Neves SOLICITORS **Business Update—Summer 2014**

Farewell David Swain

Neves are sad to announce the retirement of David Swain. David has been a part of the team at Luton for a number of years, following the merger of his own practice with Neves at the beginning of 2006. In doing so, David became a consultant at Neves, specialising in both Commercial and Residential Property, Wills and Probate.

David was born and educated in Bedfordshire and has spent most of his working life in the county since qualifying as a solicitor in 1975. For 17 years he was a partner in a local firm dealing mainly with litigation and property-related matters before branching out on his own. His extensive experience within the legal profession has helped to build and establish the high quality service that Neves strives to achieve. David will be greatly missed.

On behalf of everyone at Neves, we would like to wish David a well deserved and relaxing retirement.

Mary Moves to Harpenden

After months in the planning, Mary McEvoy has officially moved out of the Luton office into the new suite four in our Harpenden office. It was a momentous occasion leaving the Luton office having been there for over 20 years! The move went smoothly with the support of all the staff at Harpenden. Mary will continue to see clients at both offices but will be predominantly based at Harpenden.
A special thank you to Hollie Hadley whose dedication saw the project to its conclusion.

School Awards 2014

Neves were proud to be involved in sponsoring the Hertfordshire School Awards on 24th June in St. Albans. Mary McEvoy, was once again on the judging panel and helped to select the shortlist of finalists and winners. This is the third year that Neves have been involved with the awards, that help celebrate a wide range of achievements in the Hertfordshire area. Neves sponsored the award for the Teacher of the Year (Primary) which was won by Stephanie Nye of High Beeches School.

The prizes were awarded at a ceremony held at Oaklands College and was attended by many school children, teachers, head teachers and parents. The event was co-hosted by 'The Parent Show' which is also sponsored by Neves.

What Our Clients Say About Us

"I cannot thank you enough for such an excellent piece of work and for all your help. It has been an exceptional service."

"Very Professional, when matters arise then you know you can count on the expertise to deal with it. I would choose Neves over any call centre type conveyancers"

"Completely smooth process from start to finish. Delivered quality on time at the agreed price."

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

"I was so pleased with the service. I trusted my solicitor and felt I could always turn to her. It was easy to make initial contact."

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

Contact Us

Harpenden
Tollgate House
69-71 High Street
Harpenden
Hertfordshire AL5 4ET
T: 01582 715234

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

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

E: business@nevesllp.co.uk W: www.nevesllp.co.uk

Neves SOLICITORS

Business Update
Summer 2014

The Legal 500 United Kingdom Leading Firm 2013

Employees' Right to Request Flexible Working Arrangements

From 30 June 2014, all employees have the right to ask their employer for a change to their contractual terms and conditions of employment so that they can work flexibly, provided they have worked for their employer for 26 weeks continuously by the date on which the application is made. Previously, the right only applied to the parents of children under 17 (or 18 in the case of parents of disabled children) or to those with caring responsibilities for an adult.

As of that date, the statutory procedure for considering requests is removed and replaced by an Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice containing guidance on an employer's duty to consider all requests in a reasonable manner and to reach a decision within three months (unless an extension is agreed). However, employers have the flexibility to refuse a request on business grounds, provided it is for one or more of the eight reasons for doing so as specified in the Employment Rights Act 1996.

If an application for flexible working is made, the employer should consider it carefully, looking at the benefits of the requested changes in working conditions for the employee and the business and weighing these against any adverse impact on the business in terms of the possible costs or logistical implications of granting the request.

In reaching a decision, employers must be careful not to inadvertently discriminate against particular employees because of their protected characteristics, thus exposing themselves to a claim under the Equality Act 2010, for example by failing to agree to flexible working arrangements where this would be a reasonable adjustment for a disabled employee.

In addition, an employer must ensure that part-time workers are treated consistently with other workers as the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 make it unlawful to treat part-time workers less favourably as regards their contractual terms and conditions than comparable full-time workers, unless the different treatment can be justified on objective grounds.

