News of the law from Clifton Ingram Solicitors

CITATION

Summer 2019

STAYING GROUNDED

in the ever changing world of conveyancing

ALSO IN THIS ISSUE:

CLIFTON INGRAM LLP SOLICITORS

CITATION

WELCOME TO THE NEW-LOOK CITATION MAGAZINE FROM CLIFTON INGRAM SOLICITORS.

IN THIS ISSUE:

Clifton Ingram LLP Solicitors

Wokingham Office:
22-24 Broad Street
Wokingham
RG40 1BA

T: 0118 978 0099

Reading Office:
County House
17 Friar Street
Reading RG1 1DB

T: 0118 957 3425

Designed and printed by Supreme Creative Ltd

CLIFTON INGRAM LLP SOLICITORS

PROMOTION NEWS

A ROUND-UP OF SOME OF THE CLIFTON INGRAM PEOPLE NEWS IN 2019 SO FAR...

ANNE DELLER has been elected as the firm's new Managing Partner and takes over from Jonathan Davis who has retired from practice after 43 years as a solicitor, 21 of which were spent at Clifton Ingram. Joint head of Clifton Ingram's Family department Anne Deller has specialised in divorce and family law for over 20 years dealing with complex cases including those with an international element. In 2019 The Legal 500 listed Anne as a Leading Individual in the field of Family Law and awarded her team a top tier ranking.

Anne said, "On behalf of everyone at Clifton Ingram I would like to thank Jonathan for his contribution to the firm not only in his most recent role as Managing Partner but throughout his career as a litigator and mediator.

I LOOK FORWARD TO WORKING WITH MY COLLEAGUES TO CONTINUE TO GROW OUR LAW FIRM AND PROVIDE THE QUALITY OF SERVICE OUR CLIENTS HAVE COME TO EXPECT".

Commenting on Anne Deller's appointment Jonathan Davis said: "During my time as a Partner at Clifton Ingram, the firm has grown in breadth, expertise and turnover thanks to our talented and committed solicitors and staff. Having worked with Anne for many years, I have no doubt Clifton Ingram will continue to flourish and I wish her every success in the new role."

For more information please contact
ANNE DELLER
e: annedeller@cliftoningram.co.uk
t: 0118 912 0220

We have also welcomed three new Partners from 1 May 2019, Lewis Djemal, Jonathan Foulds and Rekha (Ray) Joshi.

LEWIS DJEMAL first became involved with Clifton Ingram as a work experience student and his enthusiasm and maturity were so evident we encouraged him to apply for a traineeship once he left University.

After finishing his legal studies Lewis joined Clifton Ingram and qualified into the Commercial Property department, developing a particular expertise in land development and acting for landlords and tenants in connection with granting, renewing, assigning and subletting leases.

Lewis' innovative ideas and strong work ethic have been rewarded with promotions accordingly, and in May 2019 he became the firm's youngest ever partner at 30 years old.

For more information please contact

LEWIS DJEMAL
e: lewisdjemal@cliftoningram.co.uk
t: 0118 952 3566

JONATHAN FOULDS joined Clifton Ingram in 2017 from regional law firm Stevens & Bolton and is considered a 'significant figure' in Legal 500. Jonathan has over a decade's experience of all aspects of commercial property matters, including commercial landlord and tenant acquisitions and disposals, head office moves and portfolio management. He also advises on the property aspects of refinancing and business acquisitions, sales and reorganisations and has extensive experience in a wide range of sectors including retail, industrial, office and development.

For more information please contact

JONATHAN FOULDS
e: jonathanfoulds@cliftoningram.co.uk
t: 0118 912 0273

As well as becoming Partners, Lewis Djemal and Jonathan Foulds will take over from Ian Graham as joint heads of Clifton Ingram's expanding Commercial Property department.

REKHA (RAY) JOSHI Joshi joined Clifton Ingram's Family department in 2004 after qualifying as a solicitor and deals with all aspects divorce and family law including the financial consequences of relationship breakdown, matters involving children such as maintenance and child arrangements, and Pre-Nuptial and Living Together agreements. In recent years she has developed a regular caseload of more complex high-value financial disputes.

