Neves SOLICITORS **Client Update - Spring 2014**

## CQS Awarded To Neves

Neves has now achieved a place on the Conveyancing Quality Scheme! CQS provides a recognised quality standard for residential conveyancing practices. Membership achievement establishes a high level of credibility and a trusted source for clients to look for when choosing a solicitor for Conveyancing matters.

This is a great achievement for the firm and helps provide a benchmark of integrity that both existing and potential clients can trust Neves to do the best job possible.

A special thanks to Caroline Hume and Andrew Becconsall along with all the staff based in Conveyancing at Neves for their continued hard work to help achieve this milestone for the firm.

## Congratulations Trevor

The Partners are pleased to announce as of the 1st of April Trevor Kidd will become an Associate at Neves. Trevor joined the firm in September 2007 and during his time at our Harpenden office he has helped build a wealth of satisfied clients. We would like to thank Trevor for his continued dedication and commitment to the firm over the years and wish him the best of luck in his new role at Neves!

## The Parent Show And Neves

Recently Mary McEvoy Head of Divorce and Family Law at Neves, made a guest appearance on local community Radio Station Verulam's Parent Show. Mary provided input on the topic of Non School attendance and the penalties that are being issued. This subject has become popular in the media over recent months with particular interest in the way individual schools are dealing with absence of their pupils.

The Parent Show is a unique programme providing tailored information for parents or anyone caring for children in and around the Hertfordshire region. Neves are proud to continue sponsoring the show which is broadcast at 8pm every Thursday, you can catch up on missed shows via their podcast.

## What Our Clients Say About Us

*"The service provided was of a good standard and I felt they were trustworthy"*

*"Thanks you for this, you always make it very easy to understand, I have had no hesitations in recommending your services to all my relevant connections"*

*"Very polite, helpful, friendly service , with excellent value for money".*

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*"We very much appreciate the manner in which the business transactions were conducted, efficient and pleasant."*

*"Highly organised and efficient. The best solicitors that I have dealt with in the Luton area."*

*"Trustworthy, reliable, extremely high attention to detail. Very friendly like a family-run business".*

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The Legal 500 UNITED KINGDOM LEADING FIRM 2013

## Always Read The Small Print

The pitfalls of not getting documentation exactly right have become all too clear for a lender following a recent Court of Appeal hearing.

The case arose because the lender wished to rely on the guarantees given over a debt by a group of guarantors. Unfortunately for the lender, the documentation contained a clause stating (in effect) that the guarantees were only valid if all four guarantors had signed the document.

When the person to whom the loan was made did not make the necessary repayments, the lender issued a statutory demand for payment on the guarantors. If a statutory demand for payment is not set aside or met within 21 days, the lender can bring insolvency proceedings against the debtor. Dealing with a statutory demand immediately on receipt is therefore essential.

One of the guarantors alleged that his signature was a forgery, so the guarantors applied to have the statutory demand set aside. The High Court refused and that decision was then appealed.
In overturning the decision of the High Court, the Court of Appeal considered that if the document was intended to create joint and several liability among the co-guarantors, it was clearly necessary that all should have signed it before any one was bound.

Accordingly, if the signature of one of the guarantors could be shown to be a forgery, the guarantee would fail. That point remains to be decided. In the interim, the lender's statutory demand for payment was set aside.

If you are advancing funds or having an advance guaranteed by a guarantor, a failure to ensure that the paperwork is fully and correctly completed could cost you dear.

## Ignoring Duty To Neighbours Costs Homeowner

Homeowners have a responsibility to ensure that they do not damage their neighbours' properties and this includes a legal duty to keep their garden trees and shrubs under control.

When a North London woman ignored her responsibilities in this regard, the result was an order by the court to pay more than £17,000 in damages to her neighbours after the spreading roots of her 'dominating' cypress hedge caused damage to the foundations of their home.

The couple who lived next door brought a claim for damages against the woman after they discovered cracks in the exterior and interior walls of their property.

The Technology and Construction Court found that expert evidence had established that the cypress trees were a significant cause of the subsidence damage and that a 'reasonably prudent landowner' would have appreciated the real risk posed by the trees' roots.

Given the 'dominating position' of the hedge – described as 'not an attractive feature' – the damage to the couple's home was 'reasonably foreseeable'. Finding the woman liable in nuisance, the Court found that it would only have cost between £700 and £800 to remove the hedge and that the woman had failed to take appropriate steps to eliminate the obvious risk.

However, the Court went on to rule that damage caused by a 50-year-old oak tree on the woman's land had not been reasonably foreseeable, and lopped 15 per cent off the couple's compensation to reflect their contributory negligence in failing to complain to their neighbour earlier. The Court awarded the couple damages for the cost of expert advice, surveys and remedial work, and for the distress and inconvenience caused by the tree roots damage. The total award came to £17,269, after the 15 per cent reduction

**Inside this issue:**



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# Teenager's Wishes Granted

In a ruling that underlines that the wishes and feelings of children can be decisive in even the most intractable family cases, a father has won a seven-year battle to have more contact with his daughter.

The 'doggedly persistent' father had separated from the girl's mother before their daughter was born but was so devoted to her that he kept his home stocked with neatly arranged dolls and had her name engraved above his fireplace. The first six years of her life were marked by ceaseless litigation between the parents, resulting in more than 40 family court hearings.

The father saw his daughter weekly during her early years but, in 2006, a family court restricted his contact with her to three times per year in the light of concerns expressed by social workers and psychologists that his preoccupation with her and his constant conflict with her mother could cause her emotional harm. The father's applications to extend contact in the seven years since then had all failed.