Employers who have an existing policy for handling requests for flexible working should make sure this is updated in light of the changes. Employers who do not should consider introducing a policy as this can help to ensure consistency of treatment across the workforce.

The Code of Practice and revised ACAS guidance on the right to request flexible working can be found on the ACAS website at www.acas.org.uk

Relief as Landlords Can Again Look to Administrators for Rent

When a company enters into administration, the expenses it has incurred prior to the administration have a different status from the expenses incurred by the administrators. These latter expenses are in effect preferential to the former.

This is important for landlords because it is now common for companies with leased premises to have large liabilities for quarterly rents that fall due on the 'quarter days' and they will often be put into administration when they cannot pay the sums due.

There have been many legal arguments about the status of rental payments falling due around the time a company goes into administration.

Traditionally, the rent was regarded as payable by the occupant for the period of occupancy, but a 2012 case on the issue determined that where the administrator is appointed after the rent falls due, the rent is a pre-administration expense in its entirety. So, if the quarter's rent falls due on the 24th of the month and the administrator is appointed on the 25th, the liability for the whole quarter's rent is a pre-administration liability and not part of the administrator's expenses.

In a recent case in the Court of Appeal, a landlord that stood to lose £3 million in rents following the appointment of administrators to a retail chain the day after the quarterly rents were due argued that the precedent discriminated unfairly against landlords.

Inside this issue:

Don't get our monthly newsletter? Subscribe online at www.nevesllp.co.uk

No Second Bite of the Cherry After Ombudsman's Decision

When a couple received negligent advice from a firm of financial advisers, they complained to the Financial Ombudsman Service (FOS). The ombudsman ruled in their favour and ordered that compensation should be paid to the monetary limit (which was then £100,000) and that the balance of the loss they had suffered should be determined by a formula.

The financial advisers accepted the decision and sent the couple a cheque for £100,000.

The couple then started proceedings in the County Court to recover the balance of their loss. The Court refused to consider their claim as the dispute had been settled by the payment of the sum awarded by the ombudsman. The couple appealed.

The question for the Court of Appeal was whether or not a matter that has already been accepted as settled by a 'binding and final' determination by the ombudsman can then be retried on the same facts if the ombudsman's award is deemed to be inadequate.

In other words, does the decision of the ombudsman extinguish all rights of action with regard to the matter? The decision turned in part on the nature of the FOS, which the Court held to be a quasi-judicial body. It could not be said, therefore, that if a decision of the FOS was a final decision, from which there was no appeal, the right to have access to the law to settle disputes – a right under the European Convention on Human Rights – was infringed.

Nor, said the Court, was it appropriate for a defendant to have to defend two sets of legal proceedings on the same facts.

The Court was unequivocal that the acceptance of an ombudsman's decision shuts the door on future litigation relating to the same matter unless there is material new evidence available.

Choosing to use an ombudsman scheme rather than litigation is a decision which should be taken with legal advice, especially if the claim exceeds the maximum that can be awarded by the ombudsman: the current maximum that can be awarded by the FOS is £150,000.

Litigation *If you need help or assistance contact our team.* Email: **disputes@nevesllp.co.uk**

Peter Kelly
Partner
Head of Employment Law and Disputes
E:Peter.Kelly@nevesllp.co.uk

James Harvey
Solicitor
Litigation
E:james.harvey@nevesllp.co.uk

Deadlock Forces Sale When Family Inherits Business

When a family business is handed down and ownership is split between two or more members of the next generation, the result can all too often be discord. Normally, this can be resolved by one party buying out the other, but when this does not occur, the result can be a disaster, as a recent case shows.

It involved a family company owned by a man who died in 2001, leaving a controlling interest in the company to his children by way of a trust. Gradually, one of the children took over running the business and brought in her husband (an accountant) to help, although all three children were directors.