She handles difficult cases with care, and was recommended in the Legal 500 who said 'Rekha Joshi provides empathy with clients who need reassurance but is not afraid of giving strong, sensible and sound advice'. Ray has had two legal cases published in law reports because of their significance in significant in law.

For more information please contact

REKHA JOSHI
e: rekhajoshi@cliftoningram.co.uk
t: 0118 912 0242

CYBERSECURITY

5 LEGAL POINTS DIRECTORS SHOULD KNOW

COMPANY DIRECTORS ARE NORMALLY VERY AWARE OF THEIR RESPONSIBILITIES FOR FINANCIAL COMPLIANCE AND THE RISKS OF THEFT OR FRAUD...

They are much less sensitive to their responsibilities regarding cybersecurity or their liabilities in the case of a breach, often assuming that their IT provider or IT department will take care of it. The reality is that they and their companies are just as much at risk from cybersecurity problems as they are from financial mismanagement.

Cybersecurity is now a major challenge for business and, with the volume and severity of attacks increasing, one that could put an organisation's future at risk.But while most directors appreciate the threats to their business, what they might not realise is that these issues can lead to personal liability for themselves too.

Here are five ways that cybersecurity issues can have a direct impact on board members:

1. BREACH OF DIRECTORS' DUTIES

The Companies Act 2006 specifies that directors have a duty to promote the success of the company and to exercise reasonable care, skill and diligence in the conduct of their role. A director's failure to understand and mitigate cyber breaches could amount to a breach of these duties which could lead to claims against them by the company or its shareholders.

2. FALLING FOUL OF REGULATORS

For companies operating in regulated sectors, a failure to manage cyber risks could equate to a breach of their personal regulatory obligations. For example, the FCA can take action if a director does not adequately discharge their regulatory duties and this could include not properly managing cyber risks for their company.

3. BREACHES OF DATA PRIVACY AND CYBER LAWS

Some laws places direct obligations on individual directors - including the Data Protection Act 2018, the Network and Information Security Directive and the Digital Economy Act 2017.

4. CLAIMS BY CUSTOMERS AND OTHER THIRD PARTIES

In addition to action by the company, directors could also face claims from customers. By failing to adequately understand and mitigate cyber security risks, directors will also be at risk of claims by third parties who have suffered some loss or damage as a result of a director's mismanagement of cyber risk, including claims for negligent conduct.

5. RISKS TO THEIR JOB OR PROFESSIONAL REPUTATION

Increasingly board members are being targeted directly by cybercriminals using ever more sophisticated scams. In one case last year the FD and CEO of the Dutch branch of the film company Pathe were sacked after being tricked into paying over €19m into a bank account in Dubai, believing they were acting on instructions from their French headquarters and the money related to an acquisition that was underway.

