



CLIFTON INGRAM: KEEPING YOU POSTED WITH NEWS OF THE LAW | AUTUMN 11

CITATION

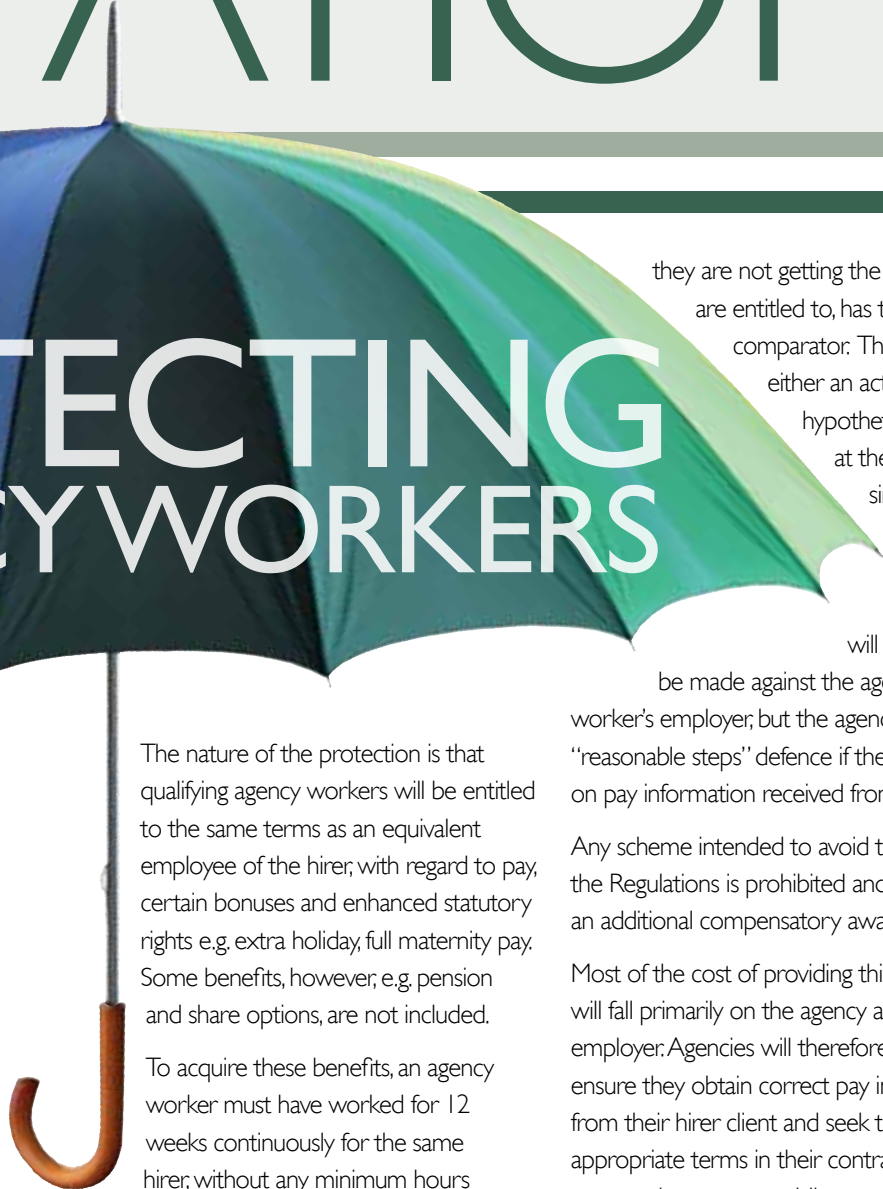
[REGULATIONS]

PROTECTING AGENCY WORKERS

Starting on October 1st 2011, the new Agency Workers Regulations (AWR) will come into force, giving Britain's 1.3 million agency workers potentially the same rights as full time staff.

According to the Government, complying with the AWR will cost businesses an extra £1.62bn a year, especially as businesses being cautious about hiring permanent staff in the current economic environment, has led to record numbers of agency workers being recruited as a flexible alternative.

The Regulations will give protection to any qualifying worker supplied by an agency under the supervision/direction of a hirer. A truly self-employed worker will not be covered.



