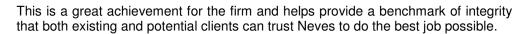
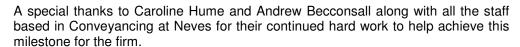
#### **Client Update - Spring 2014**

## 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.





#### **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

#### **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.



Conveyancing

Quality

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"

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



"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<sup>®</sup>

"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.'

**Neves Solicitors** 

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

Follow us on twitter







**Tollgate House** 69-71 High Street Harpenden **Hertfordshire AL5 4ET** 

T: 01582 715234

8 George Street West Luton **Bedfordshire** LU1 2DA T: 01582 725311

E: info@nevesllp.co.uk

Milton Keynes Kingsbridge House 702 South Seventh Street Milton Keynes MK9 2PZ T: 01908 304560

**Northampton** Independent House Units 1 & 2 Wilks Walk **Grange Park** Northampton NN4 5DW T: 01604 814500

W: www.nevesllp.co.uk



# **Client Update** Spring 2014



#### **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

Dealing with a statutory demand among the co-guarantors, it was immediately on receipt is therefore clearly necessary that all should essential.



One of the guarantors alleged that his aside. signature was a forgery, so the guarantors applied to have the If you are advancing funds or statutory demand set aside. The High having an advance guaranteed 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

proceedings against the debtor, create joint and several liability 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

by a quarantor, 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 landowner' would have appreciated the



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:	
Always Read The Small Print	1
Ignoring Duty To Neighbours Costs Homeowner	1
Teenager's Wishes Granted	2
Law Commission Backs 'Pre-Nuptial Agreements'	2
Prove It Or Lose It	3
Avoiding Will Disputes	3
Neves News	4

found that expert evidence had established that the cypress trees were a significant cause of the subsidence damage and that a 'reasonably prudent

real risk posed by the trees' roots.

### **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 sevenyear 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.

#### **Family**

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

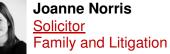
Email: family@nevesllp.co.uk

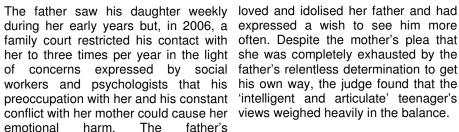


Mary McEvov Partner & Notary Public Head of Divorce & Family Law, Collaborative Lawyer

increased the contact between father

and daughter to eight times per year





failed.

extend contact in the seven then had all

applications to Although the judge could discern little

change in the father's attitude over the years, he did not doubt the sincerity since 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 Now, however, a family judge has school holidays, the girl's birthday and Christmas. She will also be given a dedicated mobile phone which she can after being told that the 13-year-old use to telephone and text her father.



**Beth Woodward** Partner Divorce & Family Law, Collaborative Lawyer



**Pui Uro** Solicitor Divorce and Family Law

### 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

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 needs, in order to iron out any inheritance received or wealth inconsistencies in how the courts brought into the marriage by one party. approach such awards, but makes no However, the law gives the courts a recommendation for reform of the wide discretion to make appropriate treatment of non-matrimonial property. 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 reliable arrangements as regards and post-nuptial agreements should be their wealth - for example as a way of made legally binding by the creation of appropriate statute to provide for shared on divorce or dissolution. 'qualifying nuptial agreements'.

The 231-page report reviews the law partnership have been in a relating to the division of assets on relationship before and wish to relationship break-up. It recommends safeguard a house or other assets for that the Family Justice Council produce their children from that relationship authoritative guidance on financial well have reached a different decision.

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 protecting an inheritance from being Secondly, they will be useful where the parties to a marriage or civil



#### **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.



**Gail Donaldson** Senior Associate Head of Private Client

HM Revenue 20

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

The first problem the couple faced

in justifying their claim was that they

could not produce accurate details

of their whereabouts during the

when they retired.



payable.

Paul Ashby

Private Client

#### **Avoiding Will Disputes**

**Private Client** 

Solicitor

**Jennifer Duckett** 

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 used for Inheritance Tax mitigation. disinherited.

One solution to this problem is to depends on individual family create 'mutual wills'. A mutual will is circumstances and all the available one which effectively binds the options survivor by creating a 'constructive considered. We can advise you on trust' over all or some of the assets in what these are and their the combined estates. This prevents consequences.

the survivor from disposing of them by changing his or her will.

relevant tax year and it was clear

that they had visited the UK

several times during the tax years

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

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

non-resident.

2001/2002 and 2002/2003.

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

Clearly, achieving the best result should be

Page 3 Page 2