

### ► Over £4,700 raised for Surrey Air Ambulance

The 3rd edition of the TWM Adventure Relay took place on 9 September 2016, helping to raise money for Surrey Air Ambulance, the firm's partner charity. Using innovative modes of transport to traverse between TWM office sites including horseback, canoe, go-kart and skateboard as well as more conventional methods, resulted in an aggregate total of 933 miles being covered by the TWM teams. Some teams set off at first light and didn't arrive in Guildford for their traditional post-event beer and pizza until 6pm. An amazing team effort, made possible by everyone's planning and hard work and the support of all staff, those who took part and those that covered for colleagues. A big thank you too for the generous donations from other businesses and friends of the firm.



### ► TWM invited to attend House of Commons drinks reception

The great and the good of Epsom and Ewell were invited to join local MP Chris Grayling for his annual Drinks Reception on the terrace of the House of Commons. Anne Fowler, Lindsey Alexander, Clare Chappell and Georgina Denny were lucky enough to be among the guests at this prestigious event. Coming only a short while after the vote to leave the European Union, there was no shortage of matters to discuss over drinks and canapes!

### ► TWM Solicitors wins national legal award

We are delighted to announce that TWM has won an award for the category of Innovation in Client Relationship Management (CRM) by The Lawyer magazine (the leading journal in the legal market). The firm was chosen ahead of three others following an evaluation of entries by a panel of 15 judges. The Lawyer Business Leadership Awards recognise and celebrate law firms and staff that have made a vital contribution to their organisation over the past year.

TWM has successfully delivered a project which at its heart helps clients, or family members of clients, by providing them with the personal information that they need at a time when they are in the midst of a traumatic event such as bereavement.

Our award-winning project involved the arrangement for 37,000 Wills and all Powers of Attorney to be scanned electronically and stored. In this way the firm is able to "access on demand" the specific wishes of clients, and can answer questions posed, often at a time of emotional vulnerability for the family.

Allison Crossman, Head of Private Client at TWM Solicitors explained, "This project was special to us because it provides family members of recently deceased with valuable information when they need it most. Many of the people we had known well in their lifetimes, so to be able to provide this service on-demand compared to waiting for documents to come out of storage is very gratifying."

The awards were held at The Brewery in London on 28 September 2016.



# RECOMMENDATIONS FOR TWM SOLICITORS AGAIN IN THE 2016 EDITION OF THE LEGAL 500

We are delighted to announce that we have retained our tier rankings for all seven recommended practice areas this year in the newly published The Legal 500, and that ten solicitors within the firm have received recommendations:

## Corporate and commercial

Commercial litigation

Employment

Contentious trusts and probate

## Family

Personal tax, trust and probate

Commercial property

The Legal 500 is one of the most authoritative guides to the UK legal profession. The guide is aimed at buyers of legal services.

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## BUSINESS LAW

### Apprenticeship Levy

The number of apprenticeships is set to rise with the government's implementation of the apprenticeship levy which will be used to fund three million apprenticeships by 2020. It is estimated that the levy will raise £3bn by 2019/2020. Although some are calling the levy a tax on business, the aim is to increase the number of apprenticeships available to either people outside of the company or to retrain current employees to enable them to progress in their career.

In certain industries there is a shortage of skilled staff and research shows that the better employers train their staff, the more positive effect they have on the company and in turn this impacts on profit making and the company as a whole.

The levy is set to be in force from 6 April 2017 in which all businesses with a payroll of more than £3m will be required to pay the apprenticeship levy at a rate of 0.5% of their annual bill. All employers will receive an annual allowance of £15,000 (in digital vouchers) against the levy, meaning that fewer than 2% of employers will pay any levy at all. The government will create an online portal which all companies will have access to known

as the Digital Apprenticeship Service. Employers will be able to use this service to recruit apprentices, find training providers and pay for training using their digital vouchers.

Although not all businesses welcome the levy, it will benefit those smaller businesses who may draw from the fund without having to contribute to it. Small businesses with fewer than 50 employees will not have to pay anything towards the levy if they employ apprentices under the age of 19 and they will also receive £1,000 with an additional £1,000 paid to the training provider.

Companies who currently employ apprentices will be refunded under the terms and conditions which were in place when the scheme started.

Although there are still questions to be asked surrounding the levy, there has been a decline in training and apprenticeship opportunities in recent years and it is hoped that the apprenticeship levy will create more opportunities for individuals as well as have a positive impact on businesses.



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## DEAL NEWS



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A great deal going on...

