UK200Group

independent quality assured professionals

infocus

Legal Update

Issue date: September 2013

Welcome to the 2013 second issue of Legal Update

As always we have selected a range of relevant topics on which UK200Group Lawyer members have written using their specialist knowledge and expertise to inform on key issues which client businesses should be aware of for the benefit of their business, their employees, themselves and their family, where appropriate.

Consumer protection – website terms

Martin McKinnell, The Endeavour Partnership LLP
m.mckinnell@endeavourpartnership.com +44 (0)1642 610307

Contributor
ENDEAVOUR PARTNERSHIP
Business Lawyers

The Distance Selling Regulations 2000 (DSR) and the Electronic Commerce (EC Directive) Regulations 2002 (ECR) are the main regulations that govern online consumer protection here in the U.K.

The DSR apply when goods and/or services are bought by / sold to consumers over the internet or by other means of 'distance selling'. The regulations identify certain information which must be provided to consumers before and after an online sale (e.g. price) but, more significantly, provide consumers with a 'cooling-off period' giving them the right to withdraw from a contract within 7 working days, without penalty and without reason (there are however exceptions to this rule).

The ECR stipulates information that must be provided by online suppliers to their customers including their name, address and corporate registration details. Additional requirements are also set out such as the requirement to inform the customer of the steps required to conclude the contract with the supplier and the obligation to provide an acknowledgement of orders placed. The regulations also introduce the 'country of origin' principle into U.K. law meaning that suppliers are only obliged to comply with the laws of the E.U. country in which they are based and should not be subject to other requirements when selling goods in other E.U. countries. E.U. consumers however enjoy a limited exception to this rule and may continue to rely on the laws of the country in which they are based in respect of the quality and safety of products, unfair contract terms and other consumer related regulation.

It is clear that the law gives special protection to consumers operating in the online world which means that online suppliers should tailor their website terms and operations accordingly in order to avoid being imposed with financial and other penalties and, in some cases, criminal sanctions.

Data protection – Large fines are here to stay

Laurie Heizler, Barlow Robbins LLP
laurieheizler@barlowrobbins.com +44 (0)1483 464272

Contributor
BARLOW ROBBINS SOLICITORS

Organisations that handle personal data usually take their compliance requirements very seriously but the monetary penalties for getting it wrong were never high. That changed in 2010 when data protection legislation was amended to allow the Information Commissioner's Office to exact fines up to £500,000 on data controllers who seriously contravene the law.

Fines are often imposed for breach of the Seventh Data Protection Principle. This obliges controllers to take steps to prevent accidental loss, destruction or damage to personal data. Clearly, loss of personal data such as financial or health information can cause significant damage and distress. The ICO will calculate the level of fine depending upon the actual or potential likelihood of harm to data subjects as well as the steps the controller takes to mitigate such risk. Account may be taken of the size of the business and its ability to pay without suffering undue financial hardship.

Sony Computer Entertainment Europe has been fined £250,000 following the hacking of its PlayStation network in 2011. Sony is said not to have done enough to protect its network from infiltration and "denial of service" attacks which resulted in subscribers' contact details, passwords and credit card numbers becoming accessible externally. The fine has taken account of the aggravating factors such as the large amount of data that was leaked and the inadequacy of Sony's security measures. The sufficiency of the steps Sony has taken to prevent any repeated breach was also assessed. Sony has considered an appeal. There is now a precedent (the Scottish Borders Council case) for reducing a fine that the ICO cannot justify by taking all factors into account.

Private businesses of all kinds are now very much at risk of being fined if they do not take their data security responsibilities seriously. They must have adequate contracts in place with third parties who handle personal data on their behalf. Penalties could be larger than the penalty levied on Sony if the EU Data Protection Regulation comes into force. It may contain provisions to fine an organisation up to 2% of its world turnover for serious violations.

Seven golden rules for directors

Fiona Gibbon, The Endeavour Partnership LLP
f.gibbon@endeavourpartnership.com +44 (0)1642 610343

Contributor

ENDEAVOUR PARTNERSHIP
Business Lawyers

Directors need to be made aware that they are personally subject to certain duties in their capacity as directors of a limited company.

Historically, the duties owed by directors to their companies have evolved through case law. The Companies Act 2006 codified these and introduced a statutory statement of directors' duties which aimed to replace many of those existing common law duties and enshrine them in law.

It is also worth noting that the law does not distinguish between executive and non-executive directors, so such duties apply to both categories of directors.

