

Sydney Mitchell 250 Years Celebratory Balloon Race

Sydney Mitchell celebrated 250 years in business and winning the Birmingham Law Society Legal Awards for 2013. As a thank you to clients and contacts, guests joined Sydney Mitchell at Hogarths Hotel in Dorridge.

The 250 balloons were launched by the Mayor of Solihull, Joe Tildesley with the aim of raising funds for two great charities the Tiny Babies Appeal for Birmingham Women's Hospital raising funds for specialist neonatal equipment and the Maria Watt Foundation raising funds for teenagers and children with cancer and leukaemia. All funds raised from the balloon launch will go towards a fundraising target of £10,000 this year for Sydney Mitchell's chosen charities.



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Private Residential Tenancies Rights and Responsibilities

The private rented sector has expanded in the last 20 years. Availability of specialist buy to let mortgages and good returns that can be made by experienced Landlords have helped.

We are often asked about rights of residential tenants.

In English Law there is no document that says in one place what Landlords' and Tenants' rights and responsibilities are. This means that several sources have to be consulted for us to advise.

What is certain is that renting residential property is a binding contract by which a Landlord agrees to provide accommodation to the Tenant in return for rent. If the tenancy terms are lawful, fair and reasonable, the Landlord can expect the rent to be paid on time and the other terms obeyed.

If a Tenant is observing the terms of the tenancy and paying rent he has a right to live at the property in peace.

A Landlord does not have an automatic right to keep a set of keys and to go into the property uninvited without advance notice being given. Most tenants will take a common sense view if repairs are needed, and allow a Landlord and his contractors in. However, frequent unannounced visits

and uninvited entry can be construed as harassment which is treated as a crime and can be punished severely.

Anyone who lives in residential property by consent of the owner has to be given at least 4 weeks notice to quit and cannot lawfully be evicted except by Court Order.

People paying to live in residential property have various protections, but

the protections they enjoy depend on the nature of the arrangement and when it began.

Louisa Jakeman, a Solicitor, comments:-

"The best advice I can give to any Landlord is to use a good written tenancy agreement that a solicitor has prepared. Don't be tempted to let anyone move in until agreements have been signed and make sure they are filled in correctly.

Good tenancy agreements take account of the Law and are clear for both parties.

For the buy to let investor, lenders require all tenancies to be approved in advance. Many lenders insist that a solicitor prepares and vets the proposed agreement.

Also, when you want to end the tenancy, take legal advice before you do anything. It is too easy for Landlords to get it wrong".



For further information on Residential Tenancies, please contact Louisa Jakeman on **0121 746 3300** or email l.jakeman@sydneyMitchell.co.uk



www.sydneyMitchell.co.uk

Hazards of Signing Personal Guarantees Underlined

In a ruling which underlines the potential hazards of signing personal guarantees in respect of corporate debts, a businessman has been hit with a bill for more than £330,000 almost seven years after he resigned from the relevant company. The Court of Appeal ruled that he was liable under a personal guarantee even though a large proportion of the company's debts had been accrued following his departure.

The company, which supplied tools and materials to the building industry, had been provided with a substantial line of credit by National Merchant Buying Society Limited (NMBS), an industrial and provident society that bulk purchases goods at reduced rates on behalf of its members, of which the company was one.

The directors of the company had signed personal guarantees underwriting its debts to NMBS. At the time of the businessman's resignation as a director in 2006, the company owed NMBS £400,000. However, the debt was subsequently increased to £700,000 before the company became insolvent, went into creditors' voluntary liquidation and ceased to trade in 2008.

At first instance, the businessman and his co-director were each held liable to pay NMBS £331,627.26 under the terms of their personal guarantees.

He alone challenged that ruling on the basis that he had not consented to the increases to the company's credit limit subsequent to his resignation. It was submitted that those non-consensual increases amounted to variations of the contract between the company and NMBS, which had the effect of discharging his personal guarantee.