The nature of the protection is that qualifying agency workers will be entitled to the same terms as an equivalent employee of the hirer; with regard to pay, certain bonuses and enhanced statutory rights e.g. extra holiday, full maternity pay. Some benefits, however, e.g. pension and share options, are not included.

To acquire these benefits, an agency worker must have worked for 12 weeks continuously for the same hirer, without any minimum hours requirement. Continuity can be broken by absence of at least 6 weeks (28 weeks if due to sickness) but absence such as maternity/paternity leave will not break continuity.

Facilities such as a canteen, parking and childcare, enjoyed by the hirer's employees, will likewise be extended to agency workers as soon as they start working for the hirer.

A qualifying agency worker, who claims

they are not getting the terms they are entitled to, has to have a comparator. This means either an actual or hypothetical employee at the hirer doing similar work, who is on better terms. Claims will primarily

be made against the agency, as the worker's employer, but the agency may have a "reasonable steps" defence if they have relied on pay information received from the hirer.

Any scheme intended to avoid the effect of the Regulations is prohibited and may warrant an additional compensatory award of £5000.

Most of the cost of providing this protection will fall primarily on the agency as the employer. Agencies will therefore need to ensure they obtain correct pay information from their hirer client and seek to negotiate appropriate terms in their contracts to recover the extra cost. Hirers must establish who on their staff are agency workers, check the terms of service contracts they have with their agencies, and review their basic pay terms which will be used as a benchmark for worker claims.

[GET IN TOUCH]

If you need advice on any of these issues please email James Dyson at jamesdyson@cliftoningram.co.uk

THE REAL BUSINESS CLUB

As the business world is plunged into economic recession Clifton Ingram solicitors have been assisting the next generation of local entrepreneurs.

It is accepted that the recovery is going to be led by growth and innovation in small and medium-sized enterprises. Although the government is encouraging the banks to lend to small businesses, and groups such as the Federation of Small Business are lending support where they can, who is providing the help that individuals need to get on to the very first rung of the ladder? Where do individuals go for advice when they have a business idea?

Starting your own business can be daunting. Not only is there a service to provide or a product to make, but the budding entrepreneur has also to master marketing, financing, accounting and legal matters.

Fortunately Wokingham has The Real Business Club established by Kate Lole, Dawn Edwards and Isabel King for anyone interested in starting a business or wishing to take their business to the next stage. They arrange activities where attendees can network and obtain free business advice from local experts, specialist workshops and bespoke business development sessions to local authorities, organisations and commercial business.

Clifton Ingram is pleased to support The Real Business Club and Carlton Rae (carltonrae@cliftoningram.co.uk), a regular advisor; has presented seminars on credit control and Mediation.

[GET IN TOUCH]

To find out more about The Real Business Club and upcoming events visit www.therealbusinessclub.co.uk

[THE BRIBERY ACT 2010]

BRIBERY OR INCENTIVE?

The Bribery Act 2010 came into force on 1 July 2011 and can carry a penalty of up to 10 years imprisonment or an unlimited fine, which in serious cases could run to tens of millions of pounds.

If you or your business:

- provide hospitality as an expression of appreciation to customers, business referers, partners or associates
- have promotional expenditure to improve your business image, enhance products/services or to establish good relations with customers or associates
- makes facilitation payments or use independent consultants for the purpose of acquiring new commercial opportunities

then you may be at risk of committing bribery offences.

It is important to be aware that you can also be caught under the Bribery Act if a person 'associated' with you e.g. an agent, a supplier; a joint venture partner; an intermediary or an employee is involved in some form of bribery, with or without your knowledge.

There are ways of mitigating your risks under The Bribery Act 2010 and we have the expertise on hand to assist you with identifying what action you should take. Steps open to you may include some of the following:

- A bribery policy for employees, agents, independent consultants and any joint venture partners.
- An expenses policy for employees and consultants.



- Reviewing your disciplinary and whistle blowing policy which should operate alongside your bribery policy.
- Reviewing the terms of your contracts with third parties, including agents, suppliers and any independent consultants who seek business opportunities on your behalf.
- Internal financial controls in relation to hospitality, facilitation and promotional expenditure.

The Bribery Act is not retrospective. This means that if your business has escaped prosecution in the past for bribery committed before 1 July 2011, this does not mean that you are safe from prosecution from now on.

