

Examples of legal articles you could use on your website

These are the articles we sent out in August to law firms that subscribe to our private client service. They contain news items that will be of interest to your private clients and can be placed on your website or used to create an email newsletter. This monthly newsfeed is free to law firms that subscribe to our quarterly 4-page newsletter for private clients. Alternatively, you can subscribe to them separately for just £95 per month plus VAT.

For more information, email nk@media-coverage.co.uk or phone Nick Kehoe on 0115 981 0288

August Private Client Website Articles

Stories included

Secretly obtained documents can not be used in divorce cases

Forced retirement at 65 to be scrapped

Father who owes £78,000 maintenance prevented from selling home

More protection against discrimination in shops and workplace

Neighbour dispute settled by assessing the lie of the land

New tax regime could 'impact on trusts and wills'

Abolition of HIPs tempts sellers back into housing market

Have your say on how to improve the family justice system

Injury victims subjected to 'shameful pressure' from insurers

Secretly obtained documents can not be used in divorce cases

A landmark ruling by the Court of Appeal means that couples in divorce cases will not be allowed to use secretly obtained confidential documents to prove their partner is withholding assets.

The case involved a wealthy couple who were in the middle of divorce proceedings. The woman's brother downloaded information which gave details about her husband's financial affairs.

They alleged the documents proved the husband was hiding the true extent of his wealth so he wouldn't have to give it to his wife as part of the divorce settlement.

The husband took legal action saying the brother had no right to download his private documents. He won his case in the High Court which granted an order that the documents should be handed back. That decision has now been upheld by the Court of Appeal.

It has never been permissible to obtain documents by force such as by breaking into a cabinet or an estranged partner's home. However, until now, there was a practice known as the Hildebrand rules which meant that if a husband or wife came across a confidential document proving that their partner was withholding money then they could use it as evidence in court.

That practice must now stop following the Appeal Court ruling. Many legal commentators believe the Hildebrand rules were in need of clarification due to the rapid rise in technology which means information can be accessed from emails or downloaded from a computer.

In giving his judgment, Lord Neuberger said: "It follows that nothing in the so-called Hildebrand rules can be relied upon in justification of, or as providing a defence to, conduct which would otherwise be criminal or actionable."

The judgment means that if a husband or wife in a divorce case take documents without permission, they could face heavy costs or even criminal proceedings.

They can still, of course, apply for a court order to obtain documents or freeze assets.

Please contact us if you would like more information about this or any aspect of matrimonial law.

Forced retirement at 65 to be scrapped

From October next year, your employer will no longer be able to force you to retire just because you've reached the age of 65.

The Government is scrapping the Default Retirement Age (DRA) which means thousands of people will be able to continue working unless their employer can show that there are valid reasons for obliging them to retire.

These reasons would have to relate to the nature of the work. For example, an employer might be able to show that an older employee could not carry out the tasks required of certain jobs such as police or fire officers.

Ministers are now beginning a consultation process on the issue but have already outlined the timetable for phasing out the DRA. It means that from 6th April 2011, employers will no longer be able to issue any notifications for compulsory retirement using the DRA procedure.

For the period between 6th April and 1st October 2011, only people who were notified before 6th April 2011 and whose retirement date is before 1st October 2011 can be retired compulsorily using the DRA.

After 1st October next year, the DRA can no longer be used to oblige employees to retire. If employers wish to retire an employee after that date they will have to show that their reasons are objectively justified. Pensions Minister Steve Webb said: "Many older people want to work after age 65 and have a wealth of skills and experience that are not being used. We want to get rid of the Default Retirement Age so that if they want to work they can do so. By spending longer in the workforce they can also have a better pension in retirement."

Please contact us if you would like more information about the issues raised in this article.

Father who owes £78,000 maintenance prevented from selling home

A father who owes £78,000 in unpaid maintenance has been prevented from selling his home. It was feared that he wanted to stop the Child Maintenance and Enforcement Commission (CMEC) from taking the property to settle his debt.

The man, who cannot be named for legal reasons, has paid nothing to his former partner for nearly 12 years. He failed to respond to letters and phone calls from the Child Support Agency (CSA) which is now part of CMEC.