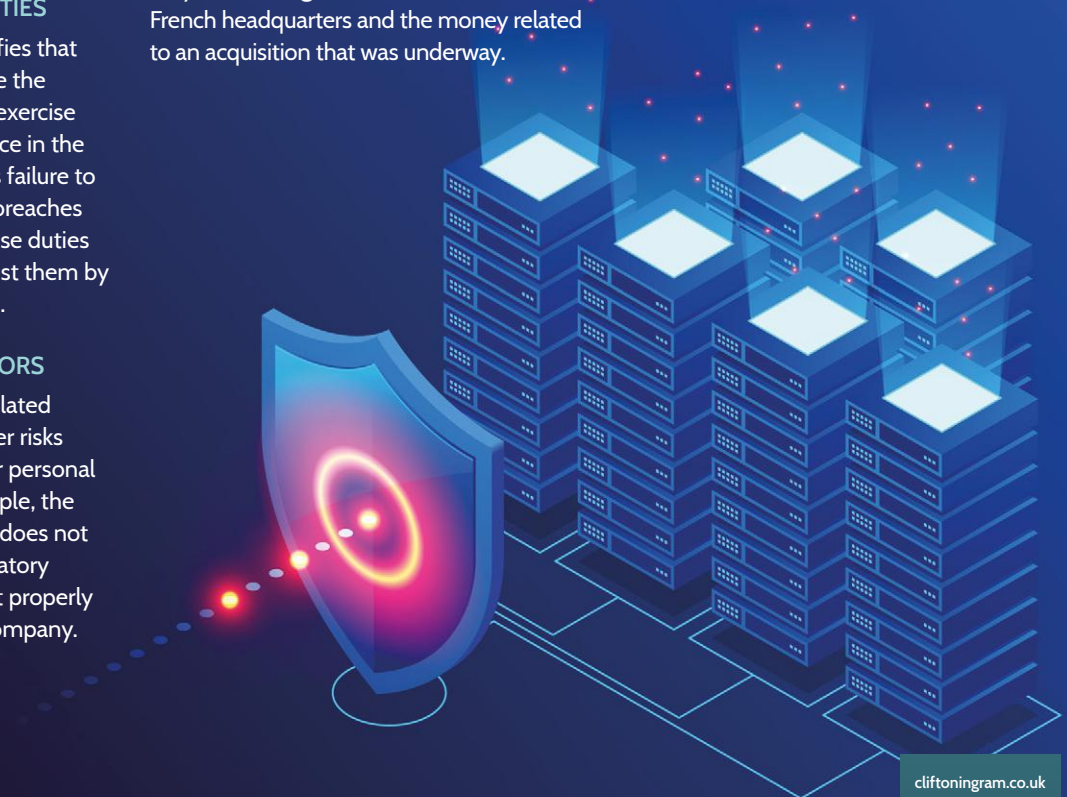
KNOWLEDGE REDUCES RISK

While cybersecurity will be seen as a new responsibility by many directors, it is now vital that they update their skills. Installing proper monitoring helps avoid breaches and allows businesses to identify and fix them quickly if they happen. Demonstrating a careful approach to risk minimisation and compliance will, most likely, significantly reduce any eventual penalties or reputational impacts from a breach.

Cybersecurity ignorance isn't, but directors understanding and monitoring their cybersecurity will certainly reduce business and personal risk.

For more information please contact

JOEL MOLLOY
e: joelmolloy@cliftoningram.co.uk
t: 0118 9120 229



CHANGES, CHANGES, CHANGES... IN COMMERCIAL PROPERTY

STAMP DUTY DEADLINE

It is important to highlight that following a land or property transaction, the law now requires a Stamp Duty return to be submitted and the relevant tax due paid within 14 days of completion. This recent change effective from 01 March 2019, has seen the time period to file a return and make any payment due shortened from 30 days to 14 days. Failure to comply may well result in penalties as well as interest accruing on any stamp duty payable. Usually, if you have instructed solicitors, they will file an online return on your behalf and pay any tax due on completion or shortly thereafter, however, if you are filing your own return, you must be mindful of the time limit as you will have to order a paperform (SDLT1) from HMRC and this may well take a few days to come through.

LETTING FEES

Tenants across England will be glad to see some drastic changes being introduced by the government in a bid to protect tenants against unfair tenancy fees. The Tenant Fees Act 2019 ('the Act') is designed to cut back on those 'hidden costs' which tenants sometimes face at the start of a tenancy. The aim of this particular piece of legislation is to make Landlords responsible for the costs associated with the setting up, renewal and termination of a tenancy. Much to most Landlords' dismay I am sure, the Act will come into force on 01 June this year and will affect those Assured Shorthold Tenancies (ASTs) granted on or after that date however, with effect from 01 June 2020 it will extend to all ASTs including even those which predate the Act.