Essentially, there are 7 duties that directors should have in their minds at all times:

1. To promote the success of the company
2. To act within powers of the company's constitution
3. To exercise independent judgment
4. To exercise reasonable care, skill and diligence
5. To avoid conflicts of interest
6. To not to accept benefits from third parties
7. To declare an interest in a proposed transaction or arrangement with the company

Broadly speaking it is hoped that by setting out these duties in statute it brings greater clarity and certainty to directors duties, ensures that the company's interests should always come first and that directors, when making decisions, should always have these duties at the fore front of their minds.

Registration of charges

Philip Ball, Myerson Solicitors LLP
philip.ball@myerson.co.uk +44 (0)161 941 4000

Contributor

myerson

It has long been the case that a charge (e.g. a mortgage or debenture) created over the assets of a company must be registered at Companies House within 21 days or it will be unenforceable. The law governing the registration of charges was updated earlier this year. Companies House have traditionally taken a very strict approach to the registration procedures and the consequences for failing to register before the deadline can be severe.

Some of the main changes are:

- A new form MR01 for where there is a document creating the charge (replacing the old form MG01), containing more information (e.g. whether there is a negative pledge). There is a new form MR08 for where there is no document creating the charge.
- A certified copy of the document creating the charge should be submitted; originals should not be sent as they will now be retained by Companies House. Copies of charge documents will now be available to download online.
- It will be possible to register security interests online using Webfiling, either where a company is registering a charge against itself, or where a lender (with a lender authentication code) is registering its security interest over another company.
- It is now possible to sign up to be contacted by email to make corrections to submissions, but this will not apply to all errors (e.g. incorrect company numbers/names cannot be corrected).

The move towards online filing is welcome as it has modernised and accelerated the registration process, however it is of limited value to anyone other than lenders. The email correction system is also a step in the right direction but the opportunity has been missed to provide a comprehensive online registration process that is available to everyone.

Forfeiture of leases while a tenant is in administration

Contributor

Nicola Quigley, The Endeavour Partnership LLP
n.quigley@endeavourpartnership.com +44 (0)1642 610345

ENDEAVOUR PARTNERSHIP
Business Lawyers

Most commercial leases contain a forfeiture clause which enables a landlord to recover possession of the property in certain circumstances, which will usually include rent arrears.

If a tenant goes into administration, the administrator may continue to occupy the property or grant a licence to a potential buyer of the company in breach of the terms of the lease. The fact that someone is occupying the property does not necessarily mean rent will be paid. Administrators are very reluctant to pay rent, as it would become an administration expense and so be paid in priority to their own fees.

A landlord may think he can seek to recover rent arrears by threatening forfeiture, but things are not that straightforward and, notwithstanding the provisions of the lease, a landlord's options are severely restricted.

Administration brings with it a moratorium which is effectively a freeze on creditors (including landlords) taking action against the company without consent. This prevents a landlord from forfeiting the lease without either the administrator's consent or the Court's permission. The Court will only give permission for forfeiture if it will not prejudice the administration by preventing it from achieving its purpose, that is rescuing the company as a going concern or getting a better recovery for its creditors than would be achieved in a liquidation.

Recent case law has, however, seen the courts prepared to allow a Landlord to exercise rights to forfeit a lease, notwithstanding the fact that the breach was that the administrator had allowed a buyer of the company to occupy the property.

Landlords are well advised to seek legal advice as soon as they think a tenant may be in financial difficulties to ensure they protect their position.

Relaxation of permitted development rights – a bonus or not?

Contributor

Amanda Freeman, Myerson Solicitors LLP
amanda.freeman@myerson.co.uk +44 (0)161 941 4000

myerson

The Town and Country Planning (General Permitted Development) Order 1995 allows property owners and developers to make certain changes to a building without the need to apply for potentially expensive and laborious planning permission. New regulations came into force on 30th May 2013 that increase these permitted development and change of use rights which will remain in force until 30th May 2016.

The Changes

In addition to allowing more significant extensions to both residential and commercial properties without the need for full planning, there has been a significant relaxation in planning rules for changes of use:

- Offices can be converted into homes.
- High street premises can be used for new types of business. Buildings that are classed for use as retail, financial services, restaurants, pubs and hot food takeaways, offices, leisure and assembly uses can temporarily change to another use class.
- Existing agricultural buildings under 500m^2 can be used for a range of new uses such as shops or offices. For buildings between 150m^2 and 500m^2, prior approval is required, to ensure that the change of use does not create unacceptable impacts, such as noise or transport problems.
- The thresholds for business change of use increases from 235m^2 to 500m^2 for change of use from offices and general industrial use to storage and distribution, and from general industrial and storage or distribution to offices.

