you, please contact him on 01277 268312.

carers' new flexible working rights



Many of you will be familiar with the right for parents to request flexible working, but from 6th April 2007 this has been extended also to carers.

The Government estimates that about 2.6 million carers potentially may benefit from flexible working rights under the Work and Families Act.

Other measures previously introduced include;

- extending paid maternity and adoption leave to 9 months;
- introducing two weeks paid paternity leave;
- up to 13 weeks parental leave for parents of young and disabled children; and
- the right to a reasonable amount of unpaid time off work to deal with any emergency involving a dependant.

property changes: business leases and residential tenancy deposits

Many of our clients rent business premises, sometimes under long term business leases. A new Code for Leasing Business Premises has now been agreed. It is always wise to take legal advice on commercial leases. The new Code is a result of collaboration between commercial property professionals and industry bodies representing both owners and occupiers.

The Code is divided into three parts:

- 10 point requirements for landlords to ensure that they are Code compliant;
- a guide for occupiers; and
- a model Heads of Terms.

Budget changes

Since the last issue of this newsletter went to print, the Budget has taken place and many tax changes will affect our clients.

There are the usual increases in allowances and closing of tax loopholes. Anyone who was hoping to avoid buying an annuity with their pension fund and pass the fund on to their children has had that plan blocked in most cases.

For the 2007/2008 tax year the single person's allowance is set at £5225 which is the amount (for most people) that can be earned before tax is payable. The budget also set some tax rates for future years. From 6 April 2008, the 22% rate will be reduced to 20% which is the lowest basic rate tax level for 75 years and the 10% rate will be restricted to savings income and capital gains.

As for national insurance, the current rate for employees is 11% for income up to the upper cap. For the tax year 2009/10 onwards, the upper earnings limit for national insurance contributions will be aligned with the point at which the higher rate of income tax becomes payable after personal allowances have been taken into account. In other words there will be one earnings level at which higher rate tax

The definition of a Carer is an employee who is, or expects to be, caring for an adult who:

- is married to, or the partner or civil partner of the employee; or
- is a near relative of the employee; or
- falls into neither category but lives at the same address as the employee.

The definition of a relative includes parents, parents-in-law, adult child, adopted adult child, siblings (including those who are in-laws), uncles, aunts or grandparents and step-relatives.

The Government has recently announced that its plans for 6 months additional paternity leave are likely to be postponed until 2009 at the earliest, to allow for further consultation.

Please contact us for further information on this subject.

No one is obliged to follow the code and not all landlords will want to offer Code compliant leases however the Government is keen to encourage people to follow the code.

Another change our clients need to consider is the new deposit scheme of private tenants' deposits to be held by landlords which came into force on 1st April 2007.

Anyone with a property issue should contact us for further information and advice. Some landlords are not yet compliant with the scheme when in fact they should be.

becomes payable and below which the 11% NI is charged.

National insurance is levied at 1% above that level, making the effective combined higher rate of tax and national insurance 41%.

Inheritance tax for 2007/2008 is payable when the estate is £300,000 or over. However we can help advise you as to how to minimise the tax particularly through use of a will, leaving up to that sum to children rather than a surviving spouse, to take advantage on the first death of that nil rate band.

In terms of pension contributions for 2007/2008, individuals can put 100% of their annual earnings into a pension scheme or £225,000 whichever is the lower. This can be useful if an inheritance is received and the individual would like to use all their annual tax band for the pension or they live on investment or a spouse's income and wish to save the entirety of their earnings.

Also the Finance Act 2007 will define a Managed Service Company and treat income received from such an entity as subject to both PAYE and national insurance contributions from 6 April 2007. Any clients who make use of such companies should contact us for advice on this or on any other budget topic.

discrimination changes

Few readers will have missed the public debate about sexual orientation discrimination and access to services, in particular, in relation to whether religious adoption agencies should be forced to consider placing children with homosexual couples where that is against their religious principles.

However, the new rules are much broader than just that issue. Although the basic law banning discrimination on grounds of sexual orientation and religion came into force some time ago, rules relating to access to services on those grounds have only just now been applied. The new rules protect against discrimination on the grounds of sexual orientation, religion or belief when accessing goods, services and facilities.

The rules could have a wide impact. It is now illegal for example, for a shop or restaurant to refuse someone on the grounds of their religion or because they are homosexual. Similarly it would be illegal for a school to discriminate against a child because of their

parents' sexuality. The guidance which accompanies the regulations make it clear that businesses need to provide services in a non-discriminatory way. The new regulations are very similar to existing anti-discrimination measures that provide protection from race and sex discrimination in service provision.

The regulations mean that businesses must not:

- refuse to supply their normal service to someone, or treat them less well than others, on the grounds of their actual or presumed sexual orientation, or that of someone with whom they are associated or on the grounds of their religion or belief (or their lack of religion or belief);
- apply provisions, criteria or practices which put, or would put, people of a particular sexual orientation or people of a particular religion or belief at a disadvantage compared to others;

- treat civil partners on an unequal basis to those who are married, or treat same sex unmarried couples on an unequal basis to mixed-sex unmarried couples, in either case on grounds of their sexual orientation;

- treat someone less well because they have been involved in making, or supporting, a complaint about discrimination of this kind; unless they were acting maliciously in knowingly making a false complaint;

- advertise in a way which indicates an intention to discriminate unlawfully or get someone else to do any of these things.

There is also information on the DTI website: www.dti.gov.uk. Now may be a good time to update your policies and procedures in the employment field within your business, and also check compliance with legislation including access to your premises by the disabled and others.