The Act identifies a list of payments which will be lawful for a Landlord to request from a tenant and the idea is that if a payment does not fall within the list, then it would be deemed a 'prohibited payment'. The list is made up of the following:

1. Rent;
2. A refundable tenancy deposit capped at no more than 5 weeks' rent if the total annual rent is less than £50,000 or 6 weeks' rent if the annual rent is £50,000 or above;
3. A refundable holding deposit which is capped at 1 week's rent to reserve a property;
4. Payments to change the tenancy when requested by the tenant capped at £50 or reasonable costs incurred if higher;
5. Payments associated with the early termination of the tenancy if requested by the tenant;
6. Payments in respect of utilities;
7. A default fee for late payment of rent and replacement of lost key/ security device giving access to the property;

> THE AIM OF THIS PARTICULAR PIECE OF LEGISLATION IS TO MAKE LANDLORDS RESPONSIBLE FOR THE COSTS ASSOCIATED WITH THE SETTING UP, RENEWAL AND TERMINATION OF A TENANCY.

Landlords or letting agents who require a prohibited payment to be made may be prosecuted and fined up to £5,000. As the 01 June is fast approaching our advice is that Landlords and letting agents should review their current procedures and practices and update any document that they have so they are fully compliant to the Act come the due date.

For more information please contact

MARTINE LAM YEE MAN
e: martinelamyeeman@cliftoningram.co.uk
t: 0118 912 0315

STAYING GROUNDED
IN THE EVER CHANGING WORLD OF CONVEYANCING

If I was given £10 every time someone said to me 'isn't conveyancing simple and just a case of managing a process?' I would be languishing on my own private island.

If only it were true on both counts! Residential conveyancers are some of the most flexible solicitors in the business, having to constantly change the way they deal with matters and to respond to lenders ever evolving and increasing demands. There always seems to be a hot issue that causes naval gazing and alarm in turn over the years, such as vehicular rights of way over common land (used to be fine, then it wasn't, then there was a court case, now not so bad), chancel repair liability, lack of building regulation consent etc etc.

One of the latest topics to rear its head is the matter of ground rents.

Ground rents are fees payable to a landlord and are set out in the lease in leasehold properties. Ground rents can vary from nothing (a peppercorn) to many thousands of pounds. In the past, ground rents were relatively low by which I mean less than £100.00 per year but in recent years, many landlords are charging higher and higher ground rents and what is more, incorporating provisions in the leases whereby the ground rents are reviewed periodically.

These reviews can either be linked with an index, such as the RPI, with a review period of every 25 years. Generally speaking, ground rent clauses such as this are regarding by lenders as acceptable. But, what about ground rents which start off at the not unreasonable sum of £200.00 per annum, say, but then are reviewed every 25 / 10 / or even 5 years to double on every review period. Just think if you bought a lease with an initial ground rent of £200.00 per annum which then doubled every 10 years, by year 50 you would be looking at an annual ground rent of £8000 pa and by the end of an average 125 year lease term £1,024,000!

