

CLIFTON INGRAM: KEEPING YOU POSTED WITH NEWS OF THE LAW | WINTER 16

# CITATION

## DATA PROTECTION THE BIGGEST CHANGE FOR A GENERATION

The General Data Protection Regulation (GDPR) will come into effect on 25 May 2018 and will be the most significant change to the data protection regime in the EU for a generation.

Despite the Brexit vote, it is anticipated that the UK will, in the short term at least, continue to implement the GDPR. Going forward, the UK will be keen to enable trade with the EU and wish to be considered an adequate jurisdiction for data protection, so it is very likely that the UK will continue to maintain a law similar to the GDPR in the longer term. In any event, if your business has operations in other EU Member States, GDPR compliance will be essential.

It is, therefore, important that UK businesses are aware of and prepared for the upcoming changes. Below is a brief summary of some of the concepts to be introduced by the GDPR:

### HARMONISATION OF DATA PROTECTION REGIMES

The aim is to produce a single legal framework that will apply across all EU member states. Businesses will be able to rely on a consistent set of data protection

compliance obligations in different EU member states.

### EXPANDED TERRITORIAL SCOPE

Unlike the position under the Data Protection Directive (DPD), non-EU businesses with operations in the EU will be required to comply with the GDPR. This means that many non-EU businesses that were not previously required to comply with the DPD will be required to comply with the GDPR.

### INCREASED ENFORCEMENT POWERS

The potential fines that could be enforced against non-compliant businesses will be increased considerably. Fines will be set on a two-tier basis:

- For breaches in relation to data processor contracts, internal record keeping, data security and breach notification, fines could be up to the greater of:
  - 2% of annual worldwide turnover of the preceding financial year; or
  - €10million; and
- For breaches of the data protection principles, conditions for consent, data

subjects rights and international data transfers, fines could be up to the greater of:

- 4% of annual worldwide turnover of the preceding financial year; or
- €20million.

### RISK-BASED COMPLIANCE

The GDPR adopts a risk-based approach to compliance. This means that businesses will have to bear responsibility for self-assessing the degree of risk that their processing activities pose to data subjects.

### [ GET IN TOUCH ]

Our Corporate Services Team always keep a close eye on matters that could affect your business so that we can give clear and sound advice on how best to safeguard your commercial interests. If you require assistance in relation to upcoming data protection legislation or any company or commercial matters, please contact

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# LOVE THY NEIGH

**A recent Which? survey found that 27% of people have had issues with neighbours in the last year. Neighbour disputes can leave people feeling angry, irritable and stressed. The survey also found that 64% of people who have experienced problems didn't know where to go to seek help and advice.**

Neighbour disputes can cover a wide range of issues including:

- Boundary issues
- Parking rights
- Party Wall disputes

- Noise nuisance
- Trees and rights to light
- The use of personal CCTV cameras and privacy rights

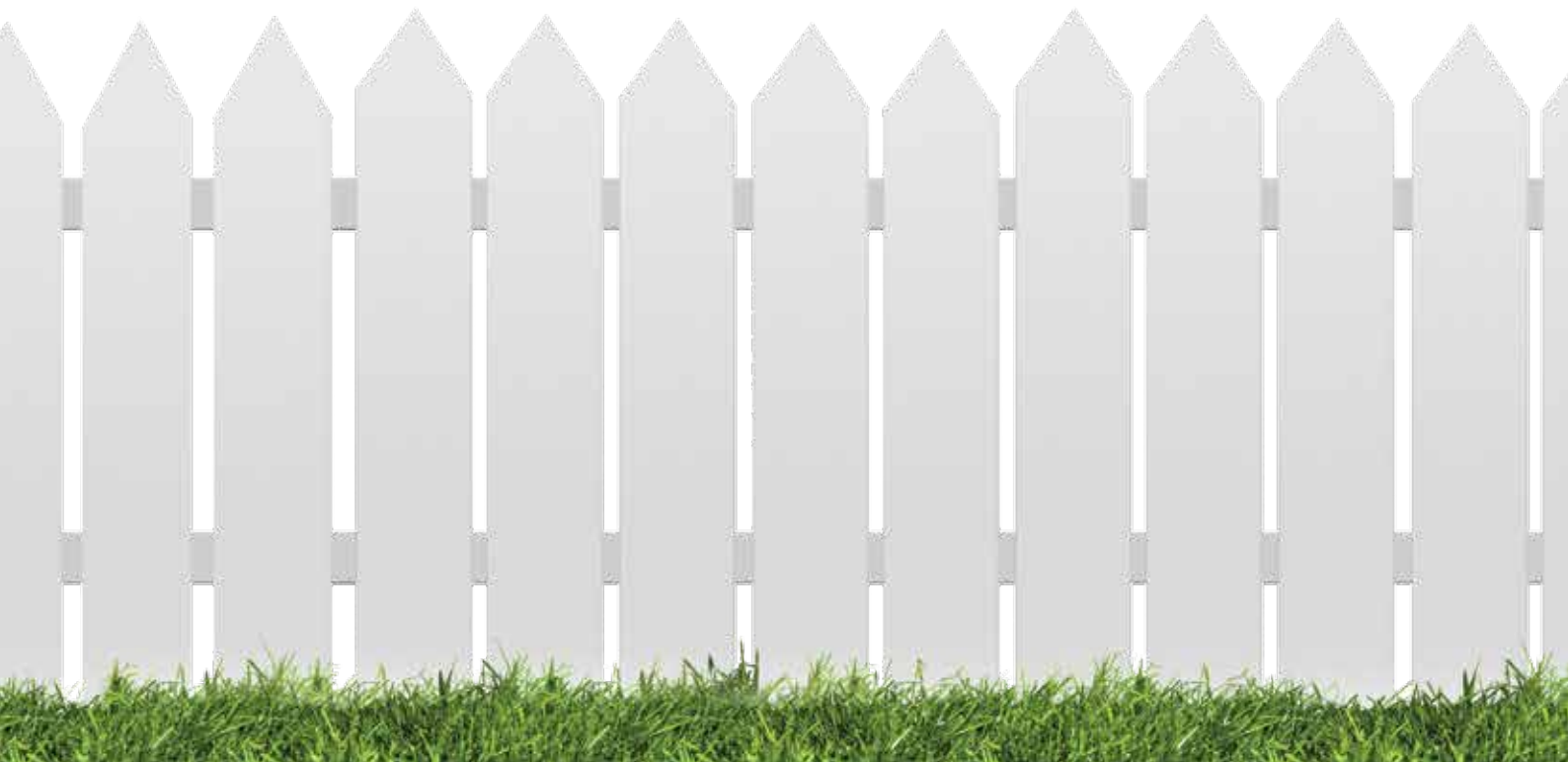
The rights of each party can be difficult to establish and can change over time. It is not always clear at the outset which party's view is correct and often the parties become entrenched very early on as they both genuinely believe they are right. This can lead to a serious break down in the relationship between neighbours, sometimes irreparably to the extent that the only option left to avoid conflict is to move house.