Automotive Sector  
Sale of West Horsley Motor Works Limited to Carlians Limited

**WEST HORSLEY MOTOR WORKS** [read more](#)

TWM advised the selling shareholders exiting the family business after 54 years.

Property Lettings Sector  
Purchase of shares in Hartswood Property Management Limited

**KEYS**  
RESIDENTIAL

TWM advised Keys Residential in connection with the purchase of the entire issued share capital of Hartswood Property Management Limited.

Real Estate Finance  
Peer-to-Peer Lender



TWM advised Assetz Capital on numerous lending transactions including personal borrower refinancing, property development loans and corporate working capital funding.

Real Estate Finance  
Short-term Finance for Property and Luxury Assets

**borro**

TWM acted for Borro on a semi-commercial bridging loan, which was completed within 5 days from receipt of instruction to completion.

Real Estate Finance  
Bridging Loan Provider

**vitvo**

TWM acted for Vitvo in advising upon, drafting and settling its security documentation for its forthcoming launch.

## ► LENDING

### Peer-to-peer lending and crowdfunding

Peer-to-peer (P2P) lending and crowdfunding are, for financial services, comparatively modern phenomena. They arose in the dearth of available lending capital post-global financial crisis and have enjoyed their role as leaders in the world's FinTech bubble: leading the way in creating equity and debt facilities for small businesses, and in providing a return to investors above the current yields available in more traditional markets since the events of 2008 and beyond.

TWM act for and work alongside several leading P2P and crowdfunding lenders: be they SME and property focused like **Assetz**, **Kuflink** or **Unbolted**, or social enterprise biased like **Crowdfunder**. There are, however, a substantial number of companies within this field: and it seems as if one is being created every week.

So what, if anything, should one be aware of when considering acting as either investor into or recipient of P2P capital? There have been some significant global failures in the last 12 months which have (or should have) shaken the P2P tree a little harder. Deloitte published a report which according to Business Insider, "just trashed the hype around the online lending industry". This detailed overview, however, shouldn't be where the feedback stops. In truth, Deloitte act for significant institutions to whom the P2P market is arguably an annoyingly combative competitor. In fact, Santander recently announced a link to Assetz for customers to access alternative funding options, so there is appetite. The concern is in the stories from Swedish failure, TrustBuddy, and Lending Club in the US. An excellent summary was provided by another TWM client, in a recent P2PIQ post:

**1. Investment Risk:** What is the expected return on my investment net of fees, losses etc.? What is the loss assumption

which the P2P lending site is using based on? Does the P2P lending site take into consideration the stage of the cycle we are in, or is it an over the cycle estimate?

**2. Deployment Risk:** What happens if my money is not deployed by the P2P lending site into loans, do I still get paid the same interest rate?

**3. Fluctuating Loan Interest Rate Risk:** If the underlying interest rate at which the P2P lending site lends money declines, does my interest rate decline as well, or is it guaranteed?

**4. Early Access To Money Penalties:** Does the P2P lending site have any penalties if I need to take my money out of the P2P lending Site earlier than the term I signed up for?

**5. Ring Fenced Investor Money:** Is my money ring fenced away from the risks of bankruptcy of the P2P lending site?

In truth, P2P lending isn't new. Syndicated lenders, participant lenders, investment managers, bond issuers and the like have been engaging with and collecting collaborative capital from retail and High Net Worth investors in a regulated environment for decades. The difference here is that the emergence of the electronic trading platform (now regulated by the Financial Conduct Authority) has enabled FinTech entrepreneurs to enter into lending. Where our clients have differentiated themselves from others is their ability to maintain quality underwriting internally with these transparent platforms. If it's all IT and no substance, then P2P lending may yet struggle and will be forced to consolidate: an opportunity for others to reinforce their substance over style.



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## ► COMMERCIAL PROPERTY

### MEES Regulations 2015

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (SI 2015/962) (known as the MEES Regulations 2015) were passed into law last year and their aim is to improve energy efficiency in both residential and commercial property. In particular, one key measure introduced is a requirement that the landlord of a property (whether commercial or residential) ensures that the property reaches a minimum energy efficiency standard before that property can be let. This aspect of the MEES Regulations is being implemented in two phases, beginning in 2018 as follows:

- Where the property is sub-standard because its energy performance falls below the minimum level of energy efficiency of a 'Band E' Energy Performance Certificate (in other words, 'Band F' or 'Band G'), subject to certain exemptions, a landlord must not on or after:
- 1 April 2018, grant a new tenancy or extend or renew an existing tenancy of a non-domestic private rented property; or

- 1 April 2023, continue to let a non-domestic private rented property.