[GET IN TOUCH]

If you need advice on any of these issues please email Caroline Lindon-Morris at clindonmorris@cliftoningram.co.uk

STAY ON COURSE

Small and medium-sized enterprises (SMEs) which have continued to trade through the challenging economic environment of the past few years have earned the right to congratulate themselves.

There is, however, no room for complacency - difficult times still lie ahead as the ongoing economic troubles in Europe and the USA and the currency turbulence in the banking sectors show.

SMEs can improve their chances of coming through this downturn and increasing profitability for future years by reviewing the following:-

CONTRACTS WITH CUSTOMERS

– an SME can look at what action it can take to retain its existing customers by offering to re-negotiate its standard terms of business so as to include

inducements in return for the customer agreeing a longer fixed-term contract.

CONTRACTS WITH SUPPLIERS – an SME may find itself negotiating with its suppliers in a buyers' market which presents the SME with the prospect of improving its purchasing terms. SMEs can pitch for more favourable payment terms, pricing structure, delivery and exclusivity.

CREDIT CONTROL – cashflow is the life blood of any business. When credit is tight any SME should review its procedures to see if these are adequate to bring in prompt payment of debtors and check that its terms of business permit recovery of extra interest and costs.

PROTECTION OF INTELLECTUAL PROPERTY (IP) RIGHTS – innovation, know-how and trade secrets are at a premium in today's competitive market place and those who protect their IP from copying, can maintain their competitive advantage. It is vital for every SME to check that its IP is protected by, for example, the registration of trademarks or the signing of licence agreements.



DUE DILIGENCE

PROCEDURES UNDER THE BRIBERY ACT 2010

– Since 1 July 2011 SMEs and other businesses must follow “adequate procedures” if they are to have a defence to the new corporate liability offence. In some areas this will have implications for the due diligence process which an SME conducts when acquiring a new business or appointing an agent or a sub-contractor. Every SME should make a risk assessment of its usual practice to make sure that it will be sufficient to defend any prosecution under the Act.

SMEs can act now to minimise threats and maximise their opportunities of exploiting commercial advantages over competitors so that they can improve profitability in the future.

[GET IN TOUCH]

Please email Caroline Lindon-Morris on clindonmorris@cliftoningram.co.uk

A LIFE IN THE COUNTRY



Many people dream of moving to the country away from busy city life. However purchasing a property in the country can have many potential pitfalls and hurdles. Some properties are located in beautiful surroundings only accessible by unmade up tracks or paths. Is there a right of way?

The driving of a vehicle over land which is not a road but common land, restricted

byway, or land over which a bridleway or public path runs is prohibited under the Law of Property Act 1925 and the Road Traffic Act 1988.

Many rural properties may not have the benefit of mains drainage. The private drainage could be a cesspool or a septic tank. It may be necessary to obtain the consent of the Environment Agency for the operation of the drainage system especially if the system discharges treated effluent into land or into an adjacent watercourse.

Very remote properties may not have mains water but instead have a private water supply. Enquiries have to be raised as to the source, rights for the supply and the quality of the water.

Many older properties are listed buildings so any alterations or extensions will have to be checked carefully to ensure that the appropriate planning permission, building regulation consent together with the listed building consent and possibly conservation area consent was obtained. Altering, demolishing or changing a listed building without the appropriate consent can result in criminal prosecution.

Take the necessary steps to ensure that your rural dream does not turn into your worst nightmare. The Residential Conveyancing Department at Clifton Ingram is here to steer a clear path around any obstacles.

[GET IN TOUCH]

For more information please email Tina Crow on tinacrow@cliftoningram.co.uk

HAVE AND TO HOLD?

In the current economic climate, there are many demands on our financial resources, and most of us would wish to preserve the fruits of our labours for ourselves and our loved ones. How, then, can we protect ourselves from potential claims from partners or former partners?

On the breakdown of a marriage or Civil Partnership, both parties' assets are taken into account. However, the landmark judgment in the Radmacher case indicates that, whilst the Court's powers cannot be ousted, provided certain formalities are met, the Court is likely to uphold the terms of a Pre-Nuptial Agreement in which the parties can protect various assets.

