

Focussing on Legal Issues important to You

Welcome to another edition of our Quarterly Newsletter, which contains current articles on personal as well as business issues. Do feel free to raise with us any comments or queries which you have after reading this newsletter, and we would be pleased to help. Contact information is contained on the back page, or alternatively, for additional information about the firm, then do please visit our website www.mercerslaw.co.uk



Tax planning in the recession

The current economic climate has caused widespread falls in the value of property and share portfolios. While this unfortunate situation is of course generally unwelcome, in some cases it does provide an opportunity for tax planning arrangements, especially given the reduction in the rate of Capital Gains Tax to 18%.

For Inheritance Tax purposes, the general rule is that the seven year rule applies to gifts. If the donor dies within seven years of making a gift then it is the value of the asset as at the date of the gift which is brought back into account in the IHT assessment of the donor's estate. Making a gift while the asset has a lower value therefore minimises the ultimate IHT risk and allows any future growth in the value of the asset to fall outside the donor's estate.

A gift is also a disposal for Capital Gains Tax purposes in the same way as a sale. A fall in value of an asset being considered for a gift

will mean that the size of the chargeable gain will be lower when that asset is given away, and the reduced rate of CGT will also contribute to the likely CGT cost being much lower than might have been the case only months ago. If the likely CGT bill is still unacceptably high then making a gift to a Trust could be a solution as CGT Holdover Relief may be available.

CGT has often in the past been a barrier to breaking long standing Trusts and so the new regime may provide an opportunity for Trusts to be broken, as the consideration of the lowering of the CGT rate, and depressed values of trust assets, may mean that the CGT penalty for taking assets out of a trust (if Holdover Relief is not available) may be lower now than for many years.

If you need advice on the above or any related topics please contact Guy Barker, Paul Stott or Peter Hopkins.



Together we can solve it

- Business and Commercial
- Commercial Property
- Employment
- Litigation and Dispute Resolution
- Matrimonial
- Personal Injury
- Residential Conveyancing
- Wills, Probate, Tax Planning & Trusts



Getting ready for a low-carbon future

The Government has formally announced its Low-Carbon Industrial Strategy, which targets four key areas of change.

These are to:

- save money through better energy efficiency;
- create the infrastructure for a low-carbon future;
- make the UK a world leader in the development and production of low-carbon vehicles;
- make the UK the best place in the world to locate and develop a low-carbon business.

To achieve these changes, the Government has also launched its Carbon Reduction Commitment (CRC) consultation, to outline the steps that businesses will need to take to reduce carbon emissions and improve energy efficiency.

Dr Neil Bentley, CBI Director of Business Environment, has urged businesses to become familiar with what forthcoming changes will mean for them. As he says, "Many companies remain unaware and unprepared for what the Government's Carbon Reduction Commitment will involve, and are in for a real shock when these changes become law."

To help business prepare itself, the Department of Energy and Climate Change has published a user guide that outlines who is covered by the scheme and guides the reader step-by-step through what will be involved. You can find the guide at www.defra.gov.uk/carbonreduction.

ACAS code replaces grievance and disciplinary procedures

In what some people are calling the biggest shake-up to employment law in decades, the statutory three-step grievance and disciplinary procedures were repealed on 6th April and replaced by a new Code of Practice from ACAS (the independent Advisory, Conciliation and Arbitration Service).

Designed to provide a clearer, more straightforward process for anyone dealing with disciplinary or grievance matters, the biggest change that the new code introduces is that a failure by an employer to follow its requirements will no longer result in a finding of 'automatic' unfair dismissal.

However, failure to do so may still result in a business facing greater costs, because Tribunals have the discretion to increase an award by up to 25% if they believe that either party has acted unreasonably. This means that employers who are not familiar with its demands are likely to face expensive tribunal claims, so it is strongly recommended that you read them in detail on www.acas.org.uk/drr

If there are any elements that you would like to know more about, do not hesitate to ring a specialist employment lawyer.

Millions more gain the right to request flexible working

Millions more UK workers than ever before now have the right to ask for flexible working. This follows early April's change in the law that means parents and carers of children aged 16 and under, who have worked for their employers for more than six months can now make the request.

This builds on existing legislation introduced in 2003 that granted those with children aged up to six (or 18 if the child is disabled) the right to request flexible working and from 2007 carers of adults were also given the right. It means that a further 4.5 million people are now eligible, in addition to the 6 million already covered by previous legislation.

While there is no guarantee that employees making a request for flexible working will be granted more child-friendly working arrangements, employers may only reject an application on certain specified grounds.

According to Harriet Harman, Minister for Women and Equality, "Mothers often tear their hair out trying to balance earning a living with bringing up their children and need more flexibility at work. And fathers want to be able to play a bigger part in bringing up their children."

The term 'flexible working' covers many arrangements, including shorter hours, working from home and during term-time, job-sharing and working agreed hours over fewer days.



Disputes rise as estate agents move into the lettings market

In a market where estate agents' sales activities have fallen by 60%, it may be reasonable to suppose that complaints against them would have fallen proportionately.

Not so, according to Christopher Hamer, the ombudsman for estate agents (OEA), who in March reported that the number of disputes involving the sale of properties fell by a mere 3% in 2008. As he said at the time, "Perhaps it shows that buyers and sellers have still higher expectations of agents' service while there are so few properties being sold."

At the same time, he witnessed a 200% rise during 2008 in disputes involving residential lettings, the direct result of more agents moving into the sector as people decide to let their homes instead of selling them.

