

M|E|R|C|E|R|S

Solicitors

Rightfocus

ISSUE 20 | JUNE 2010

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

www.mercerslaw.co.uk • mail@mercerslaw.co.uk

Focussing on legal issues important to you

Equity Release Mortgages – are they good value for money?

Equity release (or 'lifetime') mortgages are a form of borrowing which enables older home-owners to raise a 'cash' lump sum and/or an income which can be used for a number of purposes – the most common typically being lifestyle improvement, inheritance tax planning, supplementing pension income or to meet care and other needs.

After being criticised in the past as being expensive, inflexible and risky, not only are today's equity release mortgages almost unrecognisable from the schemes which existed in the 1990's, they are also very tightly regulated by the FSA (Financial Services Authority) and, in addition, the majority of providers also elect to meet the exacting standards of the trade body known as SHIP (Safe Home Income Plans).

Whilst the much vaunted 'credit crunch' has, for the time being at least, reduced the number of providers lending in the equity release market, there are still several well known companies offering a range of schemes in response to the increasing number of retired and elderly home-owners waking up to the huge potential that these schemes offer.

Two major problems with this area are:

1. the lack of Independent Financial Advisers (IFAs) with the relevant qualifications
2. the fact that these products are only suitable for elderly people (most require applicants to be over 60 - although some now start at age 55) and it is a real concern as to whether elderly clients really understand the choices available to them

However, equity release products have started to become more flexible and, in some ways, less complex and now come in just two main categories – 'Home Reversion Plans' (where you sell all or part of your home to the provider) and several different types of 'Lifetime Mortgages' where you retain ownership of your home with the interest either rolling up or being paid monthly. Most plans come with the ability to include a drawdown or 'cash reserve' so that funds need only be drawn down when required, thereby avoiding interest being charged on money which is not actually needed or not spent immediately.

Are they good value? Which is the right one for you or your elderly relative (if any)? Only a qualified and experienced IFA can advise you. It is crucial to find an IFA who can advise on the choice available.

Clients considering equity release should include the following in their deliberations:

1. what other options are available (e.g. downsizing, cashing in investments, borrowing from family, claiming grants/benefits, debt advice)
2. the costs and any future early repayment charges involved
3. does the plan they are considering conform to the principles of 'SHIP'
4. whether their family or beneficiaries should be consulted
5. has the adviser taken the time to explain both the advantages and the disadvantages

A number of websites give information on equity release, e.g. www.moneymadeclear.org.uk

The temptation to have cash-in-hand can make people overlook some of the expenses and complexities inherent in these products, and they may come to regret their rush to enter into these arrangements if the disadvantages, literally, hit home.

For further information please contact Peter Hopkins in the Private Client Department.



Together we can solve it

We provide a comprehensive range of legal services to business and private clients including:

- Business & Commercial
- Commercial & Civil Litigation
- Commercial Property
- Dispute Resolution
- Employment
- Landlord & Tenant
- Matrimonial
- Personal Injury
- Residential Conveyancing
- Road Traffic Prosecutions
- Tax Planning & Trusts
- Wills & Probate

Uncovering dubious business practices

When a director uncovers what might be called ‘dubious’ business practices in his or her company, they can find themselves in a problematic situation – particularly if they find that there has been an attempt to disguise the company’s true financial situation.

If you find yourself in this position, it is very important first to establish the true facts before taking any action. Once you have uncovered the impact, scope and severity of the situation, you need to consider your ethical position, particularly in light of the duties of directors under the Companies Act and your own contract of employment.

To make sure that you fully understand your obligations, talk with your board colleagues or HR department, ensuring that you do not breach confidentiality. Do bear in mind, however, that provided you make a ‘protected disclosure’, you are protected by the Public Interest Disclosure Act 1998 against discrimination by your employer.

At this point, it will always be sensible to seek professional legal advice. While taking the wrong action might have awkward ramifications, taking no action may place you in an even more difficult legal situation, so it is important that you have the best possible guidance.

New Act to eradicate inequality

More than 40 years after the first legislation was introduced in this country to prevent discrimination, many inequalities still exist in the workplace.