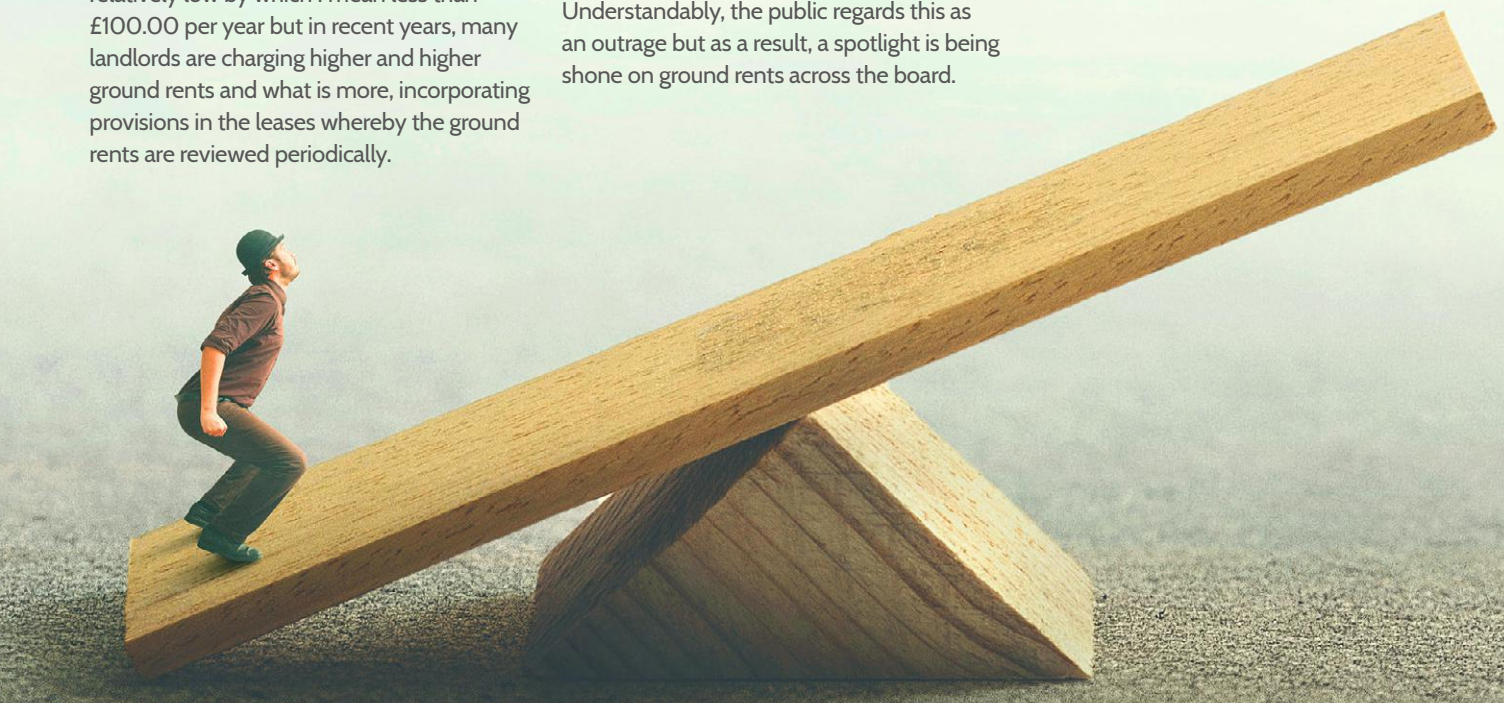
Part of the reason why ground rents are hitting the press is the scandal of houses (not flats) being built by developers but instead of being sold on a freehold basis, are sold on a leasehold basis with ground rents. Understandably, the public regards this as an outrage but as a result, a spotlight is being shone on ground rents across the board.

Ground rents which were once considered to be acceptable by lenders and hence by the conveyancing solicitors acting for those lenders are not regarded as acceptable now. Yet another example of the ever changing goal posts, standards and requirements.

The Law Commission has now launched a consultation on whether to scrap leasehold flats and houses altogether, and the government says it will be looking into it but with vested interests on landlords at stake, it will not be an easy problem to solve.

For more information please contact

TINA CROW
e: tinacrow@cliftoningram.co.uk
t: 0118 912 0259



HOW TO PLAN FOR THE FUTURE WITH YOUR DIGITAL INVESTMENTS

CRYPTOASSETS ARE AN UNREGULATED FORM OF INVESTMENT IN VIRTUAL CURRENCY THAT ARE PROTECTED BY CRYPTOGRAPHY, MAKING IT A SECURE WAY TO STORE YOUR INVESTMENTS.

Cryptoassets are an unregulated form of investment in that are protected by cryptography, making it a secure way to store your investments. The use of this type of investment has been on the rise over recent years, for example BitCoin, but there are risks associated with it. If you hold any digital investments or are considering doing so, there are various estate planning factors to bear in mind.

INHERITANCE TAX

Any form of digital currency will be considered an asset upon death and form part of your estate and thus subject to Inheritance Tax.

Cryptocurrency is characterized by its volatile nature, for example in January 2018 the value of Aeron (a form of cryptocurrency) went up over 300% within 24 hours. This highlights the importance of obtaining an accurate date of death valuation for Inheritance Tax purposes to determine how much tax will be due on your estate. Another factor to consider is that your beneficiaries may wish to sell your investment, but its value may plummet by the time by the time it can be sold. If this is the case it may be possible to submit the sale value as the date of death value of the investment and reclaim any excess Inheritance Tax that was paid on the asset. However, Executors can only reclaim this if the digital asset is sold within a year of death, so will need to act quickly if this the case.

