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Business Client UPDATE

Boost for businesses paying empty property rates

The High Court has provided a welcome boost for landlords and businesses wishing to avoid paying rates on empty commercial property.

Currently, business rates are charged on nearly all non-domestic properties such as shops, offices and factories while they are in use.

Properties with a rateable value of less than £2,600 are exempt from rates when they become vacant.

However, buildings with a rateable value above £2,600 only qualify for a three-month exemption period if they are unoccupied. After that, empty property rates become payable. Some industrial

premises qualify for a six-month exemption period.

The charges can be a drain on company finances but thankfully, there is some relief in the form of the 42-day rule. This means that if a business property is occupied for six weeks and full rates are paid, then it will qualify again for an exemption period.

This is helpful but it raises the question: what level of occupation is needed to trigger further grace periods?

A recent High Court ruling suggests the level of occupation can be very low indeed. The Makro cash and carry chain used a 140,000 sq ft warehouse to store



just 16 pallets of documents for six weeks. It then applied for an exemption period and has now won its case in the High Court.

The judge held that even though the usage amounted to only 0.2% of the total warehouse capacity, it was enough to qualify for an exemption from rates.

It's clearly good news for landlords and companies who can't offload surplus space. It will allow them more scope to manage tax liabilities and give them more confidence to use the 42-day rule.

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Meanwhile, landlords need to ensure they include their name and address when sending payment demands to tenants.

Failure to do so could result in tenants refusing to pay, as happened in a recent case that ended in legal proceedings.

It involved a landlord who asked his agent to serve demands for payment of outstanding service charges. The address given on the demand was the business address of the agent.

The Leasehold Valuation Tribunal said the charges were not payable because the landlord had not given his own address, as required by the Landlord and Tenant Act 1987.

That decision was upheld by the Upper Tribunal. However, the tribunal added that it would be inappropriate for the merits of the case to be thwarted by a purely technical point of law.

Therefore, if the landlord served a demand giving the correct address, the service charges would be payable.

Please contact us if you would like more information about any aspect of commercial property law.

Restrictive covenant balancing act

It is vital to get the balance right when trying to protect your business by subjecting employees to restrictive covenants.

If the conditions are not strict enough, they may not prevent the employee setting up a rival enterprise or helping a rival firm; if they are too strict, they may not be enforceable, as in a recent case before the High Court.

The case involved an online bicycle retailer. It employed a merchandiser who was subject to a non-competition covenant stipulating that once his employment terminated, he would not engage in "any business or activity carried out by the company" for a period of 12 months.

There was a second covenant stating that the merchandiser would not make use of or communicate the company's trade secrets or confidential information at any time.

The merchandiser then moved to another bike company as head of buying. His former employer tried to invoke the covenants.

The High Court, however, refused to enforce them. It held that the merchandiser's role with his former company had been to analyse

financial information with a view to making business decisions.

It did not involve contact with customers and was different to his role with his new firm.

The stipulation that he could not engage in "any business or activity carried out by the company" was too wide and could not be upheld.

The court held that the second clause was also unenforceable. The confidential material was so voluminous that it defied the imagination to suggest that it could be carried away in a person's head. It was also unreasonable in its scope and length. It was unrealistic to imagine that the merchandiser could have accurate recall of all that information for 12 months.

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



EU Unified Patent Court to have London section

EU leaders have reached agreement on a Unified Patent Court and a unitary patent system across 25 European countries.

The court will be based in Paris but will have a London section covering cases involving pharmaceutical and life science issues. There will also be a section in Munich covering engineering and resources.

Business Secretary Vince Cable (pictured right) said: "The deal means for the first time a single patent will be valid across 25 European countries. The reduced translation costs and simplified enforcement regime will help to support innovative companies and make an important contribution to growth across Europe.

"The key changes to the design of the system will safeguard against delays and uncertainty in settling patent disputes. This was a key concern raised by UK stakeholders. This agreement should provide a significant boost to UK and European innovative businesses at a time when new sources of economic growth are important."



