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CELEBRATING 250 YEARS 1763 – 2013

SYDNEY MITCHELL SOLICITORS

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Birmingham Law Society Award Winners Again!

What a fantastic start to 2014; we have won Law Firm of the Year for the fourth time in the last 6 years in the 5-15 partner category at the Birmingham Law Society Legal Awards.

Senior Partner, Div Singh commented:

"We are delighted that the firm has won this prestigious award again. Despite having won law firm of the year a number of times, the pride that we all experience with this award never diminishes. Each and every member of our staff has contributed towards the success of the firm and this award is a celebration of their collective contribution."

"Birmingham and the surrounding regions have some of the best law firms in the UK and to be successfully competing in such a tough market is a wonderful achievement. We have some very exciting plans over the next 12 months and will look to build upon all of the success we continue to achieve year on year."

Steve Cram, Raj Bains, Dean Parnell, Sarah Archer, Tony Rollason (Landmark), Sundeep Bilkhu, Norman Rea - Sydney Mitchell LLP accepting the Birmingham Law Society Law Firm of the Year Award.

Horse rider receives £12,000 after road accident

A horse rider who was hit by a car whilst out hacking has received compensation for her injuries in an out-of-court settlement.

Continues on page 4...

Changes to Employment Law – 2014

Norman Rea highlights important changes to employment law and practice that came into force from April 2014.

The changes are important and will have a direct impact on employers.

Auto-enrolment – Pensions

From **1st April 2014,** due to the on-going difficulties employers are experiencing with pension auto-enrolment, the time period for enrolling eligible employees into a qualifying pension scheme is extended from **1 month to 6 weeks**

Financial penalties for employers who breach employment law

From **6th April 2014** an Employment Tribunal (E.T.) has the discretionary power to impose a financial penalty on an employer who has been found to have breached a workers employment law rights where the breach has "one or more aggravating features".
The penalty will be **50%** of any financial award with a minimum penalty of **£100** and a maximum of **£5,000**. The sum payable will be reduced by **50%** if the penalty is paid within **21 days**.

Typically there has been no indication of what an "aggravating feature" will be. I have no doubt there will be satellite litigation on this issue e.g. will it be an aggravating feature not to enter into early conciliation after a breach?

ACAS – Early Conciliation

Since **6th April 2014** Claimants wishing to bring an E.T claim will first have to send details of their dispute to the Advisory Conciliation and Arbitration Service (ACAS), which will offer the parties the opportunity to settle the matter through a new, free service called Early Conciliation. If the offer is refused or the attempted conciliation fails, the Claimant will only be able to proceed with their claim if they obtain an E.C certificate to enable the Tribunal process to commence. There are transitional provisions but the Scheme becomes fully effective from **6th May 2014**.

There has been a common misconception that it is compulsory for the Employer to engage in this conciliatory process. It is not. The only compulsion is the fact that a potential Claimant has to engage ACAS in the process before being able to receive an E.C certificate and to commence proceedings. There are detailed procedural rules surrounding the Scheme but, essentially, the potential Claimant has one month after conciliation has failed within which to commence Tribunal proceedings.

Discrimination Questionnaires

From the **6th April 2014** the Statutory Discrimination Questionnaire was abolished and is replaced by a non-statutory guidance from ACAS.

Flexible Working

From **30th June 2014** (not 6th April as originally planned) the right to request flexible working arrangements will be extended to all employees who have completed **26** weeks qualifying service. The current statutory procedure will be repealed and replaced with non-statutory guidance produced by ACAS. You will recall that the right currently applies to employees who have children under the age of 17 (18) if the child is disabled (or those who have caring responsibilities).

Increase in Tribunal Awards/ Compensation Limits

These annual inflation linked increases used to take effect on the 1st February each year however future changes will take effect on the **6th April** in each year including 2014.

The main changes are:

- Maximum amount of weeks' pay for calculating a redundancy payment or for various award including basic or additional award of unfair dismissal compensation – increase from **£450** to **£464**
- The statutory maximum compensatory award for unfair dismissal will increase from **£74,200** to **£76,574**

In July 2013 a 12 months pay cap was introduced on the unfair dismissal compensatory award. Where the employee's annual salary exceeds the limit, the statutory maximum applies.

NB there is no statutory cap in discrimination cases.

Changes to TUPE

Changes will include an amendment to the rules on Economic, Technical or Organisational (ETO) reasons for transfer. Any changes post transfer to location will now amount to an ETO reason. Redundancy post transfer due to relocation will not now be automatically unfair. The rules on Service Provision change which have caused many disputes and which continue to be a complex area of law are not to be repealed. Under the amended rules, in order for there to be a Service Provision change, the new service provider must carry out "fundamentally and essentially" the same service as before the transfer.

Main Employment Law Changes due to be introduced in October 2014

These will include:

- National Minimum Wage Rates
- Equal Pay Audits
- The Health and Work Service

2014 and beyond will see important changes to the employment law landscape. Of particular relevance are the proposed financial penalties for employers, early conciliation via ACAS and the threat of an ET being empowered to order equal pay audits in relevant cases.

