

informed

Keeping you up to date with the latest in law. Issue 1 Summer 2011



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Grandparents step in to bankroll younger generation

We've become familiar with the idea of the Bank of Mum and Dad helping young people struggling in the recession. Now it appears that grandparents are becoming increasingly involved in helping out the next generation.

A national survey of 1,200 retired home owners revealed that 23% had raised money from their own properties to help their grandchildren. The average sum was more than £23,000. The money was used to help family members buy a home, a car or just clear debts.

It is only natural that people should want to help their grandchildren but great care should be taken when handing over large sums of money, especially if it involves releasing some of the equity in your home.

It is essential to get legal advice before taking any major decisions.

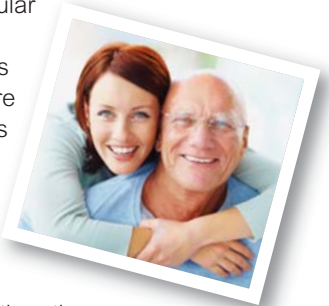
It's also important to consider potential tax implications. If you exceed your annual inheritance tax allowances then you would need to live for at least seven years after making the gift to make sure your children don't end up incurring a tax liability after you die.

One approach is to make use of your annual inheritance tax exemptions. You can currently give away £3,000 a year

without having to worry about any tax implications. Both grandparents qualify for the allowance so between them they can give away £6,000 every year.

Grandparents should also consider making use of the exemption available if they make regular donations taken from their surplus income. There are some stipulations to be met but as long as the money is from income over and above your everyday needs then there should be no inheritance tax liability.

Inheritance tax planning can be complicated so it is important to get it right in order to avoid problems for your family in the future.



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Energy performance certificates needed for holiday lets

Landlords who rent out a holiday home on a regular basis will soon need an Energy Performance Certificate or risk facing a fine.

Until now, the certificates have not been necessary for short holiday lets where there is no intention to create a tenancy.

That will change on 30th June when certificates will be needed for holiday homes which are let for four months or more in any 12-month period. This total can be made up of several very short term lets of a week or less.

Ministers have decided that holiday homes should be brought into line with other residential and commercial properties. It means that landlords must obtain a certificate before the home is rented out.

The new rule only applies to buildings and doesn't include caravans, tents and mobile homes. A building for the purposes of the certificates is defined as 'a roofed construction having walls for which energy is used to condition the indoor environment'.

This would also include a part of a building such as a self-contained flat. The penalty for non-compliance is £200 per holiday home.

Smaller firms or individuals who let out just one holiday home on a part time basis could be caught out by the change and should ensure that they comply as soon as possible.

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Tribunal service expects rise in employment claims

Employment claims look set to continue rising, according to an official report by the Tribunal Service. This is in spite of the fact that claims are already at record levels.

Judge David Latham, who is president of the employment section of the Tribunal Service, says there have been several new employment laws over the last year which have impacted on tribunals.

The new developments include the new statutory system of fit notes, additional paternity leave and new rules governing no win no fee agreements.

In his annual statement, Judge Latham also highlighted how the Equality Act reforms the law in a number of important areas relating to equality and discrimination. This too will affect the number of claims.

He said: *"It is expected that this will increase the number and variety of claims made to the Employment Tribunal."*

The warning comes at a time when claims to employment tribunals are already at a record high. Judge Latham said: *"For the financial year*

ended 31 March 2010, the number of claims lodged with Employment Tribunals was 236,100, representing an increase of 56% on 2008-2009.

"Whilst this increase included a substantial rise in multiple claims, single claims alone increased by 14% over the previous financial year. The result was that in that financial year claims with the Employment Tribunal were at the highest level ever."

The latest figures show that the number of claims continues to rise. For the three months to 30 June last year, the number of claims lodged with employment tribunals was 44,306. That was 4% higher than the same period in 2009.

Humphries Kirk can provide employment advice based on your business and your employees.

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Break clause notice became valid once 'accepted' by email

A property management company effectively validated a break clause notice by accepting it as an email - even though the lease required more formal notification.

The case involved a tenant who leased commercial premises for a term of ten years starting on 1 March 2005.



The break clause allowed for termination of the lease after 1 March 2010 providing that the tenant gave six months notice served by hand or by special delivery post.

After five years, the tenant sent the notice by email to the property management company, which replied saying that it accepted the notice and was happy for the tenant to exercise the break clause.