Property

The Impact

It is too early to tell whether there has been a significant positive impact brought about by the changes but logic would dictate that the number of unsightly empty units (especially disused offices above retail units in town centres) should reduce as developers can convert these into apartments with a reduction in red tape and associated planning costs.

The increase in the various thresholds has enhanced flexibility for small businesses and the agricultural sector and there is evidence to suggest this should support growth of those businesses.

However, some argue that the changes have simply allowed developers to gain at the expense of the local economy with local authorities missing out on income streams which were previously used to invest in the local infrastructure.

Litigation

Interest rate swap mis-selling

John Walker, Howe & Co
j.walker@howe.co.uk +44 (0)020 8840 4688

Contributor
Howe+Co SOLICITORS

I wrote an article in May this year for the UK200Group on swap mis-selling and the regulator's proposals for redress. In the article, I concluded (without stretching) that "businesses would benefit from professional advice today no less than was the case before the Pilot Scheme was undertaken". There are many tens of thousands of businesses that have been affected by the swap mis-selling saga. However, my sense (based on a statistical sampling which makes no claim to being accurately representative) is that only a relatively modest percentage of affected businesses have sought professional advice. This raises the question as to why this might be the case?

It seems to me that there are a number of reasons. In no particular order of priority, first, there is a concern that litigious moves against its bank will materially and adversely affect the ability of the business to enter into or extend its loan arrangements or overdraft facilities with the bank. Plainly, a serious business concern. Moreover, alternative sources of finance have rarely been harder to find. Secondly, litigation consumes resources. Businesses of the size at which we are looking do not, typically, have in house lawyers or other staff readily able to run litigation for the business. The task falls upon the business owners whose primary role is to run and expand the business. Time spent on litigation is time not spent on the business. During the last few turbulent years, businesses have required the entire attention of their owners. Thirdly, there is the spectre of cost. There is no budget in the businesses for this cost. In addition, for many it is the unaffordable expense to the business of the swap that is so problematic; this hardly makes the prospect of additional cost palatable. As we know, there are ways to manage the cost issue but much of this is lost on a business that is burdened by swap expense.

Perhaps it is the case that for some, troubled by one or more of the foregoing issues, the redress process run by the banks may be a more appropriate forum for airing complaint and seeking resolution. This process is not perceived by the banks as being as combative as litigation, will be less time consuming to a complainant and has fewer troubling costs issues. However, it remains the case that a complainant would be ill advised to pursue this process without professional guidance. This is recognised by the redress process and costs of professional advice incurred by claimants are able to be recovered from the banks. I would, therefore, reiterate that "businesses would benefit from professional advice".

Funding litigation: a brave new world?

Gemma Carson, Wright Hassall LLP
gemma.carson@wrighthassall.co.uk +44 (0)1926 883029

Contributor

WRIGHT HASSALL SOLICITORS

On 1 April 2013 the litigation costs landscape changed fundamentally as many of the costs reforms, proposed by Lord Justice Jackson and incorporated into the Legal Aid, Sentencing and Punishment of Offenders Act 2012, became law.

- The significant change is the introduction of Damage Based Agreements (DBA) – also known as contingency fees - whereby the client agrees to pay their lawyer a percentage (up to a maximum of 50%) of the sums (or damages) recovered from the losing party. By the same token, if the case is lost then there are no fees payable.
- Conditional fees (CFAs) are still permissible but the winning claimant can no longer recover either success fees or (except in very particular circumstances) insurance premiums from an opponent.
- After the Event (ATE) insurance is also permissible but the premium, in the event of the case being won, cannot be recovered from the opponent. The parties to a case worth less than £2m are now required to submit a budget for the cost of the litigation; this will help to ascertain what insurance cover is likely to be needed.
- Third Party Funding could be considered in high value cases with good prospects of success. As it is seen as an investment opportunity it will be principally attractive to institutional investors, private equity and private investors.

Although there are concerns that the new rules will cause some potential litigants to struggle to fund their cases, we are confident that for cases of merit, there are enough funding options available to enable a claimant to pursue litigation without having to worry unduly about fees. If you have a dispute, do get in touch and we will go through all the options available with you and recommend which funding route is most likely to suit your case.