For further information please contact us.

libel and slander online



For most individuals it is rarely worth the legal costs and risks of bringing an action for libel (or where spoken, slander). Businesses also should think carefully about such actions.

Sir Martin Sorrell in one libel case, accepted £120,000 as settlement without admission of liability in the High Court this year. He had sued FullSix Spa, Marco Benatti and Marco Tinelli for libel following the posting online of an anonymous blog (or web log). WPP Italy executive Daniela Weber in the case also accepted £30,000 in settlement of her action for invasion of privacy arising from the same alleged internet campaign. The case illustrates the importance of employees and others being aware that comments posted online can result in actions for defamation. Staff handbooks can set out policies which sensible employers can give employees for guidance in this area. If you would like us to update your policies for staff let us know. The employer is often liable for the comments of the employees particularly if it is a work related matter.

Some employers now check potential employees' *myspace* or *facebook* entries or search for their blogs online and many employees

fail to realise they may be presenting themselves in an unfavourable light online. Some employees hired by a new employer libel their employer on their personal weblog which although theoretically anonymous is often easily identifiable. We can advise you on this and other related issues.

In another case, website Mumsnet has settled with child care guru Gina Ford, for a reportedly 5 figure sum for costs, following threats to sue the site for comments posted by users of the site which were allegedly libelous. The Electronic Commerce Regulations provide that ISPs and others are not liable for illegal content they do not check in advance as long as they remove it quickly once it comes to their attention. Mumsnet founder Justine Roberts has asked the Government to reform the law. "Though we don't accept that any of the comments made on Mumsnet were defamatory, we took the decision to settle at least in part because of the distinct lack of clarity about how the defamation law applies to web forums", Roberts said. "Put simply, libel law has not caught up with the digital age. It regards a bulletin board just as it does a newspaper or a book, which is a bit like trying to use a set of railway signals to control the air traffic over Heathrow – the principles may be fine but different forms of communication, just like different forms of transport, require a different approach," she wrote.

Having clear policies helps employers if later problems arise and web sites can require those posting comments to indemnify (pay) the site if their comments lead to liability although in practice people posting may well have no funds to do so.

patent law, inventions and yoga positions!



In the UK, the Patents Act 1977 enables businesses to register inventions and obtain valuable protection usually for up to

20 years. Many of our clients patent their inventions in several countries to enable them fully to exploit and protect their rights.

We can advise you on issues such as ensuring confidentiality until a patent is applied for, where and what can be patented and how to license your rights to others in return for royalties. Patent licences need to be very carefully drafted.

There are also strict rules on which inventions employees will own and which the employer will own. In essence, those products in the course of the employee's normal duties, or duties specifically assigned to him or her, will be owned by the employer.

In a recent development, patenting of 'yoga positions' has been examined. The US Patent Office has apparently granted 150 yoga-related copyrights (in the US some copyright can be 'registered') and 2,315 yoga trademarks. The Indian government however is having old Sanskrit and Tamil texts translated and cataloguing ayurvedic medicines. The information will be made available in five languages so patent offices around the world can access it.

Patents are not available for information already in the public domain or in use so these texts may show some patents now applied for should not be granted.

US-based yoga instructor Bikram Choudhury insists that 'his' sequence of 26 bikram yoga poses can only be taught by graduates of his training school who have paid him a fee.

If you would like us to advise on issues relating to inventions, patents and licensing of rights, contact us for further information.

copyright

Many readers will have read the Da Vinci Code by Dan Brown. He earlier won a case against him for alleged breach of copyright. The Court of Appeal said he was not guilty of copyright infringement, leaving the claimants with a legal bill which may be up to £3 million. The Court of Appeal said that the ideas behind both books were too general to be protected by copyright law.

In another copyright case (Nova Productions) the court of appeal looked at copyright and computer programs and said that "merely making a program which will emulate another but which in no way involves copying the program code or any of the program's graphics is legitimate". If you propose to copy another business's work, website or even ideas, contact us first for legal advice as the law can be complex. It is worth also checking the following:

- Do you know what copyright works the business holds?
- Do you make it clear material is protected by copyright? Many businesses put copyright notices on their tender documents and products.
- Do you deal with copyright in contracts with suppliers, consultants and even in conditions of sale and purchase?
- Do you fully understand who will own rights in works produced for your business?
- Do you educate employees properly about copyright matters?
- Is all copyright in the business properly licensed including where newspaper articles are copied within a company, where music is used at the premises and where photographs are used in publicity material?

Contact us for any information or contracts you may need in this field or help with litigation.

consumer credit law changes

Consumers obtained new protection from unfair and dishonest lenders from 6th April 2007 in the biggest shake-up in consumer protection law for more than 30 years when the Consumer Credit Act 2006 came into force.

The changes include a right to:

- take complaints about lenders to the Financial Ombudsman Service (FOS); and,
- challenge unfair credit agreements in court.

The new law empowers the FOS to cover all licensed lenders. It currently covers around 70 per cent of lending activity. The change means the ombudsman service will now be able to consider a wider range of complaints, from car loans to pawnbroking and from store cards to hire purchase. The FOS investigates if a lender has acted irresponsibly in giving credit or advice. It can order a lender to pay compensation, repay interest and charges, and even write off debt. The Act also introduced an unfair relationships test, which enables consumers to challenge unfair credit agreements in court. The test will make it easier for consumers who have been treated unfairly to have their cases heard, the Government says. If you offer credit to consumers you may well need advice on the new law.

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