The landlord later disputed that the notice had been properly served. It submitted that the management

company's acceptance of the email notice was merely an acknowledgement of receipt and should not have been taken as an acceptance of notice to exercise the break clause.

The court, however, ruled in favour of the tenant. It held that the acceptance of the email by the management company had to be taken as an acceptance of the break clause notice.

Once the email had been accepted, the tenant was entitled to conclude that nothing more had to be done. It meant the landlord was prevented from challenging the validity of the notice.

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Business failures decreasing but personal insolvencies still high

The number of companies going out of business in England and Wales fell dramatically last year, according to figures from the Insolvency Service.

A total of 4,905 businesses went into receivership or administration, or entered into company voluntary arrangements in 2010. That was a fall of 23% on 2009, which was the record year for company insolvencies.

There was also a drop in the number of company liquidations at the end of the insolvency process. There was a total of 16,045 - a fall of 16% compared with 2009.

The decrease is put down to the slight improvement in the economy as it eased out of recession.

However, the Insolvency Service says the number of personal insolvencies remains alarmingly high.

There were 135,089 people declared insolvent in 2010. That was an increase of 0.7% on 2009 and the highest figure since records began in 1960. The figures included a 6.5% increase in Individual Voluntary Arrangements.

The Insolvency Service says that men still make up the majority of bankrupts, accounting for 60% in 2009. However, the number of women bankrupts is growing - rising from 29% in 2000 to 40% in 2009.

The take-up of Debt Relief Orders has been significant with 30,838 using them between April 2009, when they were first introduced, and September 2010.

It's feared that rising unemployment and the increasing cost of credit could make 2011 even more difficult for both businesses and individuals struggling with debt.

Businesses need to ensure they stay on top of their credit control to ensure they maintain cash flow and keep bad debts to a minimum.

Humphries Kirk can help with all aspects of debt collection and credit controls issues.

For more information contact:
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Anti-competition clause 'too restrictive to be enforced'

Great care is needed when drawing up restrictive covenants; if they are not tight enough they may not be effective, but if they are too restrictive the courts may not enforce them. A recent case gives a good insight into how the courts may view certain anti-competition clauses.

It involved an estate agency and one of its former employees. The firm's terms and conditions contained a clause which stated that for 12 months after leaving the firm, employees could not solicit the agency's customers, could not set up a rival business within 5 miles of their former office, and could not induce former colleagues to join them.

The anti-competition clause was put to the test when one of the agency's employees left and set up a rival firm only 1.7 miles from the agency branch where he used to work. The agency took court action to enforce the clause but only met with partial success.

The court held that the former employee had solicited the agency's clients and so imposed an injunction preventing him from doing so again.



However, the court found that he was not in breach of the clause preventing him from inducing former colleagues to join him. The evidence was that former colleagues had approached him rather than the other way round.

The court also declined to uphold the clause about not setting up a rival firm within five miles. It held that most of the work carried out by the employee while he was with the agency involved non-recurring business. This was not capable of creating a customer connection worthy of protection.

The clause was too wide in its scope and amounted to an excessive restraint of trade. It was therefore void and unenforceable. The agency was sufficiently protected by the anti-solicitation terms.

Humphries Kirk can help draw up employment contracts for your business, tailored to individual employees.

For more information contact:
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Consumers should 'be wary' when buying legal services

The Legal Ombudsman has urged people to be wary of getting legal services from unregulated and often unqualified providers.

Chief ombudsman Adam Sampson revealed that he has received 40,000 complaints about law practitioners since his office was set up six months ago. His team has not been able to deal with many of the complaints because they are against people who are not qualified solicitors. He said: *"We've seen lots of cases where people have had deficient Wills where we haven't been able to help."*

The problems stem from the fact that there is no regulation covering some legal services such as conveyancing or divorce. It means anyone can set up in practice offering these services even though they may not be properly qualified or have any insurance. Consumers may be attracted by cut price deals but they may have no form of redress if things go wrong.

Solicitors, by contrast, are strictly regulated which means they can be held accountable if they make mistakes. The legal services market is to be opened up to more providers in October.

It will enable a wide range of businesses to enter the market and Mr Sampson fears that the distinction between regulated and unregulated providers will become more blurred: *"This problem will only increase as the legal services market reforms, and internet-based provision and commoditisation of legal services increases."*

Many of the new providers will be completely legitimate but some may not, leading to more complaints to the legal ombudsman.

People will need to think very carefully before making life affecting decisions based on legal advice from providers who may not be qualified or insured.