Legal advice privilege – can it be extended to accountants and tax advisers?

Hamish Cameron Blackie, Goodyear Blackie Herrington
hamish@gbhlaw.co.uk +44 (0)1252 704001

Contributor

Goodyear Blackie Herrington Solicitors

Legal advice privilege enables a client to place unrestricted confidence in the fact that communications with his lawyer will remain confidential. It applies to confidential communications which pass between a client and his lawyer which have come into existence for the purpose of giving or receiving legal advice about what should prudently and sensibly be done in the relevant legal context. It can cover tax advice.

In R (Prudential PLC and another) v Special Commissioner of Income Tax and another [2013] UKSC 1, the Supreme Court refused to extend the availability of legal advice privilege beyond members of the legal profession. By a majority of five to two, it refused to protect the legal advice given by PricewaterhouseCoopers to its clients. Lord Neuberger conceded that the protection of legal advice emanating from members of the legal profession but not from accountants was illogical in the modern world, but the Court concluded that it was not for the Court to change the law which had been endorsed by Parliament. Lord Clarke said that he hoped that the issue would be considered by Parliament soon.

For the time being, tax advice from accountants is not protected in the same way as tax advice from lawyers, and if this is an issue for the client then it may be appropriate to recommend that the advice is channelled through a law firm even though ultimately the advice comes from an accountant engaged through the law firm to provide the advice.

Constructive dismissal

Hamish Cameron Blackie, Goodyear Blackie Herrington
hamish@gbhlaw.co.uk +44 (0)1252 704001

Contributor

Goodyear Blackie Herrington Solicitors

Employers worry about the prospect of constructive dismissal claims. In fact successful unfair constructive dismissal claims are quite rare, especially in well run businesses because underlying any claim for constructive dismissal has to be a breach of contract on the part of the employer – and no ordinary breach of contract. This has to be a fundamental breach of contract which, as the expression goes, goes to the root of the contract. The employer's conduct has to demonstrate that the employer no longer feels constrained by the fundamental terms of the employment bargain.

The most common form of constructive dismissal claim (though not the only one) arises out of an alleged breach of the implied term of mutual trust and confidence. However, the test is a high hurdle to overcome. The employee must show that the employer has without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. One can see from this definition that there are three legs to a complete defence:

- "reasonable and proper cause"
- The employee's reaction was unreasonable
- The conduct was not intended to undermine the relationship of trust and confidence.

Accordingly, for example, giving a blunt but fair annual appraisal does not amount to constructive dismissal because there is reasonable and proper cause. Failing to give a pay rise following a year of poor performance equally does not cause a constructive dismissal for the same reason. Employees who flounce out of meetings taking umbrage at innocuous comments do not have claims.

However, dealing with individuals inconsistently in terms of remuneration or discipline without proper reason can give rise to claims on the basis that dealing with employees fairly also involves dealing with them consistently.

Returning from maternity leave

Vivienne Burbidge, The Endeavour Partnership LLP
v.burbidge@endeavourpartnership.com +44 (0)1642 610350

Contributor

ENDEAVOUR PARTNERSHIP Business Lawyers

It is well established that an employee returning from maternity leave ('ML') has a right to return to work. The basic principles are:

- Establish whether an employee has taken ordinary maternity leave ('OML') or additional maternity leave ('AML') as well
- An employee who has only taken OML has a right to return to the same job in which she was employed before her absence, on the same terms of employment as before, or that are not less favourable than previous terms of employment had she not been absent
- If it is not reasonably practicable (for a reason other than redundancy) for the employer to permit an employee on AML to return to the same job (as it would for OML), the employer must permit her to return to another suitable alternative job on terms and conditions not less favourable than those which would have applied had she not been absent
- If it is not practicable for an employee on ML to return to work due to redundancy she has a pre-emptive right to be offered any suitable available vacancy on terms and conditions not substantially less favourable than those applying to the old job, i.e. she is offered the job first, ahead of other employees who may be at risk of redundancy.

This area of law is fraught with legal and practical difficulties, and there may be additional matters to deal with such as requests for flexible working by the employee on her return. An employer who is faced with an issue with an employee on ML would be wise to take legal advice before acting. One wrong step may inadvertently lead to a costly automatically unfair dismissal or discrimination claim.

Setting up a charity: why do it and how

Contributors WRIGHT HASSALL SOLICITORS

Mark Lewis, Wright Hassall LLP
mark.lewis@wrighthassall.co.uk +44 (0) 1926 880700
Gordon Reid, Barlow Robbins LLP
gordonreid@barlowrobbins.com 44 (0) 1483 464224

BARLOW ROBBINS SOLICITORS

Why set up a charity?

