

► Jacobsen & Co in Fulham merges with TWM Solicitors

One of Fulham's best known law firms, Jacobsen & Co has merged with TWM Solicitors LLP.

Jacobsen & Co was founded by Helle Jacobsen in 1989, and has been established in Fulham since 2000. Its reputation is founded on providing clients with a high quality personal service for property and private client transactions.

Helle Jacobsen, commenting on the merger between the firms said: "This merger is a very positive one for our clients. I have come to know TWM over a long period of time, and relate closely to their approach of nurturing long-standing client and professional relationships that stand the test of time. It is the same philosophy that we have always had at Jacobsen & Co. Our clients can look forward to continuity of service from people they already know, plus access to a much wider range of legal services, from more locations, across London and Surrey."

All of the Jacobsen & Co team are being retained as part of TWM, as is their office in Stephendale Yard, Fulham, so it will be 100% business as usual going forward.

TWM Managing Partner Matthew Truelove commented: "We are absolutely delighted to welcome Helle and the Jacobsen & Co team to TWM. Jacobsen & Co is a well-established



Managing Partner Matthew Truelove with Helle Jacobsen

high quality practice, in an excellent location. With offices in Wimbledon, Chelsea, Mayfair, and now Fulham, TWM is ideally placed to provide the full spectrum of legal services to individuals and businesses across Central and South West London."

"This merger is the fourth acquisition in as many years for TWM, and is a sign of the firm's optimism looking forwards. It's always a joy to find other established professionals with the same outlook as ourselves, and I am confident that this merger will prove a winning combination for clients and staff alike."

► Most innovative Law Firm



ACQUISITION INTERNATIONAL
The Voice of Corporate Finance

We are delighted to have been informed by Acquisition International (AI) that following months

of research by their in-house awards team, TWM Solicitors has been named the 'Most Innovative Law Firm of 2016 in the UK'. AI goes on to say that only the most innovative of law firms stand out from the crowd in these competitive times and in the modern legal environment the ability and willingness to innovate is crucial.

► Leatherhead Rotary 10k Bluebell Run

The eighth running of the Leatherhead Rotary Trail 10km took place over the first May bank holiday weekend. It was another fantastic event organised by Private Client partner, Adrian

O'Loughlin, and the Leatherhead Rotary Club. As in previous years all profits made by Leatherhead Rotary will be donated to their designated charity, which for 2016 it is the Alzheimer's Society. The event saw its biggest ever turn out and has raised nearly £5,000. Well done to everyone involved, especially all of those from TWM who took part and did the firm proud!



► BUSINESS LAW

Insurance Act 2015

The Insurance Act comes into force on 12 August 2016. It changes the way business insurance will be underwritten, and businesses should ensure they don't breach any future duties.

The Insurance Act is a piece of legislation designed to modernise Britain's insurance industry. The current regulations which govern the contracts between businesses and insurers are over 100 years old. The aim of the Act is to remove rules which no longer reflect good commercial practice and balance the interests of the insured and insurer to put both parties in a neutral position.



Under the new Act, a new "duty of fair presentation" applies and whilst there is still a requirement to disclose all information which a business knows or ought to know, in the absence of full disclosure the duty is still met if the insurer is provided with sufficient information to enable them to ask more questions.

Currently in the event of a non-disclosure or misrepresentation, the insurer is able to treat the policy as if it had never existed and refuse to pay any claims. Under the new Act, if the breach was deliberate or reckless the insurer can still walk away from the policy, refuse to pay any claims and retain the premium. However, if the breach was not deliberate or reckless, the remedy available depends on what the insurer would have done had the full information been available to them when the policy was taken out.

Moreover in the event that a warranty is breached, the insurer's liability will be suspended rather than discharged. If the insured can rectify the breach, cover is restored. The insurer will not be able to decline continued cover if the insured can prove that there was no causative connection between the breach and the loss.



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Quite a few things are set to change. For example, when obtaining insurance under the current law business owners are required to disclose anything which may influence an insurer in deciding whether to accept the risk and at what premium.

DEAL NEWS

► A great deal going on...



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Technology Sector Acquisition of Easy Convey by OneMove Technologies Inc.



TWM advised the shareholders with regards to the sale of 51 per cent of the issued share capital.