Note that the 'Band E' threshold may change in the future (it could be raised or lowered!) and that the MEES Regulations do not impose positive obligations on landlords to carry out energy efficiency improvement works on private rented properties. A commercial lease is still valid if a sub-standard property is let but the landlord will be in breach of the MEES Regulations and as such liable to enforcement action, which could include a financial penalty of up to £150,000 if the landlord continues to fail to take the required action after service of a penalty notice by the local trading standards officers.

We recommend that landlords with commercial property portfolios should undertake a review of their Energy Performance Certificates for each property now to ensure that the works required to bring the property up to a 'Band E' rating or higher is completed in good time before the Regulations start to bite in the marketplace.



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## ► FAMILY LAW

### The impact of Brexit on family law

The decision of the UK people that the country should leave the European Union will impact on family law, as that is closely linked to a number of European Regulations. It has been confirmed Article 50 will be invoked by the end of March 2017, and there will be a two year phase out period after that, so this may be a good opportunity for the UK to improve some of its family law legislation as well as its relationships with non-EU countries.

It is primarily the fall in the value of the pound following the Brexit vote that seemed to be occupying the thoughts of people considering separation; and how this impacts on family assets. However, it is worth bearing in mind that the pound/euro rate is actually comparable to 2013, and so far there is little sign of any real impact on the property market. The reality is, with regards to family assets, it really depends where they are held and your status in the divorce or separation.

In terms of legal process, the most frequently applied EU family law Regulation deals with conflict of jurisdiction - that is, "where will the divorce proceedings be heard?" Assuming the jurisdiction requirement is met, proceedings issued in one European country will be heard there even if another European country might be

more closely connected to the marriage. In practice this leads to a 'race to court', with spouses choosing a country whose system is more likely to benefit their case. This can lead to injustice in divorce cases where the two parties are closely connected to multiple jurisdictions. For example, there is usually a perceived advantage to a party seeking spousal maintenance to issue their divorce application in England.

In other areas of family law away from matrimonial such as care proceedings, access rights and protections from child abduction, the UK will need new laws to replace EU frameworks. The reciprocal enforcement of family court orders across the EU is just one such example.

Our sense is that when all is said and done the underlying foundations and cornerstones of family law will not change significantly. Indeed, if there's more debate around changing the current fault based divorce legislation, or legal provision for unmarried families, we may in fact come out in a better place than where we started.



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## ► PRIVATE CLIENT

### Inheritance tax: Residence Nil Rate Band – Are you better off?

In 2007 the Conservative party pledged to increase the Nil Rate Band (NRB) to £1m, and eight years later, in July 2015, the introduction of a new Residence Nil Rate Band (RNRB) was announced.

#### When does it start?

- The RNRB will apply to estates where the death occurs from 6 April 2017 onwards.

#### How much will it be worth?

- £100,000 for 2017/18
- £125,000 for 2018/19
- £150,000 for 2019/20
- £175,000 for 2020/21

From 6 April 2021, the RNRB will increase in line with the Consumer Price Index (CPI).

If everything is passed from the first spouse or civil partner to the survivor on the first death, then the survivor should be eligible to use both RNRBs.

#### What are the catches?

- If a person's estate is worth more than £2m, then the tax break tapers off until it is lost completely. Careful estate planning is key here.

- Those without direct descendants (which includes step-children and adopted children) will be unable to benefit from the new tax break.
- The deceased must have had a residence at death or, at least, have had a residence at some point after the new rules were announced on 8 July 2015.
- By creating a new tax concession, rather than simply increasing the existing nil rate band, the government is in fact making an already complex tax system even more complex.

#### Conclusion

If house prices continue to climb, the new tax break may just maintain the status quo rather than providing any real tax savings.

Some of the details are not clear yet - but what is certain is that the Nil Rate Band has not simply been raised to £1m. The new rules are complicated, and it is important to take advice on your particular circumstances before the new rules come into effect from 6 April 2017 onwards.

We are hosting a series of seminars on the subject of Residence Nil Rate Band. Please visit [www.twmsolicitors.com/events](http://www.twmsolicitors.com/events) for further information.



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## ► EMPLOYMENT

### Sexual harassment in the workplace

A Trade Union Congress (TUC) survey of 1,500 women shows that more than half (52%) have been sexually harassed in their workplace. The report, called "Still Just a Bit of Banter?", also found that a third had been subjected to unwelcome jokes and a quarter have experienced unwanted touching. In nine out of ten cases the perpetrator was male, and nearly one in five women (17%) said it was their line manager, or someone with direct authority over them.