- faster applications

The Intellectual Property Office (IPO) has announced new measures to make the international system of patent application faster and more efficient.

The changes affect the UK's fast track system and will allow applicants to make changes to an international application while still requesting accelerated processing in the UK. The IPO says this will remove a bureaucratic hurdle and increase the flexibility of the patent application process.

The changes are part of a wider effort by the UK and US intellectual property authorities to get more businesses to use the Patent Co-operation Treaty.

The treaty is designed to enable businesses to save both time and money while seeking global protection for their patents.

Please contact us if you would like more information about copyright, trademark and patent issues.



Late payment threatens survival of smaller businesses

The growing problem of late payment is threatening the survival of many SMEs, according to new research.

The credit reference agency Graydon UK, working in conjunction with the Forum of Private Business, surveyed 500 small firms across the UK. The responses showed that 16% had almost been put out of business as a result of late payment. A total of 51% cited it as a problem, and 23% said it was a serious problem.

The researchers say that the "domino effect" meant that the late payment cycle was passed on to other firms further down the supply chain. The survey showed that 56% of firms that weren't paid on time had subsequently been unable to pay their own suppliers on time.



A total of 45% of firms said that late payment had eroded their profits, and 23% admitted it had reduced their ability to innovate and invest in growth.

In spite of all these problems, few of the firms surveyed were taking formal action to ensure payment.

A spokesman for Graydon said: "The

current economic climate makes it more important than ever that companies clearly understand the risks and opportunities associated with their operations. This includes identifying the cash flow and other risks triggered by the late payment of trade invoices by customers.

"Companies cannot achieve sustainable growth if they aren't paid on time consistently. This is why having a formal credit management process based on reliable, accurate customer payment behaviour information is essential for businesses who want to transact with confidence and fulfil their sustainable growth potential."

Please contact us if you would like advice on how to recover your debts quickly and cost effectively.

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Occasionally, you might want to advertise a surgery or seminar.

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Government sets tribunal fees for employees

Employees will soon have to pay £1,200 to bring an unfair dismissal claim to an employment tribunal.

The new fee arrangement will be introduced next summer and follows widespread consultation with business leaders and trade unions.

Currently, employees don't need to pay to make a claim. This has led to complaints from some businesses that it is too easy for disgruntled staff to waste time with frivolous claims.

Starting next summer, employees will need to pay a fee upfront to raise a claim and then another when the case is referred to a tribunal.

The measure is designed to reduce the cost that the tribunal system places on the taxpayer. During the financial year 2010-11, there were 218,000 claims and 2,048 appeals at employment tribunals. This cost the taxpayer £84.2m.

It's hoped the new fee system will encourage employers and claimants to mediate or settle a claim through negotiation without having to proceed to a full hearing. Justice Minister Jonathan Djangoly said: "It's not fair on the taxpayer to foot the entire £84m bill for



people to escalate workplace disputes to a tribunal. We want people, where they can, to pay a fair contribution for the system they are using, which will encourage them to look for alternatives. It is in everyone's interest to avoid drawn-out disputes which emotionally damage workers and financially damage businesses."

The Government has made the fees slightly lower than originally planned in order to "strike a fair balance" between people with genuine claims and employers defending themselves against frivolous claims.

Claims will be divided into two categories and will be charged accordingly. A 'level 1' claim includes matters such as holiday pay and

redundancy. A 'level 2' claim covers issues such as discrimination and unfair dismissal.

A level 1 claim will cost an issue fee of £160. If the case is taken to a full hearing a further £230 will be payable making a total cost of £390.

Level 2 claims will cost an initial £250 plus a hearing fee of £950 making a total of £1,200. The fee for mediation by a judge will be £600. People on low incomes can apply for exemption from the fees. If the claimant wins his case it is expected that he would receive the fee back as part of the settlement.

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

New tenant was not entitled to exercise break clause

Businesses need to take great care when taking over a lease on commercial property from another firm.

They may find that they don't automatically inherit all the entitlements

that were granted to the original leaseholder.