Dismissing the appeal, the Court ruled that the matter hinged on a straightforward interpretation of the wording of the guarantee. The businessman had undertaken to

repay 'all sums which are now or may hereafter become owing' to NMBS. Had the parties intended to place any limit on that potential liability, the guarantee would have said so.

"At the time of the businessman's resignation as a director in 2006, the company owed NMBS £400,000. However, the debt was subsequently increased to £700,000"



Personal guarantees must be approached with extreme care. Contact Fahmida Ismail on **0121 698 2200** or email f.ismail@sydney Mitchell.co.uk



e: enquiries@sydney Mitchell.co.uk



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Drastic Changes to Employment Law and Tribunal Procedure

On the 29 July 2013 drastic changes to employment law, employee's rights and Tribunal procedure were introduced.

The essential changes are:

1. New unfair dismissal compensatory award limit (cap)

Dismissals that take effect on or after the 29th July 2013 are subject to the new statutory "cap". This will be the lower of the statutory cap which is currently £74,200 or one year's pay. Any employee earning less than £74,200 per year will be affected by this change.

2. Fees are now payable for Employment Tribunal Cases (includes Employment Appeal Tribunal ; EAT)

For the first time Issue Fees and Hearing Fees are now payable in respect of Tribunal matters. This brings the Tribunal process more in line with Court procedure.

Post 29th July a Claimant will have to pay an issue fee of between £160 and £230 to start a claim. Additionally there will be a Hearing Fee the Claimant must pay as the case progresses between £250 and £950. The level of fees will depend upon the type of claim, the number of Claimants and the complexity of the claim.

If a fee is not paid upon presentation of the claim it will be struck out and Claimants may be in danger of missing time limits within which to present a claim due to non-payment. The Tribunal has power to order the fees are paid back to a successful Claimant by the Respondent as part of the award.

There is an exemption process for those who cannot afford fees which will be waived if certain criteria are met. There is a separate fee structure for the EAT.

3. Costs

New Employment Tribunal Rules increase the amount of a Deposit Order a Claimant may have to make in order to be allowed to continue with a claim from

£500 to £1,000. Costs assessment and costs awards will be dealt with by the Employment Judge with the previous limit of £20,000 removed.

4. Compromise Agreements to be re-named "Settlement Agreements"

All previous references to "Compromise Agreements" in various legislation is now to be "Settlement Agreements". For a transitional period, care should be taken to refer to both "Settlement" and "Compromise" Agreements when updating the particular provisions in Agreements, i.e. which must state that the conditions regulating these types of agreement are satisfied.

5. Pre-Termination Settlement Discussions

This is a tricky new development and caution is needed. They are separate and distinct from 'Without Prejudice' negotiations.

Essentially an employer is now able to approach an employee and invite them to enter into confidential pre-termination settlement discussions with a view to terminating the employee's employment i.e. a 'protected conversation'. Provided this process is conducted carefully and properly this is seen as a useful management "tool" for having those "difficult conversations" without embarrassing detail being dredged up in any subsequent unfair dismissal claim. Either party can suggest the process although, in practice, it will be the Employer who makes the first move sometimes in circumstances where the Employee was completely unaware of a problem. Please note that such discussions are only applicable to unfair dismissal proceedings and details of them are not able to be given in evidence during any subsequent case. One condition is that the employee should be given a reasonable period of time to consider the proposed settlement terms made during

the course of the protected discussion and, as a general rule, a minimum period of 10 calendar days should be allowed to consider the terms enabling the employee to receive independent advice unless the parties agree otherwise.

The process must be conducted in good faith and there must be no "improper behaviour" e.g. harassment, bullying, victimisation – the list is not exhaustive and whether there has been improper behaviour will be for the Tribunal to decide.

Such conduct negates the 'protected' element and an aggrieved employee would not be prevented from launching a Tribunal claim and referring to the negotiations.

I anticipate that this particular aspect of the new regime will be fraught with problems and there will be a flurry of litigation surrounding them.

Employers should bear in mind that if they do not conduct the process of pre-termination settlement discussions correctly what is said during such meetings may very well come back to haunt them at any subsequent Tribunal hearing. It is advisable to seek professional employment advice on any aspect of the new rules and regulations.