The most obvious reason is financial; anyone raising funds for a good cause can take advantage of favourable tax terms and business rates and can link into sources of funds allocated exclusively for charitable purposes. However, in return, there are strict criteria, laid down by the Charities Act 2011, and monitored by the Charity Commission, with which charities must comply.

The Charity Commission has lots of useful information on its website but is unlikely to advise anyone directly on the merits, or otherwise, of setting up a charity.

Main advantages

Charities:

- Do not have to pay income/corporation tax, capital gains tax, or stamp duty, and gifts to charities are free of inheritance tax;
- Pay no more than 20% of normal business rates on the buildings used for the charity;
- Can get special VAT treatment in some circumstances;
- Are often able to raise funds from the public, grant-making trusts and local government more easily than non-charitable bodies;
- Can reassure the public and their supporters that they are monitored and supported by the Charity Commission.

Disadvantages

There are strict rules on campaigning and trading and the receipt of financial benefits by trustees (eg salaries or awarding business contracts to a trustee's own business). Trustees need to avoid personal interests conflicting with the interests of the charity; and there are various financial reporting obligations according to the size of the charity.

Setting up a charity

A charity has to have a minimum annual income of £5,000 before it can be established. In addition the potential charity's charitable aims must fall within those as defined by the Charities Act. A body is a charity if it is set up under the law of England and Wales and it is established for exclusively charitable purposes (as defined in the Charities Act and published on the Charity Commission's website) which are for the public benefit. The public benefit is crucial – all the aims of the charity must be for the public benefit – a charity cannot have some aims for the public benefit and some that are not.

Governance

All charities need to have a governing document, setting out how the organisation should be run. There are a variety of different ways in which charities can be constituted. Charities can be incorporated which helps to restrict the liabilities of those running the charity and is suitable for larger charities with financial obligations such as property leases, trading liabilities or large numbers of employees. Incorporation means that charities have to be registered with the Charity Commission and with Companies House which doubles the administration. This has changed this year as the Government plans for introducing Charitable Incorporated Organisations (CIOs) have finally come to fruition which means that charities will only need to register with the Charity Commission but will still benefit from the protection offered by limited liability.

This is in addition to the existing method of incorporation as a company limited by guarantee which as before will require registration at the Charity Commission and the Companies Registry.

The implementation programme is as follows:

Date	Applications for the CIO structure
2 January 2013	Window opened for Charity Commission to receive applications to set up CIOs from brand new charities with anticipated income of over £5000.
1 March 2013	Window opened for existing unincorporated charities with annual income over £250,000 to set up a CIO and transfer assets into it.
1 May 2013	Window opened for existing unincorporated charities with annual income between £100,000 and £250,000 to set up a CIO and transfer assets into it.
1 July 2013	Window opened for existing unincorporated charities with annual incomes £25,000 - £100,000 to set up a CIO and transfer assets into it.
1 October 2013	Window opens for existing unincorporated charities with annual incomes £5,000 - £25,000 to set up a CIO and transfer assets into it.
1 Jan 2014	Window opens for existing unincorporated charities with annual incomes of less than £5,000 to set up a CIO and transfer assets into it, and for brand new charities with anticipated annual incomes of less than £5,000 to set up a CIO.
During 2014	Window opens for corporate conversions into CIOs (subject to Parliamentary approval of separate conversion regulations to be made during 2013). This may also need to be phased by income bracket.

Trustees

Being a trustee of a charity is a serious undertaking. Trustees must understand their legal responsibilities and be familiar with the governing document by which the charity is run. They are responsible for the 'general control and management of the administration of a charity'- this is a legal definition so recruiting the right people who understand the legal implications of the role is vital.

Providing trustees act in accordance with their governing document and the principles laid down by law, then any liabilities that might arise can be met from the charity's resources. These principles include acting within their powers, and in good faith, based on sufficient and appropriate evidence and only taking account of relevant factors. Also it is important to manage conflicts of interest. These principles are explained in the recently published Charity Commission's guidance on decision making for charities. If trustees act otherwise, they may be in breach of trust and be liable to make good any loss to the charity. Trustees act jointly so any loss made by one will need to be covered by all.

Next steps

Once a proposed charity meets all the relevant criteria and the necessary documentation has been prepared and assembled, it can apply to set up the charity via the Charity Commission's online application form. Before that stage, there may be a number of questions and issues that will need to be resolved.