It is to eradicate these – including lower pay for women and high unemployment among ethnic minorities and disabled people – that the new Equality Act is to be implemented this autumn following its final reading in the House of Commons in late March.

The new Act, designed to streamline and strengthen the current position, has been championed by the Commission for Equality and Human Rights (CEHR). It has condensed nine major existing pieces of legislation and some 100 other measures into a single Act.

We will look at the new Act in more detail in the next issue of Right Focus, but we must emphasise now the importance for businesses of training their employees in its requirements.

This is because a number of formerly usable ‘defences’ against prosecution under anti-discrimination legislation have now been removed, and because the potential cost of being found guilty have risen. For example, awards for injury to feelings in discrimination cases will now range from £600 to £30,000.

Anyone keen to receive an impartial overview of the primary implications of the new Act should talk to a specialist employment lawyer.



Company cars and the law

Many businesses that provide their employees with company cars are unaware of the legal duties and responsibilities that surround them.

There is, for example, an important distinction between contracts that provide a vehicle solely for business use and those that also allow private use. In the first case, a car may be withdrawn when the employee is not actually at work (eg on holiday or on garden leave).

On the other hand, a car provided for private use is a part of the employee’s contractual entitlement and cannot be withdrawn. Clarity is therefore important – employers should make certain that full details of the arrangement are part of the contract of employment, including the type of car provided and the replacement schedule.

Although statutory sick pay must be provided whenever an employee is off sick, employers are under no obligation to continue paying wages or salary. The situation is different with a company car however – unless there is a clear statement in the contract that car allowance will be suspended, the employee can expect it to continue.

Talk to an expert in employment law for fuller details and for advice on all aspects of drawing up a contract of employment.

Repossession figures less serious than expected

Data from the Financial Services Authority (FSA) suggests that the UK's low interest rate regime is having a positive impact on the most vulnerable home-owners, and that earlier predictions of 'record' repossession levels were wide of the mark.

At the end of 2008, lenders predicted that 2009 would see 75,000 homes being repossessed and 500,000 mortgage accounts falling into arrears. In the event, 54,000 homes were repossessed in the year, and 378,000 accounts were in arrears – defined as owing at least 1.5% of their remaining loan. According to Housing Minister John Healey, repossessions were running at half the rate of the last recession.

In addition, the last quarter of 2009 saw a 4% fall in the number of borrowers behind with their repayments. The number of new cases was also down by 9% on the previous quarter (and by 39% over the final quarter of 2008).

At 41,000 new cases, however, the figures are still extremely high and suggest a picture of widespread financial hardship across the UK. Anyone who is concerned that they may struggle to meet their mortgage obligations should contact their lender as early as possible.

New pension regime encourages career breaks

Major changes introduced to the UK's pensions system this April are being widely hailed as the start of a process that will see the age at which Britons can become pensioners gradually start to creep up.

Over the next decade the state retirement age for women will move from the current 60 to 65 and equality with men. Once that parity has been achieved, it is expected that the limit will slowly rise again for both sexes, up to 68 by the year 2046. Some experts are also predicting that the age will rise even further, meaning that anyone now aged 30 may not receive a state pension until the age of 70 or even older.

There is an upside, however. From now on, a mere 30 years of national insurance contributions are required to qualify for a full state pension, as opposed to the previous 39 years for women and 44 years for men. In addition, this will build on an incremental basis, meaning that even as little as one qualifying year will deliver some level of pension.

This means that it is now possible to take a 15-year career break and still qualify for a full state pension. This is particularly good news for people who have had to take time away from work, perhaps to look after an ill family member or to study.

Insolvencies up, bankruptcies down...

Figures from the Insolvency Service show that more people were declared insolvent in 2009 than any year since records began in 1960.

During the year, 134,142 people in England and Wales were declared insolvent, 26% higher than in 2008 and nearly 27,000 ahead of the previous record from 2006.

However, thanks to growing awareness of alternatives to bankruptcy – namely, the individual voluntary arrangement (IVA) and the Debt Relief Order (DRO), which was introduced in 2009 – bankruptcies in the last quarter of 2009, at 17,007, were 5.5% down on the same period in the previous year. This means that fewer insolvent people were in danger of losing their homes.