Are Wills worth the paper they're written on?

A recent ruling by the Court of Appeal has stunned many solicitors as it appears to limit the circumstances in which parents can exercise their 'testamentary freedom'.

The Court of Appeals ruling appeared to make it possible for 'adult children' to make a claim against their parents estate under the Inheritance (Provision for Family & Dependants) Act 1975, in spite of any express wishes to the contrary.

The case in point is *Illot v Mitson* (2004), where Mrs Jackson, aged 70, passed away leaving the bulk of her estate, some £486,000, to 3 charities and nothing for her daughter Mrs Illot (aged 50). Mrs Jackson felt that because her daughter had left home at 17 and had repeatedly shunned her attempts at reconciliation, she was under "no moral or financial obligation to provide for her". Fearing a claim against her estate these reasons were expressed in a letter with the wish that the executors defend any claim her daughter might bring.

Upon Mrs Jackson's death Mrs Illot did indeed bring a claim and the court awarded her £50,000.

After two further appeals the court eventually ruled in Mrs Illot's favour stating that Mrs Illot's meagre financial means and the fact that she continued to need assistance from the state was a distinguishing factor.

In spite of her efforts Mrs Jackson was unable to prevent her daughter's claim, the Court of Appeal has made it plain that the question is not about whether Mrs Jackson had been reasonable, but whether, when viewed without prejudice, that the provision made (or not in this case) was unreasonable.

If you have been left out of your Parent's Will and need advice then speak to our contentious probate team on 01202 715815.

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Man dragged under car awarded £249,000 compensation

A man who sustained permanent injuries when he was dragged under a car has been awarded nearly a quarter of a million pounds in compensation.

The accident happened when the man was waiting to cross the road. He was standing behind a parked vehicle which suddenly started to reverse. He was pulled under the vehicle and suffered severe multiple injuries.

Most of the injuries were to his face. Some of his teeth were knocked out and he fractured his nose and right eye socket. He was left with double vision in his right eye.

He also broke several ribs and fractured a vertebra, which left him with back pain and restricted his ability to walk.

The man was 53 at the time of the accident. He had to give up his job as a bus driver and also lost his HGV licence because of his double vision. It's unlikely that he will ever be able to work again.

He also developed psychiatric problems including post-traumatic stress disorder and agoraphobia. He would not leave the house unless motivated by his partner.

The driver admitted liability for the accident and compensation of £249,000 was agreed in an out-of-court settlement.

Anyone who is injured as a result of someone else's negligence is entitled to claim compensation.

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Chadwell Heath is an 11 to 18 Sixth Form entry co-educational school. They have approximately 1,200 pupils on roll, including over 300 students in the Sixth Form.

Schools daunted by Academy conversion process

With less than 200 schools registering an interest in converting to Academy status and only 32 schools achieving the conversion by the first possible date on 1 September 2010, local lawyer Caroline Carretta believes many may have been overwhelmed by the administrative demands of the conversion process.

In June 2010 Michael Gove told MP's that some 1,100 schools had expressed an interest in becoming Academies. By December, the Department for Education (DfE) had only received about 170 applications.

Caroline Carretta, Commercial Partner at Humphries Kirk, suggests that many schools may simply have been overwhelmed by the requirements of the conversion process.

Caroline said, *"Whilst there are undoubted benefits to becoming an academy and having greater control over the school's finances, assets and contractual arrangements, the process of converting to an Academy can be quite daunting at first glance"*.

Converting to an Academy requires the completion of a number of separate yet clearly linked processes, including registration with the DfE, conducting TUPE consultations, finalising governance documentation with the DfE, registering the Academy with Companies House, agreeing transfer or leasing arrangements for the land and buildings, submitting a funding agreement to the Secretary of State, orchestrating the transfer of assets and contracts to the Academy, putting in place new financial systems and banking arrangements, dealing with the publicity and disclosure requirements, which apply to all companies, and completing the Academy registrations with exam

boards. This is just a taste of what is involved.

The DfE suggests that the process might take up to 3 months but Caroline suspects that many may not even get that far.

"I have been working with Chadwell Heath Foundation School in London and whilst it has been a demanding project the staff and Governors have been keen to forge ahead and we managed to successfully complete the conversion process in less than two months."

Chadwell Heath is a state secondary school in the London borough of Redbridge, and qualified to become one of the first "wave" of schools to apply for the new Academy status, having been assessed as "outstanding" in its last Ofsted inspection.