Manufacturing Sector Investment in a new car factory in South Wales.



TWM advised TVR on the banking and finance aspects of the deal.

Media Sector Relocation of Eagle Radio to Guildford College.



TWM advised Eagle Radio on the relocation of its studios and staff to Guildford College Campus.

Manufacturing Sector Restructure of business



TWM advised Sven Christiansen plc on the sale of 50 per cent of the issued share capital of the Company, buyback of shares and the subsequent creation of the Sven Christiansen Group.

► TAXATION

Focus on Capital Gains Tax (CGT)

For a tax which makes up less than one percent of total receipts (0.8% or £5.4 billion in 2014/15), there seems to be no end of tinkering. Following the budget in March this year, we now have four rates of Capital Gains Tax:

- 10% on gains falling into the basic rate tax band on most assets;
- 18% on gains on residential property falling into the basic rate band;
- 20% on gains falling into the higher rate band on most assets; and
- 28% on gains on residential property falling into the higher rate band.

Everyone has a tax-free amount to set against gains, £11,100 for individuals and £5,550 for Trusts and a key to future CGT planning will be allocating the allowance in the most advantageous way.

CGT does not only fall on assets sold at a gain but on gifts where the market value at the date of disposal is more than the original cost. There is a little-known exemption for chattels worth less than £6,000 and a partial exemption for chattels worth between £6,000 and £15,000. This can help if gifting art and antiques to the next generation when downsizing a property and undertaking Inheritance Tax planning. For larger gifts such as a family holiday home, there could be a significant tax cost to generosity, so it is worth considering agreeing for the recipient of the gift to pay an amount to cover the tax bill.

Very few things are completely exempt from CGT but private motor cars and cash are, although all gifts from one individual to another are "Potentially Exempt Transfers" for Inheritance Tax purposes. Planning for both taxes should be factored in to any gift making decision. Gifts to charities are exempt from both taxes.



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► FAMILY LAW

Lineker off-target with comments about divorce costs

In January this year Gary Lineker and his second wife, Danielle Bux, announced they were to divorce. The divorce reportedly cost "only £410", the court fee at the time. The couple came to a financial agreement between themselves and state that they downloaded and completed all forms without the help of a solicitor. The media encouraged the belief that "If Gary Lineker can divorce for £410 so can you!" In an interview, Gary Lineker went further stating that "lawyers try to manipulate it to make you spend more money and basically end up hating each other". He claims to have a solution; there should be a "mathematical equation" allowing couples to bypass lawyers and go straight to the Court who would then grant them a divorce on the terms computed by the formula. According to him, this would be cheaper and would allow the couple to part on better terms.

It is undoubtedly true that, if possible, this would be cheaper for divorcing couples. But no two family situations, and no two divorces, are the same. It would therefore be impossible to formulate a straightforward 'equation' which would take into account all factors and give a fair outcome in each and every case. Indeed, it is not until there has been full disclosure of each party's financial means and a consideration of the matter as a whole, that a financial agreement can be properly considered.

To suggest that "the norm" should be for couples to do this without the help of a solicitor risks the financially weaker, or a more vulnerable party, or the parent who is the main carer of children, getting less than they need or may be entitled to. Indeed this could increase the animosity between the parties,

the opposite of what Gary Lineker envisages. His suggestion also does not take into account the fact that solicitors often advise with other aspects of marital breakdown, for example child contact arrangements, which cannot be dealt with by way of a simple formula.



In any event the involvement of lawyers does not mean that the couple "end up hating each other", or that the matter will end up in Court. Most specialist family solicitors, including those at TWM, are members of Resolution, a national organisation of family lawyers committed to a non-confrontational approach to family problems, and which encourage improved communication between parents after divorce. The many options, which minimise legal costs and animosity, include mediation or the collaborative process, which ensure that the parties are assisted in reaching their own fully informed decision on the basis of the interests of the family (including children) as a whole, rather than applying a "one size fits all" formula.



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► DISPUTE RESOLUTION

Not the final say - challenging an unfair will

Whilst we are commonly advised to prepare for death by drafting a will, sometimes the result can cause more problems and upset than intended for surviving relatives. For example, a will drafted many years ago that did not anticipate a new addition to the family. Perhaps you were left out of the will having previously been informed you would be included? Does the will seem out of character for the deceased or do you think the will does not accurately represent the deceased's intentions? In many instances wills are often prepared in later years, or under trying circumstances when the deceased may not have had full mental capacity.