For further details on the more important aspects above please do not hesitate to contact Norman Rea on **0121 746 3300** or email **n.rea@sydneymitchell.co.uk**

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Repair obligations do not create IHT charge

Yet another attempt by HM Revenue and Customs (HMRC) to persuade the court that a gift of a property from parent to child should be a 'gift with reservation of benefit' has failed.

Where any asset is gifted from a person (the donor) to another (the donee), it will normally pass out of the donor's estate for Inheritance Tax (IHT) purposes seven years after the gift. There are exceptions to this, the most notable of which is when the donor retains an 'interest' in the asset gifted. For example, if a house is gifted by a parent who retains the right to use it (or actually does so) after the gift is made, the gift may 'fail' for IHT purposes because the donor has 'reserved a benefit' in the gifted property. HMRC's keenness to challenge such arrangements is well known.

In a recent case, HMRC challenged the transfer (by way of an underlease) of a leasehold flat from a mother to her sons, claiming that she had reserved a benefit because the underlease required them to keep the flat in good repair.

This, HMRC claimed, transferred to them an obligation put on her in the original lease, which in turn meant she retained a benefit in the property.

After success in the tax tribunals, HMRC found that the Court of Appeal did not agree that the woman had retained a benefit in the property when she had severed all connection with it other than assuring that the 'good repair' covenants in her own lease were passed on to her sons.

She had, in effect, transferred the whole of the assets and liabilities in the property to them. There was no benefit retained.

We can help you to ensure that your estate pays no more IHT than is legally necessary. Contact Tracy Creed on **0121 746 3300** or **t.creed@sydneymitchell.co.uk**.

Valid 'pre-nup' scuppers claim by ex-wife

Following recent reports that pre-nuptial agreements are soon to be given legislative support comes a case in which the current attitude of the courts towards 'pre-nups' has been made clear.

The case involved a wealthy couple who entered into a 'pre-nup' just before they married. The marriage proved short-lived, however, as it foundered after only 15 months, despite the couple already having a son and the wife being pregnant with a second child.

The husband had assets in excess of £13 million and an income of nearly £400,000 per annum net of tax. The wife had a net worth of almost nil.

Under the 'pre-nup', the wife was entitled to an income of £8,000 per month plus £3,000 per annum per child. These sums were reduced to take account of the value of the occupancy by the wife and children of a property owned by the husband.

The 'pre-nup' was entered into with the benefit of legal advice on both sides and was signed by the wife despite the presence on the agreement of a prominent warning that it should not be signed unless the signatory intended to be bound by its terms.

Despite this, the wife sought to have the agreement set aside and claimed that she should receive the full range of 'financial remedies' (as lawyers call them) available on divorce.

The court rejected her claim, Judge Mostyn stating that 'the law adopts a strict policy of requiring the demonstration of something unfair before it will open the Pandora's Box of litigation where there has been an agreement of this nature'.

If you are concerned about the potential financial implications of a break-up of your anticipated marriage or civil partnership, contact Mauro Vinti on **0121 746 3300** or email **m.vinti@sydneymitchell.co.uk** for advice.

Relief as landlords can again look to administrators for rent

When a company enters 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.

The Court agreed, ruling that the administrators must pay rent for any periods during which they retain possession of the let premises 'for the purposes of the administration'. The same would apply to premises occupied by liquidators if a company enters liquidation.

In effect, the decision means that the liability for the rent passes to the administrator on a day-to-day basis from the date of the appointment.

Given the sum involved, an appeal to the Supreme Court is possible, although the Court of Appeal judges were unanimous in their ruling.

Fahmida Ismail can help with situations such as this. Please call **0121 698 2200** or email **f.ismail@sydneymitchell.co.uk**

Horse rider receives £12,000 after road accident

Continued from page 1...

Sarah Nash was riding her horse, Scooby, along a road near the yard where he was stabled when the accident happened. A car approached, travelling at speed, and drove too close to the horse and rider. Miss Nash was unable to take evasive action as there was a high bank to her left.

The wing mirror of the vehicle struck Ms Nash's right leg with such force that the mirror was torn from its housing.

While Scooby was unhurt, Miss Nash suffered a whiplash injury and developed post traumatic stress disorder.

When she was able to begin riding again, she was scared to go down the road where the accident happened and felt compelled to move her horse to another yard.

The driver of the car later admitted that he was travelling too fast and had failed to leave enough room when overtaking the horse and rider.

Miss Nash won compensation totalling £12,000, which took into account her physical and psychological injuries as well as the cost of moving her horse to a different stable.

If you are hurt in a road accident that is not your fault, whether as a cyclist, pedestrian or other road user, it is important to establish the full extent of your injuries and their likely impact on your life, and to provide clear medical evidence in support of your personal injury claim, in order to ensure that you are adequately compensated.

We are experienced in handling claims of this kind. Please contact Mike Sutton on **0121 698 2200** or email **m.sutton@sydneymitchell.co.uk**

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