

LAW BRIEF

Landlords will need written agreements for all their tenancies

Landlords will have to provide written agreements for all tenancies under plans put forward by the Government.

Ministers say the agreements will "strengthen the hand of tenants" in the event of a dispute.

There will also be a new National Landlords Register which tenants can use to make basic checks when choosing accommodation. The register will provide information about how well landlords maintain their properties and deal with problems.

The register will also make it easier for councils to identify landlords and enforce regulations.

Tenants will be able to use a Government hotline to get free advice if they are experiencing difficulties with their landlord. This is expected to be available by the summer. Tenancy rights will be extended to 150,000 people living



in shared homes on a short term let basis. This will mainly help students and seasonal workers.

There will also be stricter regulation of managing and letting agents. Ministers

hope this will help tackle rogue agents who damage the reputation of the private rented sector. New regulations will be introduced to raise general standards and to eliminate bad practices such as wrongful eviction.

The measures have been put forward in a document entitled, *The Private Rented Sector: Professionalism and Quality: consultation responses and next steps*. The intention is to ensure that tenants are given greater legal protection and become more aware of their rights.

Ministers now plan to work with landlord and tenant groups to finalise the proposals. The forthcoming General Election may change things, of course, but currently the Government intends to introduce legislation to create the National Landlords Register and implement the stricter regulations.

The proposed measures are part of a continuing effort to provide more control over the private rented sector. A number of other regulations have been introduced over the last few years including tenancy deposit protection schemes, licensing for houses in multiple occupation and energy performance certificates.

Please contact us if you would like more information about landlord and tenant issues.

Fathers can share 'maternity' leave

New legislation will allow fathers to take additional paternity leave during the second six months of the baby's life if the mother decides to return to work.

The idea is to allow parents to share the mother's 12 months maternity entitlement if they so wish. The father could take up to six months leave in this way and for three of those months

he would be paid the same rate as Statutory Maternity Pay. The legislation is due to be in place by the end of this Parliament and to take effect for parents of children born after 3rd April next year.

Please contact us if you would like more information about employment law issues.

Company directors disqualified following regulatory breaches

Two financial advisers at a firm that went into administration after mis-selling investment products have been disqualified from acting as company directors.

The court heard they were responsible for regulatory breaches and keeping inadequate records.

The two men were directors of a regulated investment services company which sold structured capital at risk products known as SCARPS. The Financial Services Authority had investigated the company and the Financial Services Ombudsman had

upheld four complaints against it. The company then went into administration. Its liabilities were much greater than its assets and the Financial Services Compensation Scheme had to deal with thousands of substantial claims for compensation.

The High Court held that the advisers had under-rated the risk of the SCARPS they sold. While this by itself did not mean that they were so obviously incompetent that they should be disqualified, there were other reasons why they should be barred from acting as directors. They had used direct marketing to sell SCARPS without any

regard to the suitability of the product for the client. They had failed to comply with regulatory requirements that their marketing should be clear, fair and not misleading.

They did not properly explain to clients the risks involved or differentiate between fact and opinion. Their record keeping had also been woefully inadequate. The court held they were unfit to be directors and should be disqualified.

Please contact us if you would like more information about company law and compliance issues.

Bank ordered to install a lift for disabled customer

The importance of complying with the law relating to disability discrimination was illustrated in the much publicised case involving the Royal Bank of Scotland.

The bank lost its appeal against an injunction ordering it to install a lift for a disabled customer at one of its branches. The branch is a listed building and the cost of the alterations could be in the region of £200,000.

The case was brought by teenager David Allen who suffers from muscular dystrophy. He asked the bank to install the lift at a branch in Sheffield so he could access the premises in the same way as other customers.

The bank declined and invited Mr Allen to visit three other branches or use its services by other means such as the

internet. The judge at Sheffield County Court ruled that the bank had breached the Disability Discrimination Act and ordered it to install a lift. The court also awarded Mr Allen £6,500 compensation.

That decision has now been upheld by the Court of Appeal.

Giving the lead judgment, Lord Justice Dyson said: "The public at large have physical access to banks in order to make use of traditional counter banking services and the bank's non-disabled customers have physical access to all of its branches.

"The judge was entitled to conclude that the provision of the alternative methods of making those banking services available that were relied on by the bank was not a reasonable alternative, unless there was no reasonable way of



affording Mr Allen physical access to the main branch."