Changes to immigration rules since April 2013

Marian Dixon, Wright Hassall LLP
marian.dixon@wrighthassall.co.uk +44 (0)1926 886688

Contributor
WRIGHT HASSALL
SOLICITORS

The government has made a number of changes to the immigration rules, most of which came in effect in April 2013. A summary of the main changes is outlined here.

Indefinite leave to remain (ILR)

Qualifying migrants who have spent a continuous period of 5 years in the UK can apply for ILR, which is a step to applying for a British passport. Until this year, if applicants were out of the country for more than six months during the qualifying five year period, they would have to argue their case and ask UK Border Agency (UKBA) to exercise discretion. For certain categories of workers, chiefly senior executives and international workers, this requirement had become unworkable.

Since April, the main employment routes, Tier 1 (General), Tier 2, and UK ancestry are now permitted absences from the UK of up to 180 days during each rolling 12 month period during the five years leading up to the date the application for ILR is submitted. However, absences must be consistent with the applicant's employment such as annual leave or a secondment.

There is also a new criminality test for ILR applicants. Any applicant convicted of, or who has admitted to, an offence, for which they received a non-custodial sentence, in the 24 months leading up to the date of their application will not qualify for ILR. There are much stricter sanctions for applicants receiving a custodial sentence.

Life in the UK Test

A new version of the 'Life in the UK' test came into effect in March 2013. Applicants applying for ILR or for naturalisation as a British citizen will need to ensure that they use 'Life in the UK Handbook, 3rd Edition: A Guide for New Residents' in preparation for the test.

Tier 2 changes

The minimum salary thresholds for new hires and intra-company transferees (ICT) have been increased:

- Qualifying salary for new hires increased from £20,000 to £20,300
- New hire General Certificate of Sponsorship (CoS) exempt from Resident Labour Market Test increased from £150,000 to £152,100
- ICT with an annual salary of over £152,100 allowed to extend visa period up to nine years
- ICT long term staff increased from £40,000 to £40,600
- ICT short term staff increased from £24,000 to £24,300

Codes of Practice: These have been substantially revised and are complex. The main difference relates to salary and there are two new minimum levels of salary under each code - one for 'new worker' and one for 'experienced worker'. We recommend taking legal advice on how the revised codes will affect new staff or existing staff extending their stay.

Advertising: New rules apply to advertising. There are now general criteria governing the media in which to advertise for all codes (rather than each code specifying their own media). Only jobs with a salary of less than £71,000 need to be advertised on Universal Jobmatch although jobs over the £71,000 threshold have to be advertised in at least two, rather than one, media.

Cooling off: the 12 month cooling off period can now begin from the earliest date the employee can show they left the UK (such as a passport stamp or ticket), rather than the expiry date of the employee's leave. Sponsors will still need to inform UKBA if an employee leaves early.

New Fees

New application fees in most categories were introduced in April. For dependants applying for leave to remain (including indefinite leave to remain) the fees will increase from 50% to 75% of the main applicant's fee.

If you have any queries about how to apply the new rules, please contact Marian Dixon who is a leading business immigration lawyer who advises financial institutions and large multi-nationals as well as smaller companies and private individuals on all immigration related matters.

When is it not good to be British?

Albert Harwood, Howe & Co
a.harwood@howe.co.uk +44 (0)020 8840 4688

Contributor

Howe+Co SOLICITORS

One year ago new immigration rules were introduced for family members of British Citizens coming to the UK.

Despite the rhetoric of all of the main political parties about the importance placed on families, these were amongst the most restrictive immigration rules in recent years. These have had a major detrimental impact on British Citizens and their migrant family members.

The anomaly is that non EU spouses of British Citizens are now subject to more restrictive rules than spouses of other European citizens. The main reason for this is that different laws govern European applications for foreign spouses compared to those of British Citizens.

Lawyers have challenged the law in this area. Such litigation has been successful before the courts, for example, in relation to the income required by British Citizens wanting their foreign partner to join them. They are required to show a minimum annual income of £18,600. This is in contrast to EU nationals working in the UK wanting to bring their foreign partner to join them; they only have to demonstrate that they have a genuine job with no specified income requirement.

The courts have recently held that the arbitrary figure of £18,600 is not fair on ordinary British Citizens who happen to marry a spouse from outside the EU.