When there has been a neighbour dispute it can prove problematic if you wish to put your house on the market as you must disclose any

past, present or potential future neighbour disputes when selling your property. This can have a detrimental effect on the value of your house, as purchasers will not want to buy a property adjacent to a troublesome neighbour.

The best course of action when you think you might have a problem with a neighbour is to address the issue early on and seek advice from a solicitor before the problem becomes a full blown "dispute" and relationships start to break down. A solicitor can advise you on the legal position before you become embroiled in a distressing argument with your neighbour and can act as buffer between the parties.

We regularly attend clients for a brief one hour meeting, on site if necessary, to



# BOUR

go through the issues and explain their rights, which can help to provide clarity and closure on a dispute which might be developing. Alternatively when a dispute has already arisen with a neighbour, we can act as mediators to help diffuse the tension between neighbours and provide clarification to each party on their rights.

## [ GET IN TOUCH ]

For further information on settling disputes, please contact

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# A WARNING TO TENANTS EXERCISE A BREAK CLAUSE

**In today's difficult economic climate, tenants who have negotiated a break clause in their commercial lease may be alarmed to find out just how difficult it can be to successfully exercise it.**

In essence, a break clause allows either the Tenant or the Landlord to terminate the Lease early. Although this sounds fairly simple, in practice, a Tenant wishing to exercise the break may find it anything but straightforward. The right to exercise a break is usually conditional upon certain conditions being fulfilled, such as rents being paid up to the break date, the need to give vacant possession and to comply with other general tenant obligations in the lease.

Vacant possession is generally considered to mean that;

- (a) The property needs to be empty of people;
- (b) The Landlord must be able to take immediate and exclusive possession, occupation and control of the property and
- (c) The property must be empty of chattels that might otherwise prevent or interfere with the landlord's right to possession of a substantial part of the property.

A recent case on this issue was *Riverside Park Ltd v NHS Property Services Ltd* (2016) which focused on whether the Tenant's failure to remove partitioning at the premises meant the break was ineffective.

When the Lease was granted, the premises were open plan. A licence for alterations was entered into by the Landlord authorising the Tenant to install a large amount of partitioning. The Tenant sought to exercise the break clause in the lease but failed to remove the partitioning by the break date.

The Landlord argued that the break notice was ineffective as the presence of the partitioning meant that the Tenant had failed to provide "vacant possession". The Tenant on the other hand contended that the partitioning was now a fixture and thus formed part of the premises (i.e that they were not chattels which would be an impediment to giving vacant possession).

It was decided that the partitioning was demountable as it was constructed on top of a raised floor and reached the underside of the suspended ceiling and was only fixed by screw fixing and not affixed to the structure. It was therefore held that the partitioning did indeed prevent and interfere with the right of possession, so the tenant could not break the lease and had to remain in occupation paying the rent for the rest of the lease term.

Thus Tenants who wish to exercise their break clause must check and consider any conditions in good time before any notice to exercise the break has to be served and to consider what work they may need to do to secure an effective break... If in doubt, seek our advice in good time.