According to Ian Potter at the Association of Residential Lettings Agents, making the transition from estate to lettings agent involves studying over 100 pieces of legislation and passing a series of minimum competency tests. He is concerned that many do not meet these standards and are not being properly regulated.

Now, however, improvements may be on the way. The Office of Fair Trading is being asked to recognise the OEA lettings Code of Practice under its Consumer Codes Approval Scheme. This step is designed to ensure consistency in service standards delivered across both the sales and lettings markets.

Keep your eyes open for misleading financial advertising

The recession is leading to growing numbers of unscrupulous advertisements and other forms of promotion from businesses claiming to be able to arrange for unpaid loans, credit card bills or other debts to be written off.

Now, the Ministry of Justice has told such businesses to stop or face prosecution – so it is important that people keep their eyes open for misleading statements designed to prey on some of the most vulnerable members of society.

People spotting such materials are being encouraged to let their local Trading Standards Office know about their suspicions. If the businesses concerned are acting within the law, then they have nothing to worry about. If not, it is vital that their potentially very damaging activities are stopped. It would be prudent for anyone considering using a business offering such services to first take professional advice.

If, however, you believe that you have fallen victim to a misleading advertisement – or have found that a business offering you financial advice is not licensed to do so – you should seek professional legal advice on what action you can take.

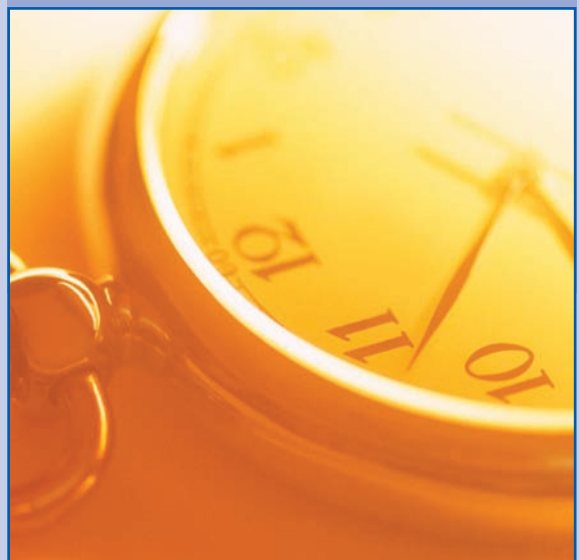
What chance a late retirement?

For most people the dream of early retirement is a far tougher goal to realise today than it has been in recent decades. Now, a decision by the European Court of Justice (ECJ) means that 'late retirement' – carrying on working after the age of 65 – might become nearly as hard to achieve.

The ECJ ruled in March that, to all intents and purposes, retirement age of 65 does not breach European law. Some 250 individual cases brought by people who were made to leave their jobs on reaching this age had stalled in advance of the ruling, which follows a case brought by Heyday, the membership arm of the Age Concern charity. This sought to challenge employers' rights to dismiss workers at the age of 65 without having to make redundancy payments.

Following the ruling, the ECJ stated that the UK retirement age of 65 was in principle capable of justification but referred the issue back to the UK High Court to consider whether it can be objectively justified. Therefore, any further decisions on similar cases will now be made by the UK High Court.

Mike Emmott, employee relations adviser at the Chartered Institute of Personnel and Development (CIPD), is disappointed by the ruling. "Organisations that have abandoned mandatory retirement and recognise older workers' value will continue to reap the rewards," he says. "This continuing uncertainty about the law means that in practice employers will remain free to dismiss older workers, many of whom simply want to be allowed to carry on working."



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Driving offences are no laughing matter

Worldwide media reports recently told the story of Liverpool-based company director Gary Saunders, who was stopped by the Police for laughing while driving.

Although Mr Saunders was eventually not charged with an offence, it appears there is still confusion over the activities that drivers can be prosecuted for. According to the most recent edition of the Highway Code (2007), drivers should "avoid distractions when driving or riding such as: loud music (this may mask other sounds), trying to read maps, inserting a cassette or CD or tuning a radio, eating and drinking (and) smoking."

While there is no mention of laughing, the use of the phrase 'such as' does open up the possibility of prosecution if it leads to careless or dangerous driving.

According to the AA website, "The Highway Code does not make it a specific offence to smoke while driving, any more than it is currently an offence to change a cassette, read a map or eat. However, if any of these behaviours are coupled with bad driving, or lead to an accident, a charge of careless driving, or not being in a position to control the vehicle becomes a distinct possibility. They can also be used to show dangerous driving, an offence which could lead to imprisonment, particularly if the dangerous driving causes a death."

Using a hand-held mobile is, of course, a specific offence, as the AA site confirms, while "using a hands-free phone is not a specific offence, but provides grounds for a careless or dangerous driving prosecution in the event of erratic driving or an accident."



Changes at HMRC

Big changes took place at HM Revenue & Customs in early April, designed to streamline how it works with business, agents (such as accountants) and other customers.

Among a raft of other new developments was the introduction of a single, unified set of powers and safeguards covering PAYE, VAT, Income Tax, Capital Gains Tax and Corporation Tax. According to HMRC, the changes are designed to reduce confusion among customers by applying the same rules no matter which sort of tax it is checking.

Comments Dave Hartnett, HMRC Permanent Secretary for Tax: "These are important measures which will make it easier for businesses and their advisers to meet their obligations, while making it easier to work with us and to get decisions on points of law. These initiatives will provide them with more consistency, certainty and faster online processing of key documents."

