

OUR NEWS AND VIEWS

CHARLES
LUCAS &
MARSHALL
solicitors

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Want to keep on top of legal changes which affect your business? Charles Lucas & Marshall has launched a series of specialist Newsletters for clients who want to keep up to speed in the area of employment, corporate law, commercial property and landlord/tenant law.

If you would like to join our mailing list and receive these regular updates free, then email marketing@clmlaw.co.uk



ESTATE PLANNING - MORE IMPORTANT THAN EVER



While there have been recent changes to the way inheritance tax is calculated, there are still many reasons why tax and estate planning advice should be sought.

Richard Mead, of Charles Lucas & Marshall's Wills & Estate Planning team, believes that for large numbers of people, the need to make a Will is as important as ever.

"Firstly, inheritance tax is still an important issue if, for example, you own a business or own agricultural property. Such assets require specialist inheritance tax advice," he says.

There are also many non-tax reasons for making a Will. Estate planning allows people to protect their assets for future generations and ensure their wishes are carried out – and this can be particularly important if people have previously been married.

Charles Lucas & Marshall's Wills & Estate Planning team is one of the largest and most experienced in the region. There is a wide range of specialist knowledge across the firm's four offices with the

team, headed up by Richard Mead and supported by Simon Mee, Ceri Davies, Michelle Thomas and Michael Overend.

"We pride ourselves in offering creative and individual solutions to our clients by taking a comprehensive and holistic approach to each of our clients needs," says Richard Mead.

As well as helping clients put their affairs in order and plan for their future, the team encourages clients to think about how they can use Lasting Powers of Attorney to ensure their affairs are managed in line with their wishes in old age.

"Often families are loath to confront and discuss what would happen if they became incapable of managing their affairs through illness or old age," says Richard Mead. "We genuinely believe people should be setting down their wishes while they can."

Sadly the consequences of not planning for possible mental incapacity can be serious, cause worry and create an unnecessary administrative burden for families.

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For further information contact Richard Mead on 01635 521212 or richard.mead@clmlaw.co.uk.

CONVEYANCING SERVICE RECEIVES LAW SOCIETY STAMP OF APPROVAL

Charles Lucas & Marshall, has received accreditation from the Law Society's Conveyancing Quality Scheme.

The scheme requires firms to undergo a strict assessment, compulsory training, self reporting, random audits and annual reviews.

Charles Lucas & Marshall is the first firm in Newbury, Hungerford and Wantage to be accredited under the Conveyancing Quality Scheme (CQS) – set up by the Law Society to provide the public with a recognised quality standard for conveyancing services.

The scheme has the support of the Council of Mortgage Lenders, Land Registry, the Building Societies Association, Legal Ombudsman and the Association of British Insurers.

"We are delighted to have been recognised by the Law Society for the quality of our conveyancing," says Simon Pook, Head of Charles Lucas & Marshall's Residential Property Team. "We are very proud to have the accreditation – and particularly to be the first firm in three of our four office locations to receive it."

The Law Society reports that as well as support from the mortgage lending and insurance industries, there is increasing recognition from the public of the scheme.

"We have strong evidence from our own marketing to show the public is actively seeking CQS firms," says Simon Pook.

For further information contact Simon Pook on 01635 521212 or simon.pook@clmlaw.co.uk

CAN'T PAY, WON'T PAY – HERE'S WHAT YOU CAN DO?

In today's economic climate, there has been an alarming increase in clients, both individuals and companies, needing to take legal action to recover unpaid invoices and other debts owed.

There are of course those cases where the debt is genuinely disputed and which may end up going to trial before any judgment is made. However, what if the debt is not disputed? What if, for pure cash-flow reasons, customers will not or are unable to pay?

Formal Letter before Action

If your internal credit control systems do not prove fruitful in recovering the monies owed, then the next step is to send a formal Letter before Action, which, in effect, is a precursor to commencement of court action. Such Letters before Action are usually sent by solicitors and very often result in either payment in full or an agreed payment plan.

