

# News and Views

## Independent Praise for TWM

At this time of year, the legal market is awash with reports about the performance of the leading firms, including independent commentary. Among these is Chambers UK, whose commentary included:

### Employment

"The team is known for representing claimants and respondents in Employment Tribunals, senior level executives, and advises on corporate transactions such as TUPE". A particular strength of the team is responsiveness, with one client stating: "They are very responsive to requests for help, providing first-class, practical solutions."

### Family/matrimonial

"With offices throughout Surrey this family law team retains a strong presence on high net worth financial cases and complex children law matters. It also houses notable expertise in mediation and collaborative law. Client comments included. "The entire family team at TWM have attended to my matter with consummate professionalism and empathetic understanding."

### Private Client

"A strong non-contentious team that routinely handles sophisticated tax planning and estate administration work. Increasing focus on elderly and vulnerable client care, with an established capacity for Court of Protection work." Client comments included. "They have always delivered an effective and efficient service as well as offering a wide range of legal services."



The other major annual independent annual legal guide, The Legal 500, recommended TWM in the following areas:

- Commercial property
- Corporate & commercial
- Employment
- Family
- Personal tax, trusts & probate

## Kingston Business Excellence Awards

A gala dinner attended by Kingston MP, Ed Davey, was a suitable way to celebrate the inaugural Kingston Business Excellence Awards. The awards were the idea of leading business support partners in the borough, including, Kingston Chamber of Commerce, of which Sarah Cornes, TWM's Head of Family, is the current President.

Sarah said that the idea behind the awards was to unite the business community and celebrate the best that the Kingston Borough had to offer. Looking back on the evening and considering the quality of awards submissions, those twin objectives have undoubtedly been reached.

TWM supported the initiative, and sponsored the award for Best Customer Service, which was won by Metropolis Hairdressing. The overall winner and Business of the Year was The Canbury Arms, run by Michael Pearson.



## Company Law **Personal liability for national insurance contributions**

The Upper Tribunal (Tax and Chancery Chamber) has recently held that an objective test of neglect applies when determining whether a company's failure to pay national insurance contributions (NICs) can be attributed to neglect on the part of a director, making him personally liable for all or part of the unpaid NICs. This standard will not be adjusted to meet particular circumstances (such as mental health issues) and, therefore, support may be needed from fellow directors in such cases to avoid liability.

The taxpayer was the finance director of a company that went into liquidation in March 2007, owing HM Revenue & Customs (HMRC) unpaid NICs. In 2009, HMRC issued a personal liability notice (PLN) to the taxpayer for £218,593.77. The taxpayer appealed the PLN on the ground that the company's failure to pay was not attributable to any fraud or neglect on his part, as he had been suffering from an addiction that affected his behaviour, and that ought to be

considered when assessing whether he had been negligent. HMRC may issue a PLN requiring an officer of a company (who was serving at the time of default) to pay a specified amount in respect of Class 1, 1A or 1B NICs that the company has failed to pay, together with penalties and interest on the unpaid NICs.

"Officer" is defined to include directors, company secretaries, shadow and de facto directors, and managers. To issue a PLN, HMRC must first determine that the company's failure to pay is attributable to "fraud or neglect" on the part of the intended PLN recipient. A PLN may be appealed to the First-tier Tribunal on the ground (among others) that "the failure to pay ... was not attributable to any fraud or neglect on the part" of the appellant.

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## Lasting Power of Attorney **The ageing population**


We are constantly reminded that Britain's population is ageing fast, with statisticians predicting a huge increase in the number of people aged more than 80 years from the current number of three million to reach eight million by 2050. By 2050 it is estimated that one in four of the UK population will be over the age of 65. The knock-on effect of this is that an increasing number of the population will suffer from age-related capacity issues such as Alzheimer's disease and dementia. More of us will require ongoing care and assistance with managing our day to day finances.

With this in mind it is logical that every adult should put in place a property/financial Lasting Power of Attorney (LPA). However, we generally find that these are only considered by those who are elderly and often at the point when health issues arise.

LPAs enable you to appoint a person(s) you trust to deal with your finances if the need should arise in future. Once the document is registered they have legal authority to deal with all of your finances, including paying bills, investing assets, dealing

with your property including selling this if it becomes necessary. If a family member is unable to deal with your financial affairs due to mental incapacity then without a Lasting Power of Attorney life can be incredibly difficult and can be costly. Even as a spouse or relative of the mentally incapacitated person you will have no authority to deal with their finances and will not be able to obtain release of funds to pay for ongoing costs. For example, if you have tried to make contact with a financial institution/utility company on behalf of a member of your family then you will be aware that it is almost impossible to assist as the financial institution/utility company will only deal with the person who holds the account.