The Disability Discrimination Act 1995 requires businesses to make "reasonable adjustments" to enable customers to use their services. This case shows that the courts are prepared in some circumstances to interpret "reasonable adjustments" to mean that costly alterations should be carried out.

Please contact us if you would like more information.

Consultation begins on amendments to Companies Act

The latest raft of Companies Act measures only came into effect last October but already there are moves to make some amendments.

One issue to have emerged relates to registered office addresses. The Department for Business, Innovation and Skills (BIS) says there is evidence that some companies are using the addresses of other businesses or private individuals with whom they have no connection. This can be very distressing for those affected.

BIS has now begun a consultation seeking views on how to change the law to reduce the risk of innocent parties having their addresses used in this way. It is also looking at ways to allow companies to challenge information on the register.

The Act's requirements relating to "statements of capital" have also caused concern. The statements are a snapshot of share capital and must be produced at various stages of a company's life cycle, including each year in its annual return.



BIS says it has become clear that it could be difficult for some companies to comply with the requirement for certain financial information. It acknowledges that "in certain circumstances, it may not be possible or meaningful for a company to identify the amount of premium paid up on each share".

It is now looking at ways to amend the requirements in a way that will "balance the interest of third parties in obtaining information with the cost to the company of supplying it".

We shall keep clients informed of developments. In the meantime, please contact us for more information about the Companies Act and how it may impact on your business.

Compliance can be difficult

Court of Protection rules to be clearer and simpler

The rules and procedures for the Court of Protection are to be made simpler following complaints that the system is sometimes too formal.

The Court of Protection was created under the Mental Capacity Act 2005. Its role is to make decisions on behalf of people who lack the capacity to decide for themselves. It also appoints other people, known as deputies, to make decisions on behalf of others.

The issues involved relate to such things as property, financial affairs, health and personal welfare.

The President of the Court of Protection, Sir Mark Potter, has set up a committee to review the Court's rules together with its forms and practice directions. Sir Mark said: "The Court of Protection has faced a number of difficulties in its first two years and court users have complained that court procedure is too formal, particularly in relation to straightforward financial matters which are not contentious.

"My aim is to create a set of rules, practice directions and forms that are clear and simple for lay and professional users to understand. Where possible, the

committee should simplify the handling of routine property and affairs cases which constitute the majority of applications."

The Court may have experienced some difficulties but it still provides a way for families to get decisions made on behalf of loved ones who have lost the capacity to decide for themselves. This can be very helpful when such a person had not already granted someone authority to manage their affairs by registering a Lasting Power of Attorney.

Please contact us if you would like more information about the Court of Protection.

Green paper offers new hope to 'heroic' grandparents

Family breakdowns mean that grandparents sometimes have to suffer the heartache of being denied contact with their grandchildren.

They have no automatic contact rights which means they can face a difficult battle if they are denied access by a son or daughter-in-law, or even in some cases by their own children.

Now, proposed new legislation outlined by the Government in 'Support for All – the Families and Relationships Green Paper' could help to improve the situation.

Ministers want to make it easier for grandparents - described as "unsung heroes" by Children's minister Ed Balls - to seek contact with their grandchildren. As the law stands now, they have to get permission from a court before they can



even start to make an application for contact.

The proposed new measures would remove that hurdle making the process easier.

Court action ought to be a last resort, of course. The first step should be to approach the parent who is being obstructive and try to reach an agreement. This can be difficult if they are feeling bitter after the break-up of a relationship but in time, most people will realise the value of their child having contact with the grandparents.

If that doesn't work then mediation with the guidance of an independent mediator

might help. However, both sides have to agree so it may not always be suitable.

Legal action may then become necessary, although there's a good chance the problem could still be resolved before you get to court. Once the application is made, family advisory officers from the court agency CAFCASS may be appointed to examine welfare issues and prepare a report.

These reports are often strong enough to persuade the obstructive parent that contact would be good for their child. If not, the matter is likely to be decided by the court.

If the court decides in favour of contact with the grandparents then the parents will have to comply.

Legislation based on the Green Paper may still be a long way off but it should at least give grandparents confidence that the tide is turning in their favour and that their role in their grandchildren's lives is highly valued. In the meantime, they can still ask for court permission to make an application for contact.

Please contact us if you would like more information about this or any matter relating to family law.

Chancellor scraps plan to increase the inheritance tax threshold

The individual inheritance tax threshold is to remain unchanged at £325,000.

The Government had originally intended to increase the allowance to £350,000 but that plan has now been scrapped because of the recession.