Now, however, a family judge has increased the contact between father and daughter to eight times per year after being told that the 13-year-old loved and idolised her father and had expressed a wish to see him more often. Despite the mother's plea that she was completely exhausted by the father's relentless determination to get his own way, the judge found that the 'intelligent and articulate' teenager's views weighed heavily in the balance.

Although the judge could discern little change in the father's attitude over the years, he did not doubt the sincerity and strength of his love for his daughter and his wish to play a bigger part in her life. He directed that contact sessions should take place around school holidays, the girl's birthday and Christmas. She will also be given a dedicated mobile phone which she can use to telephone and text her father.

***Family***

*If you need help or assistance with any family law issues then contact our family team.*

Email:
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# Law Commission Backs 'Pre-Nuptial Agreements'

Following hard upon a case in which the court refused to uphold a pre-nuptial agreement signed by a city lawyer and his bride-to-be on the day before their wedding, the Law Commission has published proposals for pre-nuptial agreements to become binding in English law.

Hitherto, following the much-publicised Supreme Court decision in Radmacher v Granatino, 'pre-nups', although not binding, have generally been upheld by the English courts provided the court is satisfied that the agreement was entered into with appropriate safeguards in place – such as independent legal advice having been taken by both parties. However, not all such agreements pass the necessary tests.

In the absence of any agreement to the contrary, English law assumes that 'matrimonial property' divided equally. That assumption does not apply to 'non-matrimonial property' – for example any inheritance received or wealth brought into the marriage by one party. However, the law gives the courts a wide discretion to make appropriate financial orders to meet the parties' 'financial needs'.


The Law Commission has now produced a report called 'Matrimonial Property, Needs and Agreements', which sets out proposals that pre-nups and post-nuptial agreements should be made legally binding by the creation of appropriate statute to provide for 'qualifying nuptial agreements'.

The 231-page report reviews the law relating to the division of assets on relationship break-up. It recommends that the Family Justice Council produce authoritative guidance on financial needs, in order to iron out inconsistencies in how the courts approach such awards, but makes no recommendation for reform of the treatment of non-matrimonial property.

In all cases, the needs of children of the marriage will be the first consideration of the courts.

The report points out that qualifying nuptial agreements are likely to be particularly useful in two situations. Firstly, they will be an important source of legal certainty for high net worth couples who want to make clear and reliable arrangements as regards their wealth – for example as a way of protecting an inheritance from being shared on divorce or dissolution. Secondly, they will be useful where the parties to a marriage or civil partnership have been in a relationship before and wish to safeguard a house or other assets for their children from that relationship well have reached a different decision.



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# Prove It Or Lose It

A recent tax case shows how important it is to be able to prove one's claims when dealing with the tax authorities.

It involved a couple who moved to Belgium in 2001, having left the UK before 6 April that year. They were admitted as permanent residents of Belgium. They were not therefore resident in the UK during the 2001/2002 tax year and had taken advice on how to avoid being considered to be UK resident for tax purposes.

During that year, they disposed of most of their UK property – either by way of sale or by gifting it to their children. They also built themselves a villa in Portugal for their retirement. The properties they sold included some on which Capital Gains Tax (CGT) would have been payable were they UK resident.


When HM Revenue and Customs (HMRC) opened an enquiry into the couple's tax affairs, they claimed that their property disposals were not subject to CGT by virtue of the fact that they were no longer resident in the UK. They claimed that when they moved abroad, they did so with no intention of returning to the UK to reside permanently and they intended to live in Portugal when they retired.

The first problem the couple faced in justifying their claim was that they could not produce accurate details of their whereabouts during the relevant tax year and it was clear that they had visited the UK several times during the tax years 2001/2002 and 2002/2003.

HMRC assembled evidence of the couple's visits to the UK, using cashpoint withdrawal records, credit card records and other transactions. The couple were also shown to have kept a taxed and insured car at a UK property. HMRC were thus able to establish, to the satisfaction of the First-tier Tribunal, that the couple had not sufficiently cut their ties with the UK to justify being regarded as non-resident.

The Tribunal concluded that the couple were UK resident for 2001/2002 and 2002/2003. As a result of the Tribunal's decision, more than £400,000 in tax will be payable.

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Private Client

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Head of Private Client

**Paul Ashby**
Solicitor
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# Avoiding Will Disputes

It is common for couples to make what are called 'mirror wills' – in which both wills contain essentially the same clauses. These wills are often in the form of 'all to other', whereby the whole of the estate of the first to die passes to the survivor. Sometimes, such wills also contain specific legacies, with the remainder of the estate passing to the surviving partner.

Normally, there are no complications. However, the creation of a mirror will does not bind the survivor in any way. Issues can therefore arise where the surviving partner goes on to change their will. For example, if a surviving spouse subsequently remarries and executes a new will leaving his or her estate to their new partner, any children of the earlier marriage may be disinherited.


One solution to this problem is to create 'mutual wills'. A mutual will is one which effectively binds the survivor by creating a 'constructive trust' over all or some of the assets in the combined estates. This prevents the survivor from disposing of them by changing his or her will.
However, a better result can often be achieved by setting up a trust under the will, into which assets can be placed on the first death. This can be an effective means of ensuring that assets are not dissipated and eventually pass to the appropriate beneficiaries. Trusts can also be used for Inheritance Tax mitigation.

Clearly, achieving the best result depends on individual family circumstances and all the available options should be carefully considered. We can advise you on what these are and their consequences.