Often we find that clients are under the mistaken impression that as they have jointly held bank accounts then there is no need to put in place an LPA. However, guidance issued by the British Bankers' Association states: "If you are the joint account holder and the other joint account holder becomes mentally incapable, you do not automatically have the right to access the account unless you have a Lasting Power of Attorney, Enduring



Power of Attorney or an order from the Court of Protection.”  
The bank/building society will use their discretion to determine whether or not to temporarily restrict the operation of the account to essential transactions only until a deputy has been appointed or a power of attorney is registered.

Further, without an LPA or Enduring Power of Attorney if you

own property held in joint names and one party loses mental capacity then you will not be able to sell the property until there an Order from the Court of Protection is issued. This process is lengthy, requires medical evidence, and full financial information to be lodged.

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## Family & Matrimonial **Separation options for splitting couples**

Resolution, the family lawyers organisation, promoted DR (dispute resolution) week from 25 to 29 November 2013. The aim was to raise awareness of the different options available to separating couples, including mediation and collaborative law. More details about mediation and collaborative law can be found on the family pages of our website. All the lawyers in TWM's family department are members of Resolution and we have seven mediators and six collaborative lawyers. We are committed to promoting a constructive and amicable approach and avoiding court proceedings unless absolutely necessary.

To support the initiative, Demelza Patricio from our Reigate office and Sarah Bostock from our Leatherhead office helped man a stall in Dorking market on Friday 29 November, promoting ways in which separating couples can resolve issues without asking the Court to make decisions for them. Leaflets have been distributed throughout doctor's surgeries, libraries and train stations across Surrey. You can find out more by searching #keepitoutofcourt on Twitter.

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## Mental capacity **Tensions emerge between attorneys and relatives**

The sad news of former footballer and TV presenter, Sir Jimmy Hill's diagnosis of Alzheimer's disease, has brought to the fore issues surrounding decision making when one loses capacity.

In 2005, Hill appointed his wife and a solicitor attorney under an Enduring Power of Attorney (EPA). His children have recently expressed their disappointment as to their lack of influence over their father's care. Attorneys under an EPA have a limited duty to consult with family members when making decisions, thus potentially rendering loved ones without a say. Attorneys are under a duty to consult with anyone “interested in the donor's welfare,” but are not obliged to follow their wishes. That said, attorneys are subject to the overriding jurisdiction of the Court of Protection and the Office of the Public Guardian. The right to apply to the Court of Protection to

have a deputy appointed in relation to health and welfare and indeed, challenge the appointment of an attorney, extends to children of the donor and Hill's children can apply to the Court.

If you or a family member have concerns regarding the appointment of an attorney under either Enduring or Lasting Power of Attorney our Contentious Probate team can help. We are independently recommended and are happy to have a no cost, no obligation initial discussion to help you better understand the issues that might apply in your specific circumstances.

**Guy Perkins - [guy.perkins@twmsolicitors.com](mailto:guy.perkins@twmsolicitors.com)**

## Focus on contentious trust and probate



Guy Perkins is Head of Dispute Resolution and his specialist practice is in contentious trust and probate work, and Court of Protection cases. He is qualified as a full Member of the Association of Contentious Trust and Probate Specialists (ACTAPS), and is independently recognised as an expert in the field.

His varied case load concerns challenges as to the validity of Wills; disputes arising out of the administration of estates (which are often worth in excess of £1million); claims for reasonable financial provision and cases where he has been appointed as Litigation Friend for minor children.

In explaining his work Guy says many clients approach TWM seeking advice on challenging the validity of a Will, citing alleged undue influence. In reality, given the evidential burden imposed upon someone alleging undue influence in relation to a Will, few such challenges succeed. The majority

of successful challenges are based upon lack of capacity, or failure to comply with the provisions of Section 9 of The Wills Act 1837. Challenges in the latter category are more commonly established in cases where the Will is 'homemade'. Explaining how people can avoid or manage these challenges, Guy says. "I am surprised at the number of people who have failed to make a Will, or seek to cut corners by preparing a 'homemade' Will, even where the estate assets are complex in nature and substantial in amount. Such failures are an open invitation to family discord, and to legal challenges being made – whether as to validity or for reasonable financial provision. It is perhaps a statement of the obvious to say that a few hundred pounds invested in competent and expert legal advice will potentially save many thousands of pounds being spent in sorting out the confusion, quite apart from the substantial human fall-out".

Guy also deals with disputes in the Court of Protection, particularly concerning attempts to remove Attorneys whom, it is alleged, have abused their positions and are in breach of their fiduciary duties. The second category of cases involves applications for Statutory Wills which are disputed.

Guy says his work is both fascinating and challenging. What particularly appeals is the combination of potentially difficult issues of law and fact, combined with the emotional human dimension. Clients are often emotionally vulnerable and a sympathetic and considerate approach is needed. It is satisfying to not only achieve a result which is good from a 'legal' perspective, but which also assists the client to move on with their life in a positive way.