Sexual harassment can take many forms, ranging from inappropriate banter to unsolicited sexual advances. There is often confusion as to what can actually constitute sexual harassment. Legally speaking, the definition is 'conduct by A that has the purpose or effect of (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B'.

Crucially, the legal definition is not just limited to direct conduct but also conduct which has the effect of creating a sexually charged environment; the term 'harassment' is slightly misleading in this regard. Therefore seemingly trivial jokes, comments, and banter (everyday sexism that is frequently tolerated in the workplace), although not directed at an individual, can certainly amount to harassment.

Interestingly, the report also revealed that some 79% of women who said they were victims of sexual harassment did not tell their employer. The reasons given included fear that reporting would affect their relationships at work (28%) or affect their career prospects (15%).

When faced with sexual harassment in the workplace, the individual must report the behaviour as soon as possible. There is a 3 month limitation period in employment claims which starts from the incident itself or, in the case of continuing harassment, from the end of the last occurrence. Employees must also make a careful record of the incident(s). Employees who feel harassed should make a report to HR or to a Manager they feel comfortable speaking to. If that does not yield a result, the employee should raise a formal grievance with the employer. Should this prove unsuccessful, the employee should seek legal advice.

Employers have a responsibility to combat sexual harassment, and to raise awareness of its meaning and how it can affect others. Incorporating a Sexual Harassment policy into employees' contracts and handbooks is one way to achieve this, as is awareness training. Employers should be aware that a failure to take swift and appropriate action can be construed as a failure to take sexual harassment seriously.

Employers should be both vigilant and understanding in relation to this subject, and to those raising concerns. In addition, employers should be conscious that men can also be victim to sexual harassment and that they may find it more difficult to report sexual harassment because of the taboo associated with it. When dealing with such reports, employers should be careful not to gender discriminate and to deal with all reports on an equal basis.



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# ► DISPUTE RESOLUTION

## Alternative dispute resolution

With rising court fees, the protracted nature of court proceedings, and the uncertainty of litigation outcomes, the necessity of exploring alternatives to formal court litigation when dealing with disputes continues to become more important. Indeed, given the current legal landscape, some have dubbed ADR (Alternative Dispute Resolution) the “future for litigators”.

However, this is not to say ADR is a “lesser option” than court proceedings. The speed of the process and the relative control parties have over the process means it is often a more time and cost efficient option. Not only that, the variety of different types of ADR and the flexibility of their processes in comparison to the courts means that generally speaking there is an option to suit every client’s specific needs. Here are some examples:

- **Adjudication** – A very quick and fairly informal process, the parties agree to the use of a third party of their joint choosing to resolve the dispute. The decision is binding until either a court rules to the contrary (via more formal litigation) or there is agreement between the parties to alter the outcome. Given its speed and interim binding nature, it is commonly used during ongoing projects to deal with small points of contention, for instance in construction projects.
- **Early Neutral Evaluation** – Used outside of court proceedings or at an early stage of a claim, this process involves a current or retired judge (or another party of similar standing) informally reviewing each party’s case on a without prejudice basis (i.e. it is not to be considered by the court should a full trial go ahead). The “judge” will then provide the parties with his views on the strengths and weaknesses of each party’s case. As such, there is no binding decision, but it can provide an unreasonable party arguing a weak case with a much needed dose of reality

as to the strength of their position, hopefully leading to either withdrawal or the negotiating table.

- **Mediation** – A very flexible method which can take many different forms according to the parties’ requirements. Traditionally it involves instructing an independent third party (possibly a barrister and/or trained mediator) to meet with the parties confidentially to discuss the issues in order to bring the parties closer together with a view to a mutual agreement. As such, the mediator does not give a binding decision on the dispute, although the parties can ask for his/her informal views. In order to reach agreement, anything is essentially possible and settlements can therefore be both more creative and commercially pragmatic than traditional court remedies.
- **Expert Determination** – An expert in the particular field is instructed by both parties to investigate the issues and hear the parties’ cases. A decision will then be given which is generally a binding contractual agreement. This can be a very useful method where the issue in dispute is largely technical and specialist rather than legal. Indeed this method has its origins in property valuations and can be particularly effective where the dispute will hang largely on the opinions of experts.

**At TWM, our dispute resolution team regularly advises on the many different forms of ADR and acts for parties in the arrangement and conduct of all such methods of resolution. If you wish to explore cost and time effective alternatives for resolving your dispute, please do not hesitate to contact us.**



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## ► RESIDENTIAL PROPERTY

What you need to know when buying a brand new home

**A new-build home is appealing to many purchasers, compared to an older property. It's worth knowing there are particular aspects to buying a new property that don't apply to re-sale.**

### 1. Get a proper construction warranty

As an alternative to a proper warranty, developers sometimes arrange for an architect or surveyor to issue a Professional Consultant's Certificate (PCC) for the property's construction, stating they have supervised construction and it meets the required standards. It is not a warranty per se. If defects occur, the consultant will not immediately fix them (unlike a warranty) and, instead, is very likely to resist liability in consultation with their insurers. A PCC is far less valuable than a proper warranty.