If you require any help or assistance please do not hesitate to contact Norman Rea on **0121 746 3300** or by email to n.rea@sydneyMitchell.co.uk



Habitual Residence of Child Determines Which Court Has Jurisdiction

With ever increasing global travel, child custody cases which have an international aspect are becoming more common. These in turn can raise questions as to which country's legal system should assume the responsibility for deciding the issues.

A recent case involving a child whose parents were Spanish and English respectively illustrates the sort of issues that can arise. The child was born in Spain and lived there for the first six years of his life. His parents separated in 2009 and his father brought him to England in 2010. The hearing regarding the child's place of residence originally took place in the Spanish court, but shortly thereafter both parents agreed in writing to his remaining resident in England with his mother. The agreement also covered contact arrangements.

The Spanish court approved the agreement and this also brought to an end the earlier application for a residence order by the boy's father.

Later, the mother applied for a residence order in England in respect of the child. She also wished to obtain a variation to the contact order that the couple had agreed.

The question was whether the English court had jurisdiction to decide the matter, or whether matters concerning the child should still be dealt with

by the Spanish court, despite there being no 'live' issues in Spain. If the latter were the case, the English court would have to apply for a transfer of jurisdiction.

The High Court ruled that it did have jurisdiction to decide the matter, because the child had become habitually present in England.

This case will come as a relief to parents in similar circumstances as had the decision been made that jurisdiction still rested with the Spanish

court, the question of how long a foreign court would remain responsible for children no longer resident abroad would have become an open issue.



If you would like to discuss any Family Law matter further, please contact Amanda Holland on **0121 698 2200** or email a.holland@sydneyemitchell.co.uk



Survey Feedback

In our last edition of Script, we enclosed a feedback form asking for your comments to ensure we were making our newsletter as relevant and informative as possible.

Thank you to those of who returned the forms to us. The feedback was valuable to us, and we hope that the articles in this edition are of interest to you. Please continue to send your feedback or updated contact details to k.shakesheff@sydneyemitchell.co.uk



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Charity Ball – 18th October

An evening of fun and entertainment – live music and great food at the National Motorcycle Museum. Raising funds for two very worthwhile charities. Help us to make someone else's life better.

Limited availability – book now to avoid disappointment.

Individual tickets £35, tables of 10 or 12 available

Contact k.shakesheff@sydneymitchell.co.uk

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Protecting Your Growing Business – a Series of Seminars

Are you growing or are you being held back?
What is causing you a problem and giving you a headache in your business?
What can you do to protect your business?

We are running a series of seminars in September, October and November with the Solihull Chamber of Commerce to answer the above questions and a lot more. A brief outline of the seminars and the dates of the events are shown below.

Thursday 12th September

Getting Paid - John Irving and Kam Majevalia

- How do you ensure you get paid?
- What simple steps can you take to lower the collection risks?
- How accurate and robust are your terms and conditions of supply?
- Litigation - small claims - just how can you get money from those who have failed to pay you?
- What's hot - what is working to help you and your business improve your cash flow?

Wednesday 9th October

Employment - Protecting your Business - Norman Rea and Dean Parnell

- Restrictive Covenants
- Confidentiality agreements
- Intellectual Property who owns it
- Commercial support
- Social media policies
- E-policies

Thursday 14th November

E Business - Ins and outs of web-sales - John Irving, Dean Parnell and Norman Rea

- Does your website comply
- Terms and Conditions
- Distance selling regulations
- What legal system applies

Round up event

Overall review and conclusion from all seminars and key findings

Venue All three seminars will take place at The National Motor Cycle Museum, Coventry Road, Bickenhall, Solihull B92 0EJ

Time 7.30am – 10am

Price Each event costs £35, or you can book to attend all three for £75

For more information or to book your place, please contact Linda or Kate on 0121 746 3300 or email: l.heyworth@sydneymitchell.co.uk/k.shakesheff@sydneymitchell.co.uk



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