## [ GET IN TOUCH ]

For further information on Commercial Property please contact

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# NEW IMMIGRATION PROVISIONS IN FORCE

**Over the Summer some of the new employment-related parts of the Immigration Act 2016 began to apply.**

The main points to be aware of are that since 12 July 2016:

- it is a criminal offence for a person to work when he or she reasonably believes that their immigration status prevents them from doing so. The earnings of illegal workers can be seized.
- employers of illegal workers could be convicted if they had reasonable cause to believe that the employee's immigration status was a bar to them working. This extends the previous offence of knowingly employing an illegal migrant. A maximum

prison sentence of five years could be imposed, and a fine. In some circumstances, the business could be closed down for up to 48 hours.

It is more important than ever for employers to check, on an ongoing basis, that their workers have the right to work in the UK, and for them to keep good records. Employers should also ensure that those within their business who are involved in recruiting people to work for the employer know what's expected of them, and that they understand the severity of getting this wrong.

## October Changes

October usually brings changes to employment law. However, this year the only real change was the annual increase to

National Minimum Wage rates. The rate for workers aged 21 to 24 has increased from £6.70 to £6.95 per hour (with lower rates for younger workers and apprentices). The National Living Wage for workers aged 25 or over remains at £7.20 per hour and is not due to increase until next April.

## [ GET IN TOUCH ]

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# INHERITANCE TAX WINDFALL FOR THE GOVERNMENT?

Financial services company NFU Mutual has reported that there could be a rise to almost 500,000 millionaires in the UK this year based on HMRC data. This growth in wealth will push more people into the Inheritance Tax bracket whilst the Nil Rate Band for tax remains frozen at £325,000 until 2021. As a result, Inheritance Tax planning is becoming a major issue for more and more people in this country.

Tax payers will benefit (so long as they are married) from the new Inheritance Tax Free Allowance for family homes, being introduced from April 2017. This will amount to £100,000 per tax payer (i.e. £200,000 for a couple) rising to £175,000 in 2020, on top of the Nil Rate Band of £325,000.

This new allowance is, of course, the much lauded increase of Inheritance Tax allowance to £1,000,000 promised by the former Prime Minister David Cameron but it may not be as generous as it looks to some.

First, the allowance is withdrawn by £1 for every £2 by which the combined value of a couple's estate exceeds £2,000,000. Accordingly, if your estate exceeds £2,700,000 the enhanced Nil Rate Band allowance will not be available at all and your combined husband and wife allowance will be reduced to £650,000, although this can be mitigated by careful planning.

Second, the allowance is only available on legacies to direct lineal descendants, meaning childless couples will not have the benefit of an increased allowance.

Third, individuals who are making use of Trusts to protect assets for the benefit of their children need to think very carefully, as unless the Trusts are skilfully drawn, Wills leaving assets in Trust may also cause tax payers to lose the enhanced Nil Rate Band.

Of course this is an extremely complex area of new law and it is very easy unknowingly to lose the benefit of what at first appears to be a very generous allowance.

To ensure you keep up with changes in the law and know how to protect your wealth for future generations, reserve your place at our **free Wealth Management Event on 2 March 2017** by contacting Melissa Baxter on

t: 0118 912 0210 or

e: [melissabaxter@cliftoningram.co.uk](mailto:melissabaxter@cliftoningram.co.uk).

Clifton Ingram's events are usually oversubscribed so please contact us early to avoid disappointment.

## [ GET IN TOUCH ]

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# SUPPORTING THE FINER THINGS

Clifton Ingram Solicitors are proud to be appointed the first ever corporate partner of the Wokingham Decorative and Fine Art Society.

Wokingham DFAS is an affiliate member of the National Association of Decorative and Fine Arts Societies (NADFAS), a leading UK Arts charity that works to advance decorative and fine arts education and appreciation. The Wokingham Branch currently has around 300 members.

The Clifton Ingram sponsorship will help support some of the many events that the Wokingham DFAS holds, as well as its volunteer work in the community. Jonathan Davis, chairman at Clifton Ingram said "We are delighted to be associated with Wokingham DFAS and help support them in both their practical arts conservation work and artistic education."

For an annual subscription, Wokingham DFAS members attend lectures from visiting art experts. They have the opportunity to attend study days and participate in visits to art collections and guided walks. New members are always welcome.

Wokingham DFAS lectures in 2017 include:

- 23 February 2017, The Consolation of Movement -- The Sculpture of Edgar Degas and Auguste Rodin
- 23 March 2017, Travellers Among Mountains and Streams: Masterpieces of Chinese Landscape Painting
- 27 April 2017, Invention and Intelligence in the Art of Giambattista Tiepolo
- 25 May 2017, Germany's post-WW2 culture of memorials and counter-memorials
- 22 June 2017, The Challenge of Cubism and its legacy on twentieth century art
- 27 July 2017, Peter the Great of Russia: building St Petersburg

## [ GET IN TOUCH ]

For more information about Wokingham DFAS please visit

[www.wokinghamdfas.org.uk](http://www.wokinghamdfas.org.uk)



Photo L to R: Clifton Ingram Chairman Jonathan Davis with Robin Cops and Tim Burton of Wokingham DFAS

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