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Summer  
2012

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Business Client UPDATE

## New legislation aims to ease burden on businesses

The Queen's Speech introduced several pieces of legislation that are likely to have a significant impact on businesses.

Some of the most significant changes are contained in the Enterprise and Regulatory Reform Bill, which ministers say will "overhaul the employment tribunal system and transform the dispute resolution landscape".

It's intended that the Bill will also "improve the effectiveness and efficiency of competition enforcement". Other key aims include reducing the burden on business by repealing unnecessary red tape and reforming the inspection system.

The Children and Families Bill will also affect businesses as it makes changes to shared parental leave and flexible working. The Government hasn't

announced full details about the proposed legislation but its plans for reforming the tribunal system are already at an advanced stage.

One of the key changes is likely to be a requirement that

workers bringing a claim against their employer would have to agree to try a conciliation process before being able to proceed to a tribunal.

Meanwhile, the Government has already introduced several changes to employment tribunals. The reforms are designed to ease some of the burden on employers and reduce the number of vexatious claims.

The main changes, effective from 6<sup>th</sup> April this year, are:

- *The qualifying period for claiming unfair dismissal rises from one to two years*
- *Judges will be able to sit alone in unfair dismissal cases*
- *Witness statements can be provided in writing as opposed to the current rules where a witness reads their own statement out aloud*
- *The maximum level for costs awarded to businesses winning a vexatious tribunal claim will rise from £10,000 to £20,000. Deposit orders required by claimants when a judge determines that part of a claim is unmerited will increase from £500 to £1,000.*

Ministers say the changes will provide direct net savings to businesses of £10m a year as well as wider benefits to



employers of more than £40m a year. Business secretary Vince Cable said: "For too long now the system in place for employment tribunals has been a bloated and bureaucratic obstacle for employers and the taxpayer.

"For employers they were finding that weak and vexatious cases were too much of the norm, too easy to bring forward, while for the taxpayer they were proving ever more expensive to run. We have seen claims drop in the last year and we want to see this continue as we introduce alternative measures in the coming months helping both parties resolve workplace disputes."

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



## Landlords must comply with new tenancy deposit rules

Landlords need to ensure they comply with tougher new tenancy deposit rules which came into effect on 6<sup>th</sup> April.

If they fail to do so, they could face fines and find it harder to evict tenants. The new rules are part of the Localism Act, which redefines the way landlords should protect the deposits given to them by their tenants.

Tenancy deposit schemes were originally introduced in 2007. Under that system, landlords had to protect a tenant's deposit with a registered scheme within 14 days of the tenancy start date.

If they failed to do so, they could be fined up to three times the amount of the deposit. However, subsequent

court cases watered down the effect of the regulations. It meant that if a tenant discovered that his deposit had not been placed with a scheme, the landlord could sometimes avoid penalties by rectifying the mistake before the court hearing took place.

The new rules take away that safety net. The landlord can no longer expect to escape punishment by complying retrospectively. The tenant can bring a claim from day 31 onwards if the conditions have not been met so there is no time to waste.

Landlords should also realise that they can't rely on Section 21 notices to evict tenants if they fail to comply with the tenancy deposit scheme requirements. The one good piece of news for



landlords is that they now have 30 days to protect a deposit for a tenancy begun after 6<sup>th</sup> April this year instead of just 14 days as before

The deadline for compliance for tenancies begun before 6<sup>th</sup> April was 6<sup>th</sup> May. Landlords who failed to comply by that date run the risk of penalties and should act as quickly as possible to protect themselves.

Please contact us about the issues raised in this article or any aspect of commercial property law.

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## Succession in family businesses

Handing over your family business to the next generation may seem straightforward but it can create unforeseen problems.

In fact, succession plans involving family members may contain more risks than handovers involving complete strangers. With strangers, people tend to be cautious and get legal advice; with family they often rely on goodwill and a muddle through attitude.

For example, it is not unusual for business owners to hand over their firm to their children with hardly any thought as to how they should share control and make decisions about future policy, or how they should resolve disagreements.

The result is often bitter family feuds further down the line as siblings vie for control.

The way to avoid succession problems is to prepare properly and draw up a legally binding agreement. One key requirement is a strategy for resolving disputes. This could be done by nominating an independent third party as an arbitrator. This should be someone who understands the business and is trusted by both sides.

It could, of course, be the person handing over the business, but an outsider might be a better choice as it avoids the problem of parents having to arbitrate between their children with all the resentment that can cause.

The first task of the independent arbitrator would be to try to help the two sides reach agreement.

If that proves impossible, the arbitrator could then make a decision based on principles set down by the parents and the successors when the handover agreement was drawn up.

Professional advice is important in all succession planning but particularly if you are passing the business on to family members because emotions can easily get in the way.

Sons and daughters may feel guilty that they are demanding too good a deal from their parents, while parents may feel they are taking too much out of the business making it difficult for their children to succeed in the future.

Independent opinions from lawyers and accountants can help guide and reassure both sides.

It may seem counter intuitive but the closer the family relationship, the greater the need for a formal agreement. After all, if siblings fall out in future they may not only destroy a business, they may also destroy family relationships.

Please contact us about the issues raised in this article or any aspect of succession planning.



## Firm repays deposits after 'diligence failure'

A developer of a block of flats has been ordered to return deposits to purchasers because the building was not completed on time.

However, it was not the delay itself that caused the problem, but the lack of due diligence in failing to get the work done as quickly as possible after problems arose.

In February 2008, the developer took deposits from several people buying long leases on flats in a large apartment block. The flats were due to be ready by April 2009.

However, work on the development stopped when the main contractor went into administration in October 2008.



The purchasers waited for more than a year but when the flats were still not completed in February 2010, they asked for their deposits to be returned.

The court held that the delay itself did not necessarily mean that the developer was in breach of contract.

The issue was whether due diligence had been shown in making sure the project was finished as quickly as possible after the main contractor went into administration. All the evidence suggested

that there was no serious obstacle to the work being restarted by June 2009 and completed soon afterwards. Instead, the developer began to consider whether it might be more profitable to turn the development into a hotel instead of a block of flats.

The procrastination continued for several months before the decision was taken to continue with the flats, which were eventually completed in 2011.

The developer was therefore in breach of a term in the contract requiring that the flats be completed with due diligence.

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

Please contact us if you would like more information about the issues raised in this newsletter or if you need advice on any other legal matters.

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