At Howe & Co we are able to utilise the law to our clients' advantage in order to achieve the result they are looking for. We use innovative legal techniques to put British Citizens on an equal footing with their EU counterparts who want to bring their foreign spouse to the UK.

Disputing a will – charitable legacies

Amanda Freeman, Myerson Solicitors LLP
amanda.freeman@myerson.co.uk +44 (0)161 941 4000

Contributor

myerson

In recent years there has been a spate of cases where family members have contested Wills where the residue of the estate has been left to charity. The most prominent of these has been *Gill v RSPCA*, also known as "the Yorkshire farm case". *Ilott v Mitson* also concerned an estate which had been wholly left to charity, but the estranged daughter argued successfully that a proportion of the estate ought to go to her instead.

There are a number of ways to challenge a Will:

(i) It has not been executed properly (a forgery would come within this head)
(ii) The person making the Will ("testator") did not know what was in it
(iii) The testator did not have sufficient mental capacity to make the Will, or made it under someone else's influence.

If all these fail, a claim can be made under the Inheritance (Provision for Family and Dependants) Act 1975. In this case, a qualifying person (essentially a spouse or child, or someone who has been treated as their spouse or child by the testator) can bring a claim to the effect that the Will of the testator has not made proper provision for them, and asking the court to substitute provisions which do make "proper provision".

In Gill v RSPCA, Mr and Mrs Gill owned a farm in Yorkshire and their only daughter, Christine, helped them to run it. Despite this, they left their entire estate to the RSPCA when the second of them died. It turned out that Mrs Gill suffered severe anxiety whenever she left her home, and on this basis it was decided that she had not understood what was in her Will even when it was read out to her. Therefore the Will was invalid under item (ii) above.

Turning to Ilott v Mitson, there was no doubt that the Will was valid and the testator had left a letter explaining in some detail why she had not left any of her £450,000 estate to her daughter, from whom she had been estranged for many years. However, the daughter was successful in arguing that the Will did not make proper provision for her and she was awarded £50,000 from her mother's estate.

In each case, the judges were influenced by the fact that the apparent residuary beneficiary was not another individual to whom the deceased had a moral obligation, but a charity to which the deceased had had no connection during their life.

IHT tax planning tips

Richard Horwood, Longmores
rmh@longmores-solicitors.co.uk +44(0) 1992 305233

Contributor

LONGMORES solicitors

Inheritance Tax is paid when an individual's estate exceeds £325,000. An estate consists of the assets owned at the date of death, less the liabilities, together with any chargeable transfers made in the seven years prior to death. To minimise the potential impact of IHT individuals should consider the following:

1. Use the annual allowance of £3,000 in each tax year.

2. Make small gifts of £250 to as many individuals as appropriate, not including those benefiting from the £3,000.

3. Assets transferred between husband and wife and registered civil partners are normally free of IHT due to the spouse exemption.

4. Remember to use Transferable Nil-Rate Band allowances, particularly if clients have been previously widowed and therefore a couple may have more than two Nil-Rate Band allowances available.

5. Make regular gifts out of surplus income, which provided, broadly speaking, they are part of an individual's normal expenditure and do not affect their standard of living, should be free from Inheritance Tax.

6. Make potentially exempt transfers and hope to survive seven years. Even if the gift is not survived by seven years then any increase in value will have fallen outside the individual's estate and if the gift was for more than the Nil-Rate Band allowance taper relief may help to reduce the IHT on the gift if it was survived by between three and seven years.

7. Make use of assets qualifying for Business Property Relief.

8. Make use of assets qualifying for Agricultural Property Relief.

9. Consider making gifts to charities, which will then be free from Inheritance Tax.

10. Use trusts if you do not want to make outright gifts.

UK200Group, recognised in the professions and the commercial world as the foremost mutual association of quality assured independent accountants and lawyers serving the SME business sector.

Established in 1986, with a membership in some 160 locations spread over the UK, together with international associates in over 50 locations across the world. Chief Executives and business owners can rely on UK200Group members to have their operations, on-line systems, staff and services working to help them succeed in local and global markets.