The issue arose recently in a case involving a company called Gemini Press Ltd. It took over a lease which had

originally been assigned to a firm called Ashdown. The original lease provided the tenant with several entitlements including the right to exercise a break clause.

Gemini later decided to exercise the break clause but was told it could not do so. The County Court held that the break clause referred to Ashdown specifically by name and so the right did not transfer to subsequent tenants who took over the lease.

This meant Gemini was liable to pay rent arrears to the landlord. Gemini appealed but the High Court upheld the decision. It held that there was no doubt that the break clause right was specific to Ashdown and was not transferable.

The economic downturn has made it more difficult to let commercial premises and this has made landlords more willing to assert their legal rights. It means that now more than ever, great care needs to be taken when dealing with leases and entitlements.

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

Engineering firm wins its battle over unpaid invoices

A British engineering firm has won its legal battle with a French company that refused to pay its invoices after claiming the goods supplied were unfit for purpose.

The issue arose when the French firm complained that the various pieces of engineering machinery did not have certificates of conformity which are necessary under an EU directive.

It said this meant they could not be sold and so were unfit for purpose under the Sale of Goods Act 1979.

This was in spite of the fact that it had actually sold each piece of equipment to its own customers both in and outside the European Union.

The court held that the machines clearly were fit for purpose as the



French firm had been able to sell them in different European countries.

The Court of Appeal has now upheld that decision. It said there was no evidence that the EU Directive had been brought into effect in the member states where the French firm was trading. On that basis, the claim that the goods were unsaleable could not succeed.

Please contact us if you would like more information about issues relating to contract law.

Mentors to encourage women entrepreneurs

The Government wants to see more women starting new businesses in the UK.

It says it's important to increase the number of female entrepreneurs as a way of boosting the economy and creating more jobs. The number of new companies has actually grown during the recession. Many of them have been set up by people who've lost their jobs and are using their redundancy pay to fund a new enterprise.

Research by Lloyds TSB Business Insurance revealed that there has also been a rise in the number of home based businesses. The figure currently stands at around six million.

However, the majority of new businesses are being set up by men. Ministers say that if women started businesses at the same rate as men it would lead to an additional 150,000 start-ups a year. If female entrepreneurship in the UK reached the same levels as in the US, it would add an extra £42bn to the economy.

In an attempt to help women create new firms, the Government is recruiting thousands of established female entrepreneurs to act as mentors. Leading executives such as Dame Mary Perkins, who founded Specsavers, have already



agreed to take part. The Home Secretary and minister for women, Theresa May, said: "Women are vital to Britain's economic future and the support of a mentor will help even more of them fulfil their true potential."

Setting up a new business can be very exciting and satisfying but it is not without risk. There are several potential pitfalls that could damage a new enterprise and prevent it succeeding. It's important that before starting out, budding entrepreneurs should seek legal advice on a whole range of matters from leasehold agreements to business contracts and employment issues.

There are also important questions about the structure of a new company. For example, should you set up as a sole trader, as part of a partnership or as a limited company? You may wish to consider a franchise arrangement.

We have helped numerous new businesses get off the ground and are happy to offer advice on such things as setting up as a sole trader, partnership or new company. We also have several associates who can bring added value to the service we provide, including accountants, surveyors, valuers and financial advisers.

Please contact us if you would like more information about starting a new business or developing an existing company.

Revamped planning system to be 'simpler and quicker'

The Government has announced further changes to the planning system to make it simpler and quicker.

The measures include making it easier to re-use some existing buildings without the need for planning permission.

This would include the 'meanwhile' use of vacant commercial premises for purposes such as helping start-up businesses. Other measures include:

- Cutting out unnecessary information in the application process to make



the system clearer, and easier to use, without undermining the ability of councils to make well-informed decisions.

- Uprating local councils' planning fees in line with inflation thereby reducing the burden on ordinary council

taxpayers, who otherwise end up subsidising developers.

- Speeding up the process for determining planning appeals.
- Making technical changes to the operation of the Community Infrastructure Levy to ensure that developers are not charged twice on the same development if they amend existing planning consent.

Please contact us if you would like more information about planning and development issues.

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