The fact that IVAs were up in the same quarter by 26.3% on the previous year suggests, however, that creditors are getting tougher with their debtors. Unlike bankruptcy or a DRO, an IVA involves paying back at least some of your debts under a deal arranged between you and your creditors.

According to Louise Brittain of consulting firm Deloitte, "This is a result of increased creditor pressure which is unlikely to let up any time soon, and highlights the desperate financial difficulties facing individuals."

If you are concerned about your financial situation, seek professional advice as early as you can.





Commercial Department

Advice concerning the setting up and running of businesses including IP rights, share agreements, finance, E-commerce
Contact: Nick Godwin
Tel: 01491 572138
ngodwin@mercerslaw.co.uk

Commercial Property Department

Advice concerning sales, purchases, and assignments of business premises, both freehold and leasehold, to include lease renewals
Contact: Mike Beadsworth
Tel: 01491 572138
mbeadsworth@mercerslaw.co.uk

Litigation Department

Advice in connection with commercial and private disputes, including contract, property, employment, personal injury, landlord & tenant, liquor licensing and contentious probate
Contact: Chris Bowler or Adam Marshall
Tel: 01491 572138
csbowler@mercerslaw.co.uk,
amarshall@mercerslaw.co.uk

Residential Property Department

Advice concerning sales, purchases and remortgages of residential property
Contact: Malcolm Brunwin
Tel: 01491 572138
mbrunwin@mercerslaw.co.uk

Private Client Department

Advice concerning wills, probate, tax planning and estate management
Contact: David Weston, Paul Stott, Guy Barker and Peter Hopkins.
Tel: 01491 572138
Bellstreet@mercerslaw.co.uk,
pstott@mercerslaw.co.uk,
gbarker@mercerslaw.co.uk,
phopkins@mercerslaw.co.uk

Matrimonial Department

Advice concerning divorce, division of family assets and related matters
Contact: Malcolm Brunwin
Tel: 01491 572138
mbrunwin@mercerslaw.co.uk

Employment Department

Advice concerning employment contracts, employment procedures and disputes.
Contact: Adam Marshall
Tel: 01491 572138
amarshall@mercerslaw.co.uk

The real reasons for pulling a sickie?

A recent survey has established something that many have suspected was true – that the hangover is the biggest cause of employees pulling a ‘sickie’.

The research, by recruitment company review website HireScores, found one in three people admitting that they would be inclined to call in sick on a Monday rather than any other day of the week. A quarter of the respondents said they were most likely to call in sick on a Friday to start their weekend early.

Of those people who admitted to faking illness to get a day off, a staggering 89% said they would do so thanks to a hangover. Other reasons included being tired after a late night (68%), wishing to stay with a partner (53%), wanting a holiday (49%) and not being bothered to go to work (47%).

According to HireScores Managing Director Lisette Howlett, “The next time you look around the office on a Monday or a Friday and it seems light on the ground, now you’ll know why!

“On a more serious note, this no doubt costs British employers a huge amount of money, especially in terms of lost productivity and the loss of morale of co-workers who know that their colleagues’ sickness absence is not genuine.”

Does money make you happy?

A new report has gone some way towards proving the Beatles’ claim that “Money can’t buy you love”. Researchers at Cardiff University and the University of Warwick have found that earning more money only makes you happier if you feel richer than your friends, neighbours and colleagues.

Comparing happiness levels with those of other people of the same age, sex and level of education showed, in fact, that money only makes people happier if it improves their standing in society.

Lead researcher Dr Chris Boyce commented: “Earning £1 million a year appears not to be enough to make you happy if you know your friends all earn £2 million a year.”

He continued, “It’s important to remember that human beings are innately status-obsessed. In the days before his windfall, the lottery winner may have envied his neighbour’s new car or coveted his conservatory.

“But the odd thing is that this compulsion does not diminish even if the same man becomes as rich as Croesus. He will just hanker after even grander acquisitions: his richer neighbour’s yacht, his jet or his private estate off the Bahamas.”

According to the researchers, this obsession with comparative fortunes is why the last 40 years’ rising prosperity has not increased overall happiness levels.