### 2. Construction warranties do not cover all defects in a property

Known often as "snagging lists", minor defects are not covered in construction warranties. Often, developers' sales contracts state they are not liable for minor defects. Some developers do allow for them, however identification must be within a short period after completion, otherwise the developer will not be liable.

### 3. You have to have your financial arrangements ready for completion on short notice

Usually, developers will give 10 working days' notice of

completion. This means it is crucial that your funds are not tied up in savings accounts that cannot be accessed quickly. If you need mortgage funds to buy the property, you need a mortgage offer which will remain valid when notice is served by the developer, and to have already dealt with all of the lender's requirements. Lenders almost always need at least 5 working days' notice to make funds available once you have complied with all their requirements, so time can be very tight indeed.

Note that mortgage offers are usually only valid for 6 months. If the construction period is longer than that, your mortgage offer may well have expired in the interim. If so, and if market conditions or your circumstances have changed, then you may not be able to get a new mortgage offer on the same terms – or even at all.

### 4. The size, layout or materials for the property can change, and you have no remedy

Most developers state you can cancel the contract and get your deposit back if a major change to the property is made. However a minor change, in size, layout or materials, while it can be important and frustrating to you as a buyer, does not give rise to any remedy.

These are some examples of issues to be aware of and we at TWM will make you aware of how best to address or neutralise them, before you agree to buy your new home.



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- Businesses, including Landlords and the Self Employed, will have a more up-to-date picture of their tax position. From April 2018 they will have to update HMRC "at least quarterly" where the business is their main source of income or is a secondary source with a turnover of over £10,000.

The initial reaction and experience from TWM clients and colleagues has revealed a number of concerns:

- The registration process requires a lot of confidential information.
- There is no mention of Trusts or Estates.
- Will small businesses and landlords effectively be doing four returns instead of one?
- What happens to those who are not computer literate?

If clients have experience (positive or negative) of using the new digital tax accounts or have queries, I would be glad to hear about them.



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## ► TAXATION

Making Tax Digital

Ever since George Osborne announced "the death of the Tax Return" in March 2015, we have been waiting to see how the Government's proposal to "Make Tax Digital" would evolve.

The plan is that by 2020 the UK tax system will be fully digital, with four foundations:

- Since April 2016, every individual taxpayer and small business has access to a digital tax account. These accounts are intended to "present individuals with a personalised picture of their tax affairs" and to provide support via secure messaging and webchat.
- Simplified Processes – taxpayers should not have to tell HM Revenue & Customs about things they should already know. HMRC will gather information from employers, banks and building societies, pension providers and other government departments and hold the information on the digital tax account for the taxpayer to check and amend.
- All liabilities and entitlements in one place – presumably this will marry-up the tax credits system to the income and tax system. For small businesses, their VAT position as well as tax and PAYE should all be shown.



## ► Family event at Michelin House

Our family team hosted its London summer drinks at our Chelsea office in Michelin House. Beautiful weather and the roof top terrace provided a spectacular venue and saw a range of clients, barristers and other contacts attend. The event was a great opportunity to introduce people to the new Chelsea office and to continue developing our professional relationships with those that attended.



## ► TWM 'chip in' for London Legal Support Trust

James Aston, Tristan Kendal, Charlie Miller and Daniel Church were driving, chipping and putting their way around Verulam Golf Club (past Ryder Cup venue), raising money for the London Legal Support Trust (LLST). LLST is an independent charity that raises funds for free legal services in London & the South East. It was more of an endurance day, playing 54 holes walking no less than 15 miles. Being the English summer the weather unfortunately did its usual misbehaving trick transforming greens into lakes. However the cause was more important than the scores!



## ► Welcome to our new trainees

We are delighted to welcome Nichola Gordon-Jones and Fiona Buckland as they embark on their legal careers with a two year training contract with the firm.

Nichola is from Alton, Hampshire. She went to Cardiff University, and studied for her LPC at Guildford University of Law.

Fiona is from Sheffield. She went to the University of Surrey, and studied for her LPC at Guildford University of Law.

Their arrival brings the total number of current trainees at the firm to 9, reflecting the firm's commitment to developing and training the solicitors and partners of the future in-house.



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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