You may feel unfairly treated or have suspicions and might assume that there is nothing you can do about the will. However, you would be wrong, and you are not alone. A recent survey by First4Lawyers has found that 43% of people who had been unfairly treated under a will were not aware that they were able to challenge the will in court.

Not only that, but of the challenges to wills that did make it to court, no less than 80% were successful.

With high profile cases such as that of Heather Lott and Joy Williams, the courts have seen a huge rise in the numbers of challenges brought against estates and wills. However, in

practice most challenges never make it as far as the court; a mere 32% according to the same study. Instead these disputes tend to be settled amicably between the parties at an early stage without incurring large legal costs.

We specialise in wills, estate administration and distribution disputes and have extensive experience in various claims such as:

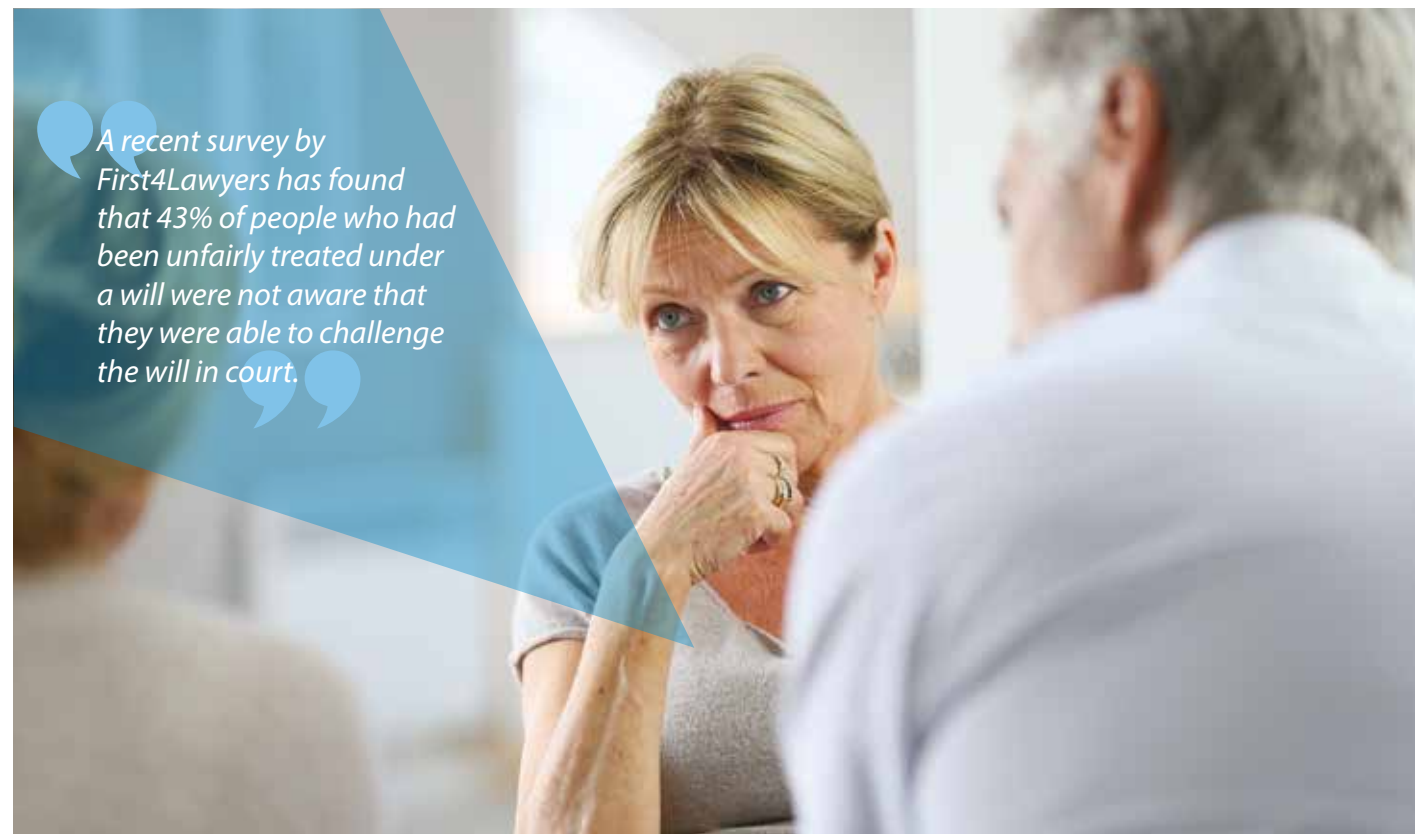
- Challenging the validity of wills due to lack of capacity (e.g. underlying degenerative medical conditions such as dementia), undue influence (from third parties in the will making process) or outright fraud;
- Claims under the Inheritance (Provision for Family and Dependents) Act 1975 in cases where certain categories of people have not been provided for sufficiently (or not at all) under a loved one's will;
- Questions as to improper administration of the deceased's estate.