Court Action leading to Default Judgment

If the formal Letter before Action elicits no adequate response, then the next step is to commence court action for the recovery of the sums owed. If no response is received, usually within 14 days, then you can request the court to enter Judgment in Default for the sum owed, together with interest and court costs.

Enforcement Options following Judgment

If, despite obtaining such Default Judgment, payment is still not forthcoming, then you will need to take enforcement action. The type of enforcement action will depend upon the financial position of the debtor.

Examination of Debtor's Financial Position

If you do not know the debtor's financial position, before deciding what type of enforcement action is best, you can compel the debtor to attend court and be examined as to their means.

Types of Enforcement Action available

- **Attachment of Earnings Order** - If the debtor is employed you can get an Attachment of Earnings order whereby the court orders the debtor's employers to pay to you a weekly or monthly sum from the debtor's salary.
- **Third Party Debt Order** - This is where the court can order the debtor's bank (assuming the debtor has funds in the bank account) to pay the sum owed to you. It can also be used to order a third party who owes money to the debtor, to pay you the sum direct.

- **Charging Orders** - this is where the court can order that the amount of the Judgment can be charged, like a mortgage, against the debtor's property or share in such property. However, the amount charged, unless an application is also made for an Order for Sale, will only be paid when the property is sold.
- **Bankruptcy Proceedings** - as an alternative to the above, if you are owed £750 or more, you can petition for the debtor's bankruptcy - although you may not get the monies if there are secured creditors ahead of you in the queue or the debtor's assets aren't sufficient.

- **Winding-Up** - If the debt is owed by a company then you can apply for the company to be wound up. Again, whether you will get your money will depend upon whether there are secured creditors ahead of you and the company has sufficient assets.

For further information contact Paul Trincas on 01635 521212 or paul.trincas@clmlaw.co.uk



NEW ROLES, NEW PEOPLE



Paul Trincas has been appointed Head of the Corporate Services Team at Charles Lucas & Marshall. Paul has been with the firm for 29 years and a partner for 20 years. A specialist in commercial litigation, Paul

is a leading expert on motoring law disputes, commercial and contractual law and dispute resolution. Paul's appointment brings a wealth of experience to the firm's Corporate Services Team, adding to the wide range of employment and corporate law services already available.



Simon Pook has been made a Senior Associate. Simon joined Charles Lucas & Marshall after completing a Theology Degree at Westminster College, Oxford. Simon qualified as a Legal Executive five years ago and is

now sole Head of the firm's Residential Property Team, a role which he covered jointly with Peter Graham previously.



Rupert Wright has joined the Corporate Services Team at Charles Lucas & Marshall. Rupert initially trained as an accountant with Deloitte before joining a leading City practice where he acted for various blue-

chip companies. Rupert has spent much of his professional life in Berkshire working for a range of companies from large plcs, including many household names, through to small businesses.



Jas Chahal and **Lisa Keefe** have joined the Residential Property Team at Charles Lucas & Marshall. Jas

has worked in property conveyancing for 13 years and was latterly with Lemon & Co. Lisa is an experienced conveyancer who has worked in property conveyancing for ten years, latterly with The Merriman Partnership in Marlborough.



Jackie Waller and **Simon Mee** have been made Associates. Jackie has worked in residential conveyancing

for over 20 years and deals with all aspects of residential property law. Simon joined the firm three years ago and is a specialist in inheritance tax planning, powers of attorney and the fast-growing area of resolving disputes over wills, inheritance claims and contentious probate. Simon is a Member of the Society of Trust and Estate Practitioners.



Kelly Carson has been promoted to paralegal executive in the Residential Property Team. Kelly joined the firm eight years ago and has worked in a variety of support roles before her promotion which means she

will now handle her own client portfolio. Kelly is also looking to develop an Equine Law practice within the firm working on the project with James Woodhouse, Rupert Wright and Hemant Amin.

DON'T LET RESTRICTIVE COVENANTS STIFLE YOUR BUSINESS START-UP

We have recently advised a large number of clients who have been made redundant and are looking at various options in terms of future employment.

Many are looking to start out in business on their own, perhaps as partners or directors of a new business start up, providing services as a consultant, or buying an existing business, franchise or distribution agency.