Her two younger sisters became increasingly disaffected by the arrangement. Things deteriorated to the extent that the two factions held 'rival' board meetings and refused to recognise the legitimacy of the 'other side's' meetings.

Considering the impasse to be insoluble and the company no longer governable, the two sisters brought a petition seeking to have the company wound up. The court granted their application.

The succession arrangements for a family business often need to be approached with delicacy and a lot of forethought. If difficulties are anticipated, there are a number of means by which the need for long and expensive litigation can be avoided: for example, the creation of a shareholders' agreement with appropriate terms for dealing with shareholder deadlock.

Follow us on twitter Neves Solicitors
Like us on Facebook Neves Solicitors LLP
Join us on LinkedIn Neves Solicitors

Wrongful Termination Argument to Go to Court of Appeal

In a case with potentially wide implications for businesses whose activities depend on licensing agreements, a company that faced destruction of its internet-based business, due to the termination of the licensing agreement that underpinned it, has failed in a High Court bid to maintain the status quo pending arbitration of the dispute, although it has been granted permission to fight its case in the Court of Appeal.

The company (company A) ran an international 'eMarketplace', which had the objective of bringing together buyers and sellers of goods and services linked to mining, metals and other natural resources. Its business model rested entirely on a licensing agreement with another company (company B), which owned the intellectual property in the eMarketplace.

Company B purported to terminate the agreement on the disputed basis that company A had failed to comply with an agreed sales and marketing plan and that the two businesses had developed in different directions. Company A submitted the dispute to arbitration and sought an interim injunction to restrain termination of the agreement pending the outcome of that process.

The Court acknowledged that there was a serious issue to be tried as to whether or not the proposed termination was wrongful or ineffective. It also found

that, given the dire impact that termination would have on company A's business, the 'balance of convenience' lay in favour of granting the injunction sought.

However, in refusing company A's application, the Court ruled that damages would be an 'adequate remedy' if it subsequently turned out that the agreement had been wrongfully terminated.

Company A pointed out that a term of the agreement could have the effect of circumscribing its right to damages, in particular for loss of profits. However, in declining to take the existence of that limitation clause into account when considering the adequacy of damages as a remedy, the Court noted that submission to the relevant term had been part of the price that company A had agreed to pay when executing the licensing agreement.

Such limitation clauses are 'a ubiquitous fact of commercial life' and the Court observed that, if such terms were held to render damages inadequate, the road to an interim injunction might be opened in practically every similar case. However, acknowledging that the issue had 'wider implications', the Court conceded that it had 'a degree of unease' about the result of the case and granted company A permission to challenge its decision in the Court of Appeal.

Commercial *If you need help or assistance contact our team.* Email: **business@nevesllp.co.uk**

Stewart Matthews
Partner
Head of Company and Commercial
E:stewart.matthews@nevesllp.co.uk

Simeon Clipstone
Partner
Head of Commercial Property
E:simeon.clipstone@nevesllp.co.uk

Jane Joseph
Partner
Commercial Property and Business
E:jane.joseph@nevesllp.co.uk

Andrew Orriss
Partner
Company and Commercial Property
E:andrew.orriss@nevesllp.co.uk

Business Start Ups

Neves Small Business team can assist your business by helping draft your terms and conditions of trading, partnership/shareholder agreement or agency agreement, or by providing you with a contract of employment for any staff you may engage, or by collecting unpaid debts. Perhaps you maybe considering renting business premises in which case we will review the terms of the lease and advise you accordingly.

If you offer services over the Internet, the firm can guide you in the legal techniques needed to make contracts electronically. It can also ensure that your website complies with the law.

If you purchase goods or services over the internet, our experts can advise you on your contractual rights and obligations.

Business start ups, make sure you are getting the right legal advice from the very start contact: business@nevesllp.co.uk

Don't get our monthly newsletter? Subscribe online at www.nevesllp.co.uk