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► EMPLOYMENT

Post-termination restrictions and protecting your business

Contracts of Employment frequently include post-termination restrictions designed to prevent an ex-employee from soliciting business, dealing with clients, poaching staff or operating a competing business. This quite often raises the issue as to how effective they are. Post-termination restrictions in the employment context will only be enforceable by the Courts if they pass the following tests:

- The Employer has an interest to protect. This is often trading relationships, a stable workforce or confidential information. It is important to be clear what the interest is and generally sensible to refer to it in the restriction itself.
- That the restriction goes no further than is reasonably necessary to protect the interests referred to in 1, above.
- That the restriction is reasonable in all the circumstances.

The tests are applied by reference to the circumstances at the time when the restriction was entered into, and not at the time when an alleged breach occurs. If an employee started employment as a junior member of staff and had restrictions imposed in his contract of employment which

were unreasonable for such a junior employee, the fact that he has been promoted to a senior role where such restrictions would be reasonable is irrelevant. At the time he entered into the restrictions, they were unreasonable and therefore they will not be enforceable. The solution is to review and tailor all restrictions as employees progress through promotion.

Problems with enforcing these restrictions arise if the period of the restriction is too long, or the ex-employee could inadvertently breach the restrictions. Note that if the restriction fails any of the tests, the Judge will not alter it to enable it to pass - it just fails. If a restriction lasting two years is held to be too long and therefore unreasonable, a Judge will not allow it to be enforced but only for a shorter, reasonable period. The clause will be ineffective as a whole.

The Government is looking at the question as to whether restrictions such as these stifle entrepreneurship. It is seeking the views of businesses and individuals on this subject and you can make them aware of your own views at the Innovation Power website held by the Department of Innovation and Skills.



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► COMMERCIAL PROPERTY

Stamp Duty Land Tax (SDLT) changes on commercial property transactions

The May 2016 budget included some unexpected changes to the SDLT for freehold and leasehold Commercial Property. From 17 March the SDLT for Commercial Property will introduce different rates and tax bands, replacing the old system which calculated SDLT from the entire transaction and overall changing the principle of 'slab' rates to 'slice' rates. Where contracts were exchanged but transactions did not complete before 17 March 2016, purchasers will have a choice of whether the old or new structure and rates apply.

The new tax bands for freehold purchases and lease premiums will be:

Up to £150,000 - 0%

£150,000- £250,000 - 2%

Over £250,000 - 5%

Stamp duty rates for leasehold transactions will also change, with a new 2% stamp duty rate on leases with a net present value over £5 million. This has bought commercial property SDLT in line with residential property SDLT. Those investing in larger commercial property will see an increase in SDLT, but the buyers of smaller commercial properties will benefit from the reduction. This is believed to benefit up to 90% of investors in Commercial Property. Anyone paying up to £1.05 million will see a decrease in SDLT. Nevertheless, the true impact of this measure remains to be assessed in the future.



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► PRIVATE CLIENT

Powers of Attorney - It's a no brainer

Mental capacity is the ability to make your own decisions. An event such as an accident or a stroke, or an age-related issue such as dementia can result in losing capacity. The question arises, if you become unable to make your own decisions in the future, someone else will need to make decisions for you.