Keith Wilkinson, head teacher at Chadwell Heath said, *"Thankfully we had a clear vision of what we wanted to achieve in converting to an academy and this has helped us to maintain our focus in completing this process. I am very grateful for Caroline's advice and hard work in helping us to get there so quickly"*.

Caroline is keen to capitalise on her recent experience with Chadwell Heath and is happy to chat with other schools who may be interested in converting to an Academy.

"Whilst there are undoubted benefits to becoming an academy and having greater control over the school's finances, assets and contractual arrangements, the process of converting to an Academy can be quite daunting at first glance."

Caroline Carretta is a Partner at Humphries Kirk and is part of the commercial team in Dorchester. Caroline specialises in company and commercial law including the sale and purchase of businesses, equity investment, financing issues, management buy-outs, joint ventures, franchising, employment law, intellectual property and commercial contracts of all kinds.

For more information contact:
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STOP PRESS:

Caroline Carretta has recently assisted Twynham School in achieving academy status by helping to guide the schools management and board through the complicated conversion process. Caroline and her team are becoming so adept in this area that they have managed to turn everything around in an astonishing five weeks! Considering the Department of Education estimate that it might take schools about 3 months to complete the process Caroline can be rightly pleased at what she and her team have been able to do for Twynham.

Reins change hands at Humphries Kirk

Humphries Kirk Solicitors are pleased to announce the appointment of James Selby Bennett T.D. as Senior Partner. This announcement comes as a result of the retirement of Felicity Hedger who held the post for the previous nine years.

It was a less than auspicious start for James who was thrown from a horse the day before he was scheduled to officially take up the post. This, however, did not stop him from appearing at a retirement party the following evening and making a speech in honour of Felicity in spite of having fractured three ribs in the fall.

In his speech, James paid tribute to Felicity's hard work and dedication to the firm as a whole. He said that, *"Partners understand that the best hope for personal and family advancement lie with the firm itself rather than the individual"*. James went on to say that he felt her support for this principle was perhaps Felicity's greatest gift to the firm.

Felicity, who specialises in helping people with Wills, Trusts and Powers of a Attorney, has been an active business leader in the community

having served as a board member of the Dorset Chamber of Commerce and is currently a trustee with local charities Dorset Blind Association and Life Education Wessex. Felicity will continue working three days a week with the firm as a consultant based in Dorchester and clients can still expect to see her for many years to come.

James, who is based at Humphries Kirks' offices near Tower Park, Poole, specialises in corporate and commercial advice of all kinds and is particularly active with international matters being fluent in French, Spanish and Italian and having been instrumental in setting up the HK International Network; a network of trusted legal and financial advisors.

When he is not helping clients to solve commercial problems, James owns and manages an organic farm at Slepe just outside Poole and is

Chairman of the Dorset Branch of the Country Landowners Association (CLA) and a trustee of the Keep Military museum in Dorchester and the Dorset Yeomanry, reflecting his 25 years service in the TA.



James Selby Bennett and Felicity Hedger

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Construction disputes - another way forward

Humphries Kirk are pleased to announce that Construction Partner Chris Reeves has recently received the qualification of "Accredited in Adjudication" by the Chartered Institute of Building (CIOB).

Adjudication is a simple, speedy and inexpensive way of resolving disputes between two parties, which appoints a neutral third party to investigate the issues and make a decision.

Chris said, *"I am thrilled to have gained this qualification from the CIOB. It is a seal of approval from one of the construction industries most respected bodies. The role of adjudicator is a natural progression having acted for parties in the process for many years. Having spent the early part of my working life in the industry before the move into legal practice, I find that my practical, as well as legal experience is invaluable in helping to get to the truth of the matter in dispute"*.

The CIOB is one of the forerunners of adjudication in the industry and, along with other professional institutions and the Construction Industry Council, sets criteria in order to establish high standards of competency for their adjudicators.

Chris went on to explain that *"Adjudication has many benefits over Court proceedings and being based in this region means that Humphries Kirk can conveniently offer a local independent expert to resolve disputes quickly, cost effectively and to the standard expected by the CIOB"*.

STOP PRESS: Chris Reeves has recently been elected as Chairman of the Wessex Centre of the Chartered Institute of Builders (CIOB). Chris said the aim of his Chairmanship is to help improve the profile of the CIOB within the local industry and also look to forge closer working relationships with neighbouring Centres.

Humphries Kirk can advise on all areas of construction law.