One of the first things to check is whether you are bound by any restrictions in your employment contract with your previous employer. These are often stated as continuing to be legally binding on you despite the termination of your employment for any reason. They may also be included in, or restated, in any compromise agreement you sign dealing with the termination of your employment.

Any breach of such restrictive covenants is essentially a breach of contract, although your former employer would have to convince a court that the restrictive covenants were

valid and enforceable. A court will consider the matter from the initial standpoint of such terms being unenforceable because they are in restraint of trade, as they prevent you as an individual from earning a living.

This presumption of unenforceability can be overcome, however, if your employer can demonstrate that such clauses in your contract do no more than is necessary to protect their legitimate business interests.

Non-competition-type restrictive covenants have traditionally been harder to enforce than other types, such as non-solicitation of customers or clients. This is because they may be so widely drafted that they are seen as likely to prevent you from being able to work. However, the courts have, in recent years, given some encouragement to businesses to use them.

For further information contact Andrew Egan on 01635 521212 or andrew.egan@clmlaw.co.uk



CALL FOR A RE-THINK AFTER SCOTTISH ASBESTOS RULING

Brigitte Chandler, Partner at Charles Lucas & Marshall and one of the UK's leading experts on asbestos litigation, has called for consistent legislation across the UK following a decision in the Scottish courts which continues to allow people with an asbestos related illness to claim compensation.

"It is ridiculous that we have one rule for Scotland and Ireland - and one rule for England," says Brigitte Chandler. "We are in an absurd position and the Government needs to recognise this."

Insurers had been trying to overturn the law in Scotland which allows people with pleural plaques, a scarring of the lungs, to claim compensation. Insurers had argued that the law was 'flawed'.

However, the Scottish Court of Session has upheld the decision by the Scottish Parliament which allows people with pleural plaques to sue employers if they develop the condition due to exposure to asbestos at work.

While pleural plaques do not cause symptoms, they signal the presence of asbestos fibres that could trigger life-threatening conditions such as mesothelioma or asbestosis.

In October 2009, the Damages (Asbestos Related Conditions) Bill which aimed to allow people in England also to claim compensation for pleural plaques was passed by the House of Commons and sent up to the House of Lords. However, the Bill ran out of time during the parliamentary session – leaving thousands of claimants in limbo.

"We need to keep the pressure on the Government so that the issue does not go away," added Brigitte Chandler. "We have a large number of clients with pleural plaques still hoping they can make a claim. Obviously, anyone with more serious asbestos related disease such as lung cancer, asbestosis or diffuse pleural thickening can bring a claim now."

For further information contact Brigitte Chandler on 01793 511055 or brigitte.chandler@clmlaw.co.uk



THE END OF TRUSTS?

Following recent changes to Inheritance Tax rules, some might argue that trusts have become unnecessary. However, there are still a number of reasons why a person may not wish to make outright gifts either during their lifetime or by their Will.

Simon Mee, a Wills and Estate Planning lawyer with Charles Lucas & Marshall, says: "A donor may think that children or grandchildren are not mature enough to deal with large sums of money. In some situations the intended beneficiaries may not be able to manage assets or it may not be in their interests to receive them. This might be because of temporary or permanent mental incapacity, or because of their particular circumstances, for example they may be entitled to means tested benefits."

"Despite the changes, tax issues are still important. The donor may not wish to

increase the tax liability of the person receiving the gift whilst keeping assets available for their unforeseen or unexpected needs," explains Simon Mee. "In some circumstances a trust may be used to benefit multiple times from the Inheritance Tax nil rate band.

Alternatively, the donor may simply not wish to lose complete control over the assets to be given," says Simon.

The creation of a trust either during lifetime or by Will may be essential for inheritance tax planning, and/or ensuring provision for the whole family in a flexible manner to provide for their individual needs.

For further information contact Simon Mee on 01635 521212 or simon.mee@clmlaw.co.uk



If you would like more information e-mail us at ask@clmlaw.co.uk or visit our website at www.clmlaw.co.uk

COMMERCIAL RENT ARREARS - AND THE BEST WAY TO RECOVER

The recession has seen a surge of cases where landlords of commercial premises are having to recover rent from tenants who have fallen into arrears.