The case is the first to be brought under new powers introduced in the latest child maintenance legislation. CMEC applied to the High Court to impose an order preventing the sale.

The orders are designed to stop parents putting assets in the names of relatives and new partners as a way of avoiding their duty to provide for their children. The Chair of the CMEC, Dame Janet Paraskeva, said: "Step-by-step the Commission is closing the escape routes for parents who think they can cheat their children out of money from which they are entitled to benefit.

"No longer can houses, cars and other valuable assets be sold off quickly to prevent the CSA taking possession of them. Those who cynically transfer the legal ownership of property into the names of their new partners risk having those transactions reversed."

The new powers have been welcomed by the family lawyers association, Resolution. CMEC has also begun Order for Sale proceedings against 500 properties belonging to parents who have failed to pay maintenance despite repeated efforts to get them to do so. The prospect of losing a home has proved very effective in persuading indebted parents to settle.

So far, more than £2m has been recovered but fewer than 15 properties have actually been taken and sold.

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

More protection against discrimination in shops and workplace

The new Equality Act will give people more protection against discrimination in the workplace and in premises where they buy goods and services.

The Government has announced that the Act will take effect in October as planned, although not all the new measures will be introduced at the same time. The Act makes it illegal to discriminate against a wide range of people who have what are described as “protected characteristics”.

These characteristics are:

- disability
- gender reassignment
- pregnancy and maternity
- race – including ethnic or national origins, colour and nationality
- religion or belief
- sex and sexual orientation.

There will be a slightly different way of defining disability which will extend protection to more people. It will be against the law for a restaurant to ask a mother to stop breastfeeding her baby or to move to a more private part of the premises.

With the exception of pregnancy and maternity, the protection also applies if a person is unfairly treated because they are wrongly perceived to have a particular characteristic.

This might apply, for example, if a person is discriminated against because they are perceived to be gay when in fact they are not.

The protection also extends to people who are treated unfairly because they associate with someone who has a protected characteristic.

The Act also introduces several changes relating to the workplace and employment law. For example, the Act develops the concept of indirect discrimination, which can occur when there is a rule or policy that applies to everybody but creates a disadvantage for employees with a particular protected characteristic. As with goods and services, there can be no discrimination relating to perception or association.

There are also changes relating to harassment and victimisation, and the Act introduces the concept of harassment by a third party. This means that employers are potentially liable for harassment of their staff by people they don't employ.

Not all the changes will be implemented at the same time and the Government is still considering its position on some of the equal pay measures outlined in the Act. Ministers are expected to offer more guidance over the coming months.

Please contact us if you would like more information about any of the issues raised in this article.

Neighbour dispute settled by assessing the lie of the land

A judge was entitled to settle a neighbour dispute by assessing the lie of the land when it was unclear from the legal documents where a boundary should be placed.

That was the ruling of the Court of Appeal in the case of two neighbours who both believed they owned the stream that separated their properties. Both properties were originally owned by the same person. When the land was split into two and sold separately, the plans and legal documents didn't make it clear where the boundary lay and who owned the stream.

At the time the first property was sold, there was a fence running alongside the stream on the side that would later become part of the second property.

The judge at the trial held that a reasonable person would have concluded that this fence formed the boundary of the first property and the stream was therefore part of that property.

The owner of the second property appealed saying that the judge had been influenced by inadmissible evidence and should not have looked beyond the legal documents.

The Court of Appeal dismissed this view, however, saying the judge's approach had been justified. Lord Justice Mummery said: "As the plan is insufficiently clear about the position of the boundary, this was a case in which the judge was entitled to take the plan in hand and look at the physical features of the land on the ground as at the date of the conveyance."

Please contact us if you would like more information about the issues raised in this article.

New tax regime could 'impact on trusts and wills'

Recent changes in the tax regime could have an adverse effect on many trusts and wills.

The new Government's first budget increased Capital Gains Tax (CGT) to 28% for higher rate taxpayers. The Law Society has warned that this new rate "will charge any gains made while an estate is being administered and also gains for the duration of a trust".