## Employment Law Changes to TUPE on the way

The Government has published its proposed amendments to the TUPE Regulations, the rules which govern employment status following a business transfer or outsourcing arrangement. There are two surprises:

- It had been anticipated that the amendment would abolish the Service Provision Change provision (which governs outsourcing), and

- That they would allow a transferor to dismiss employees to prepare the business to the requirements of the transferee.

Neither of these will occur though each has some adaptations.

continued overleaf

## Employment Law continued

The principal changes are:

- A relaxation of the restrictions preventing a transferee from changing the terms and conditions of the employees who transfer to it;
- Allowing the transferee to dismiss employees by reason of redundancy where there will be a change of location after the transfer. It is of course quite common that a purchasing transferee will want to relocate employees to the transferee's place of business. This change will help this;
- Collective agreements binding on transferors can be ignored by the transferee one year after the transfer and are of static effect;
- Service provision change restrictions will only apply if the activities undertaken after the change are fundamentally the same as existed before the change;
- The period for provision of Employment Liability Information is extended from 2 weeks before transfer to 4 weeks;

- For businesses with less than 10 employees there will no longer be a requirement to arrange for representatives of the staff to be elected for the purposes of the consultation process. Instead, such consultation can be undertaken with the employees direct.

The changes are less radical than originally envisaged. This in part follows the outcome of the consultation exercise undertaken by the Government prior to the introduction of these regulations.

The changes will make the rules more flexible and more attune to a dynamic economy broadly favouring transferee buyers over transferors. It is anticipated that these changes will take effect in January 2014.

An extended version of this article is available on our website.

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## Property - Forgetting your Manors? **Manorial rights losing overriding status**

As a consequence of The Land Registration Act 2002, an assortment of rights lost their status as “overriding interests” on 13 October 2013. This means that they no longer automatically bind purchasers despite not being protected by a notice or caution at the Land Registry.

Chancel repair liability, an obligation on landowners to contribute to church repairs, has been widely documented as one of the rights to recently lose its overriding status. However, manorial rights have received far less attention.

Manorial rights originally arose when the Crown granted parcels of land together with a bundle of rights to certain individuals known as Lords of the Manor. The set of rights, title of “Lord of the Manor” and the land itself are all separate aspects of the manor. Therefore, as parts of the land were later sold off without including the bundle of rights in the sale, the Lord of the Manor retained his rights over the land which he no longer owned.

The extent of the rights enjoyed over the land can be varied, but they often include the right to hunt, shoot, fish, hold markets, graze animals or search for and excavate mines and minerals

beneath the surface of the land. There is no easy way to tell whether a piece of land was previously part of a manor, and even if this is established, it will still be necessary to ascertain whether the rights are still attached to the land or have been sold off separately.

Many people have misinterpreted applications to register manorial rights as new burdens being claimed over their property, but their registration is simply a method of protecting existing rights. The change in the law means that any manorial rights which do not appear on the register (or have cautions against first registration if the property is unregistered) will no longer bind purchasers, unless the property is given away for free.

This means that trawling through ancient records of manorial land can now be avoided as a purchaser can see at a glance whether a property is sold subject to manorial rights. Although these “archaic” rights are still relevant to property transactions today, many will be lost as more and more properties are sold on without the owners having taken steps to protect them at the Land Registry.

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## Christmas & New Year

We would like to take the opportunity to wish all of our readers Seasons Greetings and a Happy New Year. Our offices will close at 4pm on Tuesday 24 December, and open again at 9am Monday 30 December.

In lieu of sending Christmas cards, we are making a donation to our partner charity, Surrey Air Ambulance.



## Reigate on Ice

Reigate's residents were given a true taste of winter when its very first real ice rink was installed under a circus big top in Priory Park. TWM was pleased to be able to support the venture with a rink-side advertising board.

## Pounds for Pudsey

We were delighted to raise over £200 for this year's Children in Need. As the photo below shows, it is possible to be a lawyer and to have fun at work!!



## Helping Cranleigh Lions Christmas Campaign

We are pleased to spread the message about Cranleigh Lions campaign to 'keep Emily warm' this Winter. The Lions are working with local agencies and Cranleigh CAB to identify local families in real need of a winter fuel payment this year. You can help by passing on some or all of your winter fuel payment to them, certain in the knowledge it will be passed directly to those that really need it. Details can be found at: [www.cranleightlions.org](http://www.cranleightlions.org)



News and Views is TWM Solicitors' quarterly newsletter for clients and contacts. The articles included in this publication are necessarily brief and because the law may change subsequently, it is essential that legal advice is obtained prior to proceeding.

TWM Solicitors is a full service law firm. Our seven office network covers Surrey, SW and Central London. Our approach centres on achieving success for our clients.

If we can help with a legal issue, please do not hesitate to contact one of our team:

Cranleigh - Richard Bland 01483 273515  
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For further information about TWM Solicitors, please visit our website: [www.twmsolicitors.com](http://www.twmsolicitors.com)

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