A word of warning to unmarried couples buying property together: always consider owning as tenants in common with a formal Declaration of Trust. This should set out the parties' respective interests in the property which will normally reflect each party's contributions, either to the purchase of the property



or to the mortgage payments. This is particularly important if the relationship breaks down or one party dies.

Similarly, if one party already owns a property and the other party moves in, then a Living Together Agreement is strongly recommended. This should clearly set out what both parties will contribute to the household budget and what interest, if any, the non-owning party will acquire in that property.

All too often, when sons and daughters marry or live with their partners, they are given a helping hand by parents and/or grandparents to get onto the property ladder. If that relationship breaks down, there is frequently a dispute as to whether the money was loaned or gifted and

to whom. If, in those circumstances, the expectation is that the money should be repaid, then it should be made clear at the outset and either a loan agreement or a Declaration of Trust, specifying precisely what has to be repaid and by whom, should be drawn up.

Of course, we all hope that when we or our children or grandchildren go into a relationship it will be a success and we need never bother about what will happen when it breaks down, but just taking some advice beforehand, could save a lot of time, money and upset in the future.

[GET IN TOUCH]

For more information please email Marilyn Young at marilynyoung@cliftoningram.co.uk

[ANIMAL WELFARE]

PAWS FOR THOUGHT

We are known as a nation of animal lovers and were the first country in the world to introduce parliamentary legislation for animal welfare.

In 2006 animal laws were tightened with the passing of the Animal Welfare Act, which created two main general offences, "Failing in the duty of care towards animals" and "Causing unnecessary suffering to animals".

The new law applies to pet owners and any other person responsible for animals. Although most owners already care for their animals to a very high standard there is now a legal duty of care to meet the five welfare needs which are:

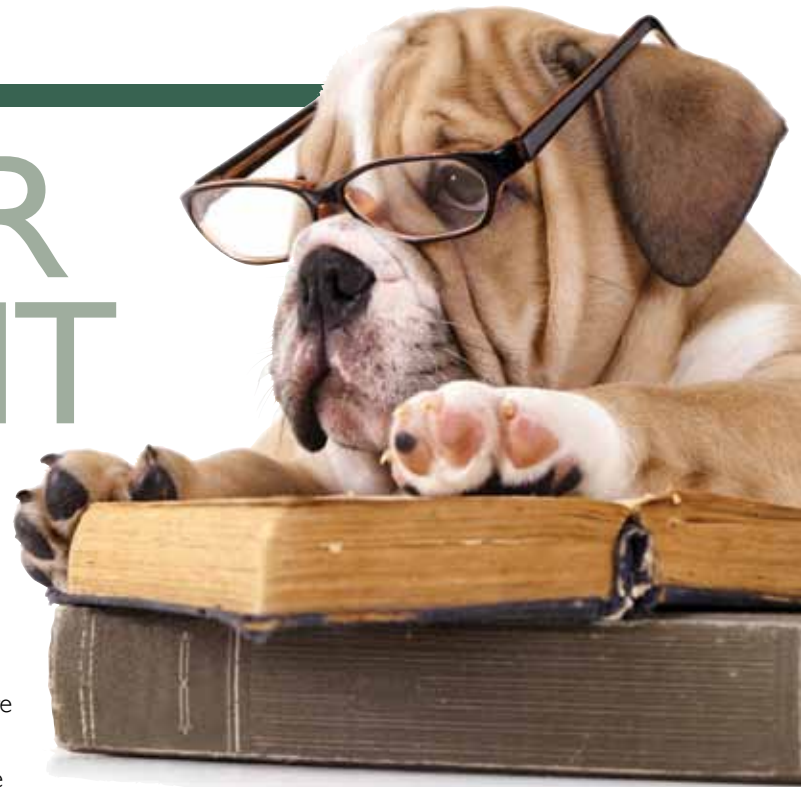
- Somewhere suitable to live.
- The ability to express normal behaviour.
- A proper diet, including fresh water.
- Protection from pain, suffering, injury or disease.
- Any need to be housed with or apart from other animals.

The Act provides codes of practice for the welfare of a very wide range of animals which can be used in Court as evidence against owners who are in breach of the law.