Will trusts, which are often created for the benefit of children, are particularly vulnerable to the changes. The President of the Law Society, Robert Heslett, said: "Many hardworking families will often look to create a protective tax regime for their children in the event that they are orphaned at a young age by leaving assets in trust until the children are old enough to manage the assets without the guiding hand of their parents.

"There is a real danger of trust assets being eroded through a combination of income tax at 50 per cent, CGT at 28 per cent and the impact of the changes to the inheritance regime introduced in 2006. Personal representatives, trustees and anyone else appointed to set up a trust and settle assets within it should urgently seek advice from their solicitor to ensure that arrangements are structured as tax efficiently as possible for the benefit of these vulnerable beneficiaries in the light of these new developments."

Please contact us if you would like more information about wills and trusts.

Abolition of HIPs 'tempts sellers' back into housing market

The Government's decision to get rid of Home Information Packs (HIPs) led to an increase in the number of people putting their homes up for sale, according to new research.

The Property Activity Index produced by Agency Express – the company that produces nearly a quarter of the UK's house 'For Sale' signs – reported a 1.8% increase in new properties coming on to the market in the month following the abolition of HIPs on 21st May.

This was in contrast to Scotland which reported a 14.8% drop in new properties coming on to the market. Scotland has retained its version of HIPs which are called Home Reports.

The Managing Director of Agency Express, Stephen Watson, said: "The Property Activity Index data confirms what we all suspected – that HIPs were an unnecessary and inhibitive addition to the house sales process."

HIPs had been widely criticised since their introduction in 2007 and the decision to abolish them was broadly welcomed across the housing market. However, sellers should remember that they still have legal obligations when they put their home up for sale. For example, they still have to provide an Energy Performance Certificate which grades the property's energy efficiency.

Please contact us if you would like more information about any aspect of buying a selling a property.

Have your say on how to improve the family justice system

The Government has invited people to express their views on how to improve family justice procedures to protect children and help families deal with their problems and disagreements.

The 'Call for Evidence' has been launched by the Family Justice Review Panel, which has been set up to conduct a fundamental review as outlined by the Government in the coalition agreement. It's intended that the review should be wide-ranging and should consider ways to improve mediation services and provide better contact rights for non-resident parents and grandparents.

The panel wants anyone interested in the family justice system to express their opinions on key areas such as:

- How can the justice system focus more on helping family members to reach agreement rather than pitting them against each other?
- How best can the courts working with other agencies support children involved in the care system?
- How best can the system provide greater contact rights to non-resident parents and grandparents?

The Chairman of the Review, David Norgrove, said: "The launch of this call for evidence is the start of a dialogue with all those involved in the system – from the children and families who use these services, to the wide range of professionals.

"We are ambitious in what we want to achieve; we would encourage as many people as possible to be ambitious in their responses."

The panel's report based on the feedback it receives is expected to be published next year.

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

Injury victims subjected to 'shameful pressure' from insurers

Insurance companies are being accused of pressurising accident victims into accepting reduced compensation awards before they get independent legal advice from their own solicitor.

The Association of Personal Injury Lawyers (APIL) says insurers can approach victims within days of the accident when they are often confused and vulnerable.

The high pressure tactics have become so widespread that APIL has sent a dossier to the Financial Services Authority highlighting several cases where insurers have tried to settle claims at far below their true value. Muiris Lyons, the president of APIL, said: "We have heard about quite shameful pressure to settle being brought to bear on vulnerable and injured people.

"The insurance industry is now euphemistically calling this 'third party assistance', but what many people won't realise or remember, often because they are shocked and vulnerable at the time, is that insurers' primary duty is to their shareholders, not the injured person.

"This obviously puts them in direct conflict with the victim."

One of the main problems is that most people know little about the compensation system and so are unable to assess whether a settlement offer from an insurance company is fair and reasonable. That is why it is essential that anyone injured in an accident through no fault of their own should seek advice from a solicitor who specialises in personal injury claims.

That way they can be sure that they will be properly compensated. They should not have to pay for this independent legal advice as the solicitor's fee can be recovered from the other party and their insurers.

Please contact us if you would like more information about making a personal injury claim.