UK200Group Lawyer members – UK

England

CHESHIRE
ALTRINCHAM
Myerson Solicitors LLP
Carl Newton
0161 941 4000
www.myerson.co.uk

CAMBRIDGESHIRE
WISBECH
Bowser Ollard & Bentley
Brian Bowser
01945 583194
www.bowsers.co.uk

CLEVELAND
STOCKTON-ON-TEES
Endeavour Partnership LLP
Simon Wake
01642 610300
www.endeavourpartnership.com

ESSEX
MALDON
Bright & Sons
Christopher Hayward
01621 852323
www.brights.eu.com

HERTFORDSHIRE
HERTFORD
Longmores Solicitors
Elizabeth Gallop
Craig Harrison
01992 300333
www.longmores-solicitors.co.uk

LONDON
LONDON W5
Howe & Co Solicitors
Steve Darlington
020 8840 4688
www.howe.co.uk

LONDON
LONDON WC1
Blavo & Co Solicitors Ltd
John Blavo
020 7025 2020
www.legalblavo.co.uk

LONDON
LONDON WC2
Postlethwaite Solicitors Limited
Robert Postlethwaite
020 7470 8805
www.postlethwaiteco.com

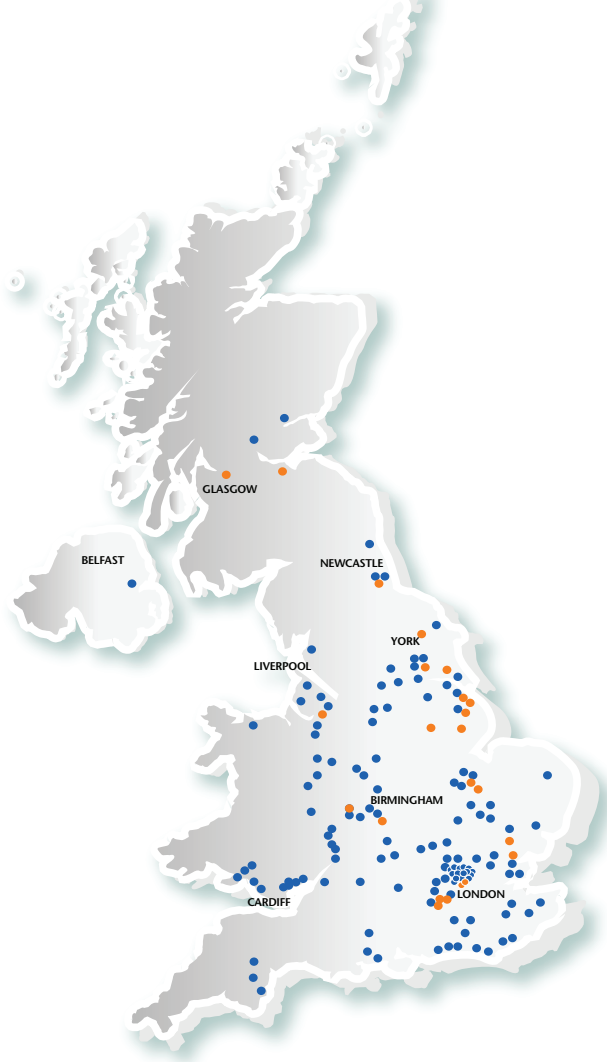
SURREY
ELSTEAD
Goodyear Blackie Herrington Solicitors
Christine Goodyear
01252 704000
www.gbhlaw.co.uk

SURREY
GUILDFORD
Barlow Robbins LLP
Mark Lucas
01483 562 901
www.barlowrobbins.com

WARWICKSHIRE
LEAMINGTON SPA
Wright Hassall LLP
Mark Lewis
01926 886688
www.wrighthassall.co.uk

YORKSHIRE
BRADFORD
Sigma Law Solicitors
Imran Awan
01274 391100
www.sigmalawyers.co.uk

Scotland
GLASGOW
Morisons LLP
Peter Duff
0141 332 5666
www.morisonsllp.com



International Associate Lawyers

GERMANY
MANNHEIM
bkb + Collegen GmbH
Holger Kwasny
(49) 621 410 7350
www.bkb-mannheim.de

SPEYER
bkb + Collegen GmbH
Holger Kwasny
(49) 6232 67490
www.bkb-speyer.de

ITALY
BOLOGNA – **Studio Legale Commerciale BCP**
Simon Cartwright
(39) 051 656 9788
www.bcp-lex.com

MILAN – **Studio Piazza**
Roberto Piazza
(39) 02 76 00 11 39
www.piazzaassociati.com

For a full list of members visit our website www.uk200group.co.uk

Authors of this Publication

Updated September 2013

UK200Group
independent quality assured professionals

3 Wesley Hall, Queens Road
Aldershot GU11 3NP
Tel 01252 401050
Fax 01252 350733
admin@uk200group.co.uk