ESTATE PLANNING CONSIDERATIONS

This might sound obvious, but tell your appointed Executors if you hold any digital investments, as they will have a duty to identify any assets you hold upon death and will be potentially liable for penalties if not reported to HMRC. Investors will most likely hold their asset information via an email account, however, as with any online account, it is not advisable to provide passwords to access your accounts, as your Executors would be committing a crime under the Computer Misuse Act 1990 if they use it.

Another factor to consider is that some digital investments may be held under foreign jurisdiction and not have the same requirements as they do in the UK – in this country you need to present a Death Certificate and Grant of Probate. This could potentially make it very hard for your Executors to access the information needed to report your investments. We recommend you contact the company you hold your investments with to determine what their formal requirements are to release your information so your Executors are able to access it and make the estate administration process smoother for them.

With the fast-paced nature of these investments, planning for the future is crucial. When initially making the investment, find out what will happen to them upon your death and keep details in a safe place, for example in a side letter with your Will so your Executors will know what to do and who to contact. It may also be worth making specific provision for your digital assets within your Will, so you ultimately have the security that your investments will pass in accordance with your wishes.

For more information please contact

JESSICA BLACKWELL
e: jessicablackwell@cliftoningram.co.uk
t: 0118 912 0313

ATTACK IS NOT ALWAYS THE BEST FORM OF DEFENCE

WHEN INVOLVED IN A DISPUTE THAT ESCALATES TO A COURT CASE, DEFENDANTS OFTEN NEED TO DEVELOP A STRATEGY AND PLAN THE MOST APPROPRIATE COURSE OF ACTION, WHICH IS OFTEN GUIDED BY THE ADVICE OF THEIR OWN SOLICITOR.

However, as demonstrated in a recent case in which Clifton Ingram acted for the Claimant, Defendants must be careful not to overstep the fine line between strategy and attack.

The case involved a dispute over the terms of a Loan Agreement relating to a £100,000.00 loan to the Defendant. The Claimant did not have capacity to bring the claim against the Defendant as he had dementia so his niece was conducting the claim on his behalf as his Litigation Friend. In broad terms, a written agreement had been drawn up between the Claimant and Defendant in 2010 without either party taking legal advice at the time and now the issue in dispute was when the loan should have been repayable – the Claimant's case being that it should have been repayable when the Defendant sold her property in 2015 and the Defendant's case being that it was not repayable until 2025.

The Claimant was diagnosed with dementia in 2013 and was unable to assist as he could not recall the loan nor recognise the Loan Agreement. Proceedings were commenced in 2017 and the issue of capacity very quickly became a contentious issue for the Defendant as she refused to accept a letter from the Claimant's GP as sufficient evidence of the Claimant's mental capacity. The Defendant subsequently sought an Order from the court and a full medical report had to be obtained, which proved to be an expensive and fruitless exercise as the report confirmed that the Claimant lacked capacity, which even to a lay person was evident on speaking to him.

There was an allegation within the Defence that the Claimant had signed a series of six receipts between December 2011 and March 2016, which purported to reduce the debt significantly. However, the Defendant's solicitor later admitted in a letter that the receipts in 2012, 2013 and 2014 had all been signed on or about 29 December 2014. A forensic report concluded that the receipts had all been signed with only two pens, which supported the Claimant's niece's

ANYONE CONTEMPLATING LITIGATION SHOULD APPRECIATE THE NEED FOR COOPERATION, FLEXIBILITY AND RATIONALITY, AND UNDERSTAND THAT AN EARLY ATTEMPT TO SETTLE CAN SAVE A LOT OF MONEY AND ANXIETY FOR ALL INVOLVED.

view that all had been signed in 2017 after repayment of the loan was demanded.