Making the announcement in his pre-budget statement, the Chancellor, Alistair Darling, said: "I do not believe that raising this allowance can be a priority, given the impact of the downturn on the country's finances.

"So I have decided to freeze the individual allowance at £325,000 for the next year."

The announcement will be a disappointment to many people and highlights the need to plan ahead in order to ensure that as much of your estate as possible is passed on in a tax efficient way to your beneficiaries.

Government announcements on inheritance matters often prompt people to review their wills, trusts and overall financial arrangements. A little careful planning now can prevent thousands of pounds being wasted in the future.

Please contact us if you would like more information about wills, trusts and any matter relating to inheritance planning.

Huge rise in number of employees bringing unfair dismissal claims

The number of claims for unfair dismissal has risen by 29%, according to the latest figures released by the Tribunals Service.

There were also steep rises in the number of employees taking action over levels of redundancy pay and the failure by employers to consult properly when making redundancies.

The increases are largely down to the recession which has put enormous pressure on firms. The sudden nature of the downturn has meant some have rushed to lay people off without following the correct procedures.

This leaves them open to claims from staff who feel they haven't been treated properly or given the appropriate redundancy package.

The latest figures from the Tribunals Service cover the 12-month period up to March 2009. In that time the number of claims for unfair dismissal rose from

just under 41,000 to just under 53,000. Claims over failure to inform and consult on redundancies more than doubled

from 4,480 to 11,371. The number of claims over redundancy pay rose from 7,313 to 10,839.

The figures show the increasing willingness of employees to take action to protect their

interests. Economic pressure is also a factor. In the past, many employees who lost their jobs would find new work quite quickly and so would not feel the need to pursue a tribunal claim.

The recession has made it much harder to find work so people have fewer options. They may choose to take legal action to make up for their lack of income. Employers who don't follow the correct procedures when dealing with difficult issues are now more likely than ever before to find themselves facing an expensive compensation claim.

Please contact us if you would like more information about employment law.



Unqualified will writers putting families at risk

Badly drafted wills by unqualified and unregulated providers are putting families at risk of severe hardship, according to a report by the Law Society.

Research by the Society highlights cases where wills turn out to be invalid because they are not properly drawn up. This means the deceased person's estate is treated as if he died intestate – that is, without having made a will at all.

The estate is then divided in a way laid down by the law, which could mean it goes to people the deceased person had not chosen. The President of the Law Society, Robert Heslett, said: "Solicitors know of so many cases of people who have turned to them for help after being left with what can only be described as nightmare wills by will writers. In many



cases, the victims are not aware their will writer is not regulated nor insured, so there is no means of redress if things go wrong."

Sometimes, people are persuaded to use these unregulated will companies because they offer a cut-price service. In reality, however, that can turn out to be

a false economy. Mr Heslett said: "While the initial cost of using these will writers can appear cheap, rectifying the damage if things go wrong can add up to much more.

"We advise people in this situation to consult a solicitor to check the accuracy of their will before it is too late."

High Court provides boost for creditors pursuing debts

The High Court has ruled that creditors can still enforce debts even if the original loan or credit agreement is no longer available.

The case involved several major UK banks and their customers. It arose because under the Consumer Credit Act 1974, lenders must supply the borrower with a copy of the credit agreement within 12 days if asked to do so.

Some debtors have tried to use this requirement as a way of stopping debts being enforced when the creditor was unable to supply a copy of the original agreement.

Now Judge David Waksman has ruled that it is acceptable for the creditor to merely supply a reconstituted copy of the original loan agreement. Judge Waksman said: "The debtor has a



legitimate interest in seeing a copy of the agreement he signed, not in the sense of proof of execution but as information."

However, he then went on to say: "The absence of a copy of a signed executed agreement is no evidence that such an agreement was not made."

If the original loan agreement was not available it would be acceptable to provide a reconstituted version. This could be drawn up from other data held by the creditor but must include the name and address of the debtor as it

was at the time when the agreement was made.

"A creditor can satisfy its duty by providing a reconstituted version of the executed agreement which may be from sources other than the actual signed agreement itself." This did not mean that a creditor could simply invent a loan agreement retrospectively to comply with the law.

"It must - of necessity - be based upon records held as to the debtor and the agreement he made. That a creditor needs to take care when providing the copy is highlighted by the fact that it is implicit in its duty that it is an 'honest and accurate' copy."

Please contact us if you would like more information about recovering debts and ensuring prompt payment.

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