By creating Lasting Powers of Attorney (LPAs) when you are healthy, for financial decisions, or health and care decisions, or both, you can choose people you trust to make decisions for you and empower them to look after your affairs day to day. Without an LPA or a valid Enduring Power of Attorney, no one has legal authority to manage your finances. Those closest to you could be faced with an application to the Court of Protection to give them authority to do so.

The Court of Protection has the power to appoint a deputy or deputies who are authorised to make decisions on behalf of someone who has lost capacity. The majority of deputyship orders issued by the Court relate to finances. Health and welfare deputyship orders are rare.

A financial deputy appointed by the Court has similar responsibilities to a financial attorney and must follow the principles set out in the Mental Capacity Act 2005. However, an attorney you have chosen yourself, appointed under a registered LPA, is able to start acting for you straight away, whereas a prospective deputy has to submit an application to the court disclosing all finances and must notify relatives. The prospective deputy has no authority to act until a deputyship

order is issued. As the volume of cases continues to rise year on year, the Court moves slowly and there can be lengthy delays. An application for that all-important order can take months, and in that time bills could go unpaid while the bank accounts are inaccessible. This can put the family under increasing financial and emotional pressure at a very difficult time.

In general, attorneys appointed by an LPA are able to handle financial matters on a day to day basis as they see fit. By contrast, a deputyship order sets out what the deputy can and cannot do, and actions that are not authorised by the original order may require the deputy to make further applications to the Court, with the accompanying delays that entails.

Deputies are also supervised by the Court on an ongoing basis and required to prepare a report each year detailing any financial decisions that were made, the status of the bank accounts and the financial transactions that were carried out. In addition, deputies are required to enter into a security bond, a type of insurance policy designed to financially protect the incapable person in the event of a deputy mismanaging the finances in their care.

You can see why we strongly recommend that clients have LPAs in place enabling them to choose who they wish to make such decisions in future if the need should arise and to make sure there is protection in place for their family.



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If you become unable to make your own decisions in the future, someone else will need to make decisions for you.

► RESIDENTIAL PROPERTY

Tax increase on purchase of second homes

The Government has introduced higher rates of Stamp Duty Land Tax (SDLT) on the purchase of second homes. One of the anomalies of the new arrangements is when purchasing a replacement main residence. Unless the sale and purchase of the main residence takes place at the same time, you may be liable for SDLT at the higher rates if you buy before you sell. Technically speaking you will own two residences. The sums can be significant, as illustrated below:

Band	Standard residential SDLT rates	Additional residential SDLT rates from 1.4.2016
£0 - £125k	0%	3%
£125k - £250	2%	5%
£250k - 925k	5%	8%
£925k - £1.5k	10%	13%
£1.5m +	12%	15%

* Currently all transactions under £40,000 do not require a return to be filed or tax to be paid in either standard or higher rate rules.

Source: www.gov.uk

You are eligible for a refund for the amount above the normal SDLT rates if you sell your previous main residence within 3 years. Whether the property being sold was actually the previous main residence or not will be subject to a test. A refund must be claimed within 3 months of the sale of the previous main residence or within 12 months of the filing date of the SDLT return, whichever comes later. To claim a refund you can complete a form online.

If you already have 2 or more properties, and you sell your main residence, you will not have to pay the higher rate if you buy a new main residence within 3 years.

Spouses and civil partners are treated as one unit. So, if either partner already owns a property you cannot escape the higher tax rates by registering the additional property in the name of the other. Purchases by trustees where the beneficiaries have no interest in possession will also be liable to the higher rates.

It is important therefore that the buyer sets out to his/her solicitor at the earliest opportunity their individual circumstances so that the tax return is completed properly and the correct rates of tax are assessed and applied.



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► LENDING

A Bank of Mum and Dad service

Legal & General have recently released a new report on the impact of parental assistance for children acquiring their first homes (and in some cases, second movers too).

This excellent report contains some surprising statistics, the most dramatic of all is that, "the Bank of Mum and Dad" will be involved in 25% of all mortgage transactions in 2016. This accumulated lending and investment would make the "Bank" a Top 10 lender, with over £5bn of loans each year at an average loan size of £17,500.