For more information contact:
Chris Reeves 01305 251007
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Legal Front-running for Charities

Humphries Kirk's team of 'Legal Front-runners' might not have impressed any 2012 Olympic scouts but the charities of Lewis Manning, Julia's House and Forest Holme were mightily pleased with their efforts in raising £900.

Along with a couple of hundred other runners Simon Cross, Stuart Bradford, James Hammersley and Michael Cunningham braved the early morning chill to take part in the Hospice 10k Run recently.

The course took runners from the Bournemouth Pier along the seafront to Southbourne and back again.

If you would like any further information or to make a donation please contact the charities directly or go to our website: www.hklaw.eu/about-us/news.aspx



The team handing their cheque to Lewis Manning Community Fundraiser Louise Trott. From left to right - Louise Trott, Simon Cross, Stuart Bradford, James Hammersley and Michael Cunningham.

Humphries Kirk mentors recognised

Trainee Solicitors, Sophie Hill, Stephanie Macpherson and Natasha Potter were amongst the recipients of awards recently handed out at the Enterprise and Skills Entrepreneurs Awards evening, sponsored by Bournemouth University and held at the Royal Bath Hotel.

Whilst the girls each received certificates in recognition of the time and effort they put in as mentors on the programme the night belonged to the students.

The Awards evening recognises one such programme where groups of students are encouraged to start a business.

Enterprise and Skills are a Dorset based charity who work with schools to introduce students to real business situations through a variety of different programmes.

Students build a business from the ground up, which includes deciding on what product or service to sell, through to manufacturing, sales and marketing, keeping accounts and culminating in a final presentation at the awards ceremony. The students are judged and prizes, which have been sponsored by local businesses, are awarded.

There were many awards on offer including: Best IT, Best Company Report, Best Entrepreneur, Best Presentation, Eco Team award and of course the Company of the Year award. Unfortunately whilst the Humphries Kirk mentored teams each did well, picking up individual awards (with Stephanie's team in particular picking up 4 of the individual categories), they missed out on the best overall award which was won by "Just" a team made up of students from Bournemouth School and Bournemouth School for Girls who were mentored by Enterprise and Skills stalwarts, Castle Point Shopping Park.

Sophie Hill, mentor and trainee solicitor said, "It is great to work with the students who are not much younger than I. The programme is a great way for Humphries Kirk to demonstrate our commitment to



Mentors Recognised - left to right: Stephanie Macpherson, Sophie Hill and Natasha Potter.

support our local community and it helps boost my own confidence in the work I do".

Schools represented at the awards included: Bournemouth School, Bournemouth School for Girls, Parkstone Grammar, Corfe Hill's and Queen Elizabeth.

Please contact us if you would like more information about Enterprise and Skills.

Karen Arnold
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HK in the community

The Launch of 'Jill the Will!'

Jill is the Lewis Mannings Hospice mascot in the promotion of their 'Make a Will Week' (6-10 June) which Humphries Kirk has been pleased to support.



We have been offering simple Wills free of charge, providing clients agree to leave a donation to the Lewis Manning Hospice.

For more information please contact a Humphries Kirk office near you.

Life Education Wessex

Humphries Kirk's main charity this year is Life Education Wessex. The charity, who receive no government

funding, supports local schools in teaching our children about making healthy food and healthy living choices. They are running a charity golf match on the 15 June at the Iford Golf Centre (Play Golf Bournemouth). Humphries Kirk will be there and we hope you can join us in supporting this worthy cause.

For more information, please contact Lorraine Hewitt on: 07825 268 183 or email: lorraine@lifeeducationwessex.org.uk

Sigma make local finals!

Commercial lawyer Amy Kerr has been mentoring a team from Bournemouth Girls and Talbot College in the recent Young Enterprise Awards.



The competition looks to bring young people together to form a business and create a service or product. Students are then judged on all aspects of their "build a business" experience.

Take a look at Sigma's product (Stash!) on YouTube:

www.youtube.com/watch?v=oT4sOGrmvu4

Purbeck Strings Seaside Concert

Once again Humphries Kirk is supporting the Purbeck Strings in putting on their seaside concert during this year's Swanage Carnival (Tuesday 3 August at 3pm on the Swanage Promenade). The eclectic group are a mash of seasoned professionals and raw recruits who come together to perform classical pieces for the carnival throng.

If you would like more information or are interested in joining this fabulous group, please contact organiser Susan Stanford by email at: maxstandford@talktalk.net

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