Landlords have the option of either forfeiting the lease or keeping the lease alive and finding some way of recovering the arrears. This latter course is often the preferred option, rather than trying to find an alternative tenant.

There are a number of different methods landlords can use to recover rent arrears. These include: suing for the arrears; serving a statutory demand threatening to wind up the tenant company or threatening to make an individual tenant insolvent.

However, an easier and quicker method to recover rent arrears is the use of the ancient

common law remedy of "distress of rent."

The beauty of this method is that the landlord does not need to obtain a court order. The process involves the landlord instructing a certificated bailiff to enter the premises, seize goods and sell them to recover the rent.

The bailiff attends the premises, shows his/her certificate to the tenant and leaves a memorandum detailing the items seized and the associated fees, charges and expenses.

Very often, on a practical level, the mere attendance at the premises of the certificated bailiff will be enough to persuade the tenant to pay all the arrears. Only rarely are goods actually seized and when they are seized, they are often left at the premises and a signed Walking Possession Order is obtained.

While the remedy of distress only applies to "rent," it has become common practice for landlords to include, under the definition of rent in their leases, items such as service or maintenance charges and other sums due under the lease so these may be recovered at the same time.

This common law remedy of distress is likely to be abolished in due course and be replaced with 'Commercial Rent Arrears Recovery (CRAR)'. This proposal is included in a draft 'Tribunals, Courts and Enforcement Bill' although no date has yet been set for implementation.

For further information contact Paul Trincas on 01635 521212 or paul.trincas@clmlaw.co.uk



PROTECT YOUR FAMILY BUSINESS FROM YOUR CHILDREN'S PARTNERS

One of the many articles we write for regional business magazines and law journals set a few alarm bells ringing!

The article was about the role pre-nuptial agreements can play in protecting family businesses - and provoked several enquires from older readers who had started a family business and subsequently given an interest in that business to their children.

They were concerned there was no pre-nuptial agreement in place. However, all was not lost. Even if there is no pre-nuptial agreement in place, there is still an option left for family businesses.

In such cases, children who have married without entering into a pre-nuptial agreement can still protect their share of the family business with a post-nuptial agreement.

This applies to employees of companies as well as to shareholders and directors. So, a company taking on a new employee who

will acquire shares or is potentially likely to become a director, can make it a requirement that the employee puts a post-nuptial agreement into place, even if he or she has been married for several years and is not contemplating a separation or divorce.

Recent court rulings have given more weight to post-nuptial agreements. They cannot be guaranteed to be binding on the courts but a well-drawn agreement can ring-fence an interest in a company.

Founding directors of companies also have other methods available to them to protect the family business from claims by divorcing spouses. How galling would it be to retire from the business that you had worked so hard to set up and hand it over to your adult children, only to see the firm's assets depleted when those children divorce?

The firm might then have to raise large amounts of capital by way of a mortgage,



or divert part of the firm's income to pay maintenance to the ex-spouse. Either way, the firm's profits will take a severe blow and your retirement income will be threatened. The lesson from that is: think hard and take advice before you simply hand over your interest in the firm to your children. Consider estate planning and all its implications, including tax, when you are contemplating retirement or making your will.

It should be borne in mind that spouses have potential claims over all marital assets and an interest in the family business is just as much an asset as the marital home. We would urge all owners of family businesses to consider the future of the firm and how best to protect it.

For further information contact Suzy Hamshaw on 01635 521212 or suzy.hamshaw@clmlaw.co.uk



OH YES, WE ARE...

Legendary hero Robin Hood is heading our way this festive season. Charles Lucas & Marshall is once again sponsoring this year's Christmas pantomime, 'Robin Hood' at Newbury's Corn Exchange.

Hemant Amin, Head of Practice Development said; "We have sponsored, 'Aladdin', 'Puss in Boots' and now 'Robin Hood'. We are proud to support The Corn Exchange which is now so much a part of the community. And the Show, well it is great fun and a sell out every year!"



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