L&G aren't the only ones to target this market. Barclays have launched their Family Springboard mortgage. This essentially enables a borrower to borrow up to 100% of their purchase price provided the Bank of Mum & Dad deploys a deposit equivalent into a Helpful Start Account. While the risk for Barclays (and others who will inevitably follow) is starker, the use of deposits as collateral isn't new, and we can be comforted that this financial engineering is already a well established concept in Australia where La Trobe Financial, a specialist and innovative lender, has been pioneering the Parent to Child (P2C™) loan for some time.

We have seen a marked rise in enquiries from the Bank of Mum & Dad and it is an area that needs careful balance of legal skills in property, financial services, credit, trust and tax. TWM have brought these together to provide a Bank of Mum & Dad service. Whether or not we undertake a client's conveyancing, we can advise on the most appropriate way to protect these funds - either as an asset backed loan, an ownership interest in the property, or a simple unsecured loan agreement.

It is also important (and one reason why it is critical to get any lending documentation prepared by a specialist) that the appropriate clauses are included to ensure no parameters are breached with the Financial Conduct Authority, who regulate lending to home owners. It is better to be explicit in addressing these and other concerns than leave it to chance and evidence. Our advice doesn't just look at structuring when the loan or investment is made, but also if it needs to be recovered. It is rare for the Bank of Mum & Dad to do this with their child, but when a third party (like the main lender, or another creditor) gets involved, it is critical to ensure that Mum and Dad's priority is preserved.



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► County Club Rally



The firm entered two teams into this year's Guildford County Club Car Rally, which took place from 21st – 24th April. The mad-cap three day dash to France and back is in its second year, with 12 teams aiming to raise much needed funds for the Guildford Street Angels – volunteers who assist the people of Guildford in their time of need, whether that will be caused by homelessness, intoxication, drug abuse, assault, or any other issue which has

caused personal distress or the potential for physical harm.

The challenge kicked off at the County Club in Guildford, with each team being handed a sheet of 'Top Gear' style tasks to complete on their drive to Reims and back, in cars which had to have been purchased for less than £500. It wasn't long before the pranks started, with TWM team 'Mange Tout' finding themselves chained to another competitor before the cars had even left Dover, with the clues for the combination lock written all over the car! The tasks and pranks continued throughout the weekend – but thankfully all drivers and their vehicles made it back to Blighty (relatively) unharmed.

The TWM teams were made up of Managing Partner Matthew Truelove and Daniel Church, driving a 100,000 mile Vauxhall Omega 2.5 V6 purchased for the princely sum of £250, and Gerry Nugent and Joseph Woodhead in the second car, a purple Renault Clio 1.2, bought for the scarcely believable sum of £47!

Thanks to the generosity of TWM staff, clients and friends, our two teams raised £1,665 towards the total of £16,000 – a fantastic amount for the Guildford Street Angels.

► Presidential address

The great and the good of the Surrey legal world assembled recently to 'meet their President' at the annual lunch held at the Weyside in Guildford. TWM Private Client solicitor Daniel Church is the current President of the Surrey Law Society, and gave an address which included the future for law firms and how they process client monies.

► 2016 Guildford Legal Walk

The TWM Trekkers joined 250 other walkers in the 2016 Guildford Legal Walk this month, in a combined effort with other local law firms to raise money for legal aid, and specifically for the Surrey Law Centre.

The Surrey Law Centre provides advice for the poorest and most vulnerable people in our community as for many, access to justice is out of reach. In recent years, particularly since the 2013 removal of much legal aid for humanitarian or social welfare legal advice, funding for legal aid has been drastically reduced,

making it extremely hard for the most vulnerable members of society to obtain specialist advice.

Law centres across the country support a vast range of people including elderly people who need support to stay living independently, people who have been unfairly dismissed or discriminated against at work, people who suffer disability or illness, and many more. These people rely solely on centres, like Surrey Law Centre, to provide guidance, advice and support in their time of need, and without charitable and philanthropic donations, these centres would cease to exist.

The most recent fundraising event entailed a brisk 10km stroll through the beautiful Surrey countryside; an easy feat in stark contrast to the daily battle of those in desperate need of legal advice. We have raised a considerable amount for this extremely worthwhile cause and will continue to work alongside the centres as well as providing support in upcoming events, not least because it is great fun to be a part of!



News and Views is TWM's 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 nine 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:

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