This can result in a fine of up to £20,000 and/ or 51 weeks in prison, and being banned from owning or looking after animals. The Act is not to be taken lightly and affects all of us who have a responsibility for a pet or non-domestic animal.

You need to consider what will happen to your pets if you are no longer able to look after them, particularly if you have no family or friends on whom to rely. Ideally you should put in place contingency plans, perhaps with your neighbour, vet or local re-homing centre. Make sure a note of your pet's history, pedigree, vaccinations, likes and dislikes is made available.

You may also want to provide for your pet in your Will. While it is not possible



to leave a legacy to the animal itself it is possible to provide for it in other ways.

To assist with the financial burden of looking after your pet you may wish to include in your Will a simple trust, for example, the income being used to provide for your pet's care and the capital going to another beneficiary such as an animal charity after your pet has died. Alternatively you may want to leave a cash legacy to a trusted individual or charity with the wish that they look after your pet for as long as is necessary.

[GET IN TOUCH]

For more information please email Anita Prymak on anitaprymak@cliftoningram.co.uk

A NOVEL IDEA



L to R: Toni Denyer (Marie Curie), Alison Cross (Clifton Ingram) Nicola May (Author) and Tracey North (Marie Curie)

In August, Clifton Ingram hosted book signings by local author Nicola May in support of Marie Curie Cancer Care. Nicola is the face of The Marie Curie

Cancer Care Free Wills Scheme which offers people over 55, in Berkshire, the opportunity to make or amend their Will with the option to include a gift to support the charity's work in the future.

The Marie Curie Nursing Service provides free home nursing care to people with a terminal illness, 365 days a year. Currently gifts left in people's Wills fund one in three Marie Curie Nurses. Clifton Ingram has worked in conjunction with Marie Curie Cancer

Care and their Free Wills Scheme since August 2010. www.mariecurie.org.uk.

Nicola's new book 'Working it Out' tells the story of Ruby, a local girl from Reading who following redundancy, decides to try twelve jobs in twelve months, until she finds the one of her dreams. www.nicolamay.com

[GET IN TOUCH]

For more information about the Free Wills scheme please email Stuart Adams on stuartadams@cliftoningram.co.uk

[INDUSTRY RECOGNITION]

MOVER & SHAKERS

CLIFTON INGRAM IS PLEASED TO ANNOUNCE A NUMBER OF NEW QUALITY ACCREDITATIONS AWARDED TO THE FIRM AND ITS STAFF IN RECOGNITION OF THEIR SPECIALIST KNOWLEDGE AND DEDICATION.



Peter McGeown and Emma McCarthy, in the Tax Planning, Wills & Probate Department, have both been appointed as associate members of the Association of Contentious Trust and Probate Specialists (ACTAPS).

With Wokingham-based Peter and Reading-based Emma obtaining their qualifications, Clifton Ingram will not only have the largest Tax Planning, Wills & Probate team in the area with 12 professionals, but also the most ACTAPS associate members in Berkshire. ACTAPS is the blue-ribbon standard for lawyers specialising in contested wills and estates – an area very few solicitors focus on. To achieve the ACTAPS qualification solicitors must successfully complete a two year training course.



The specialist skills of **Marilyn Young, Partner and Head of the Family Law Department,** have been recognised by Resolution, the UK's leading family law group.

Marilyn has become a Resolution Accredited Specialist in the areas of domestic

abuse and cohabitation, placing her amongst the most highly qualified lawyers in the area.

The Resolution Accreditation Scheme is designed to help people who are facing family breakdown to make an informed choice when deciding which family solicitor to appoint. To become a Resolution Accredited Specialist, solicitors have to agree to uphold the Resolution Code of Practice and to have passed a written test demonstrating a breadth of knowledge of family law issues and specialist knowledge in at least two areas of family law.



CLIFTON INGRAM'S RESIDENTIAL PROPERTY TEAM

has secured membership to the Law's Society's Conveyancing Quality Scheme – the mark of excellence for the home buying process. The team underwent rigorous assessment by the Law Society in order to achieve the CQS status, which marks Clifton Ingram out as meeting high standards in the residential conveyancing process.

Partner and Head of Residential Property, Tina Crow said "Clifton Ingram is delighted to have secured CQS status. It is recognition of the high standards and excellent service levels we provide to our residential property clients."



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