As a result of the difficulties that had been faced and the obstructive attitude taken by the Defendant and her solicitors, the case did not settle until 5 minutes before the trial was due to start and even then, the Defendant had the audacity to make the settlement conditional on her being allowed to visit the Claimant regularly in the future.

In terms of costs, the Defendant will have paid almost twice the amount that was originally borrowed by the time she repays back the loan in full, which is a good example of how a person's conduct can have a substantial impact on costs.

Therefore, anyone contemplating litigation should appreciate the need for cooperation, flexibility and rationality, and understand that an early attempt to settle can save a lot of money and anxiety for all involved.

A key point to note about this case is that the dispute revolved around the interpretation of the loan agreement as the repayment terms were ambiguous. Accordingly, this should serve as a warning to anyone considering entering into any binding agreement that certainty is vital, and the best way of avoiding ambiguity and potential issues in the future is to instruct a solicitor to draw up such a legally enforceable document.

For more information please contact

TATIANA HAIGH
e: tatianahaigh@cliftoningram.co.uk
t: 0118 912 0209

VALID, VOID OR NON-MARRIAGE

THE STATUS OF AN ISLAMIC MARRIAGE IN ENGLISH LAW

IN THE RECENT CASE OF AKHTER V KHAN (REV 2) [2018] EWFC 54 THE HIGH COURT HAD TO CONSIDER THE STATUS OF AN ISLAMIC MARRIAGE AS IT DID NOT COMPLY WITH THE REQUIREMENTS TO MAKE IT A VALID MARRIAGE IN ENGLISH LAW, NAMELY HAVE A CIVIL CEREMONY.

In this case Mrs Akhter wanted to divorce her husband to whom she had been married for 20 years. She had been under the impression that after the Islamic marriage had taken place a civil ceremony would follow but this never happened. Mr Akhter sought to block her application for divorce on the basis that the marriage was not valid, and therefore Mrs Akther would not have a right to make a financial claim against him.

The judge who heard the case in the High Court decided that the marriage was "entered into in disregard of certain requirements as to the formation of marriage" and was therefore VOID under Section 11 of the Matrimonial Causes Act 1973.

A marriage is void if one of the fundamental requirements at the time of the marriage is missing, e.g. not having a civil ceremony.

This means there is no valid marriage and therefore no divorce is required. However you can apply to annul a void marriage. An annulment is a declaration that the marriage was never valid. Whilst there is no need for a formal decree to annul a marriage which never existed, a party to such a marriage may want to obtain a decree from the court, so they can make a financial claim as if they had been married.

Had the judge ruled in this case that the marriage was actually a non-marriage, Mrs Akhtar would not have been entitled to make a case in the English divorce court and she would not have had any right to make any financial claims. However by declaring the marriage as void, Mrs Akhtar was entitled to a decree of nullity and therefore had a right to make financial claims.

This generated a great deal of confusion with some newspaper headlines stating that it is an example of UK courts recognising Sharia law.

Early in his judgment, the judge said:

"What this case is not about... is whether an Islamic marriage ceremony... should be treated as creating a valid marriage in English law.....Regrettably it is not that simple."

In this case the judge was not deciding whether Sharia law should be applied or not, but whether what happened in this case fell within what would constitute a legally valid marriage under English law. Rather than simply saying that the marriage was not a marriage at all, the judge said it was a marriage of a couple that didn't comply with the requirements of a lawful marriage under the English law. The outcome of this case does not mean that every Islamic marriage or any other religious marriage which has been performed in the UK will be treated as a void marriage. Each case will be considered on its own specific facts, and legal advice should be sought.

For more information please contact

NOORIE NAEEM
e: noorienaeem@cliftoningram.co.uk
t: 0118 912 0203

EMPLOYMENT LAW, DATA AND THE EU

WE COULDN'T ISSUE A NEWSLETTER IN THESE TURBULENT TIMES WITHOUT AT LEAST ONE MENTION OF THE B-WORD, BREXIT.

At the time of writing uncertainly still surrounds how/ when/ if we leave Europe and we have had a number of clients ask us whether the UK's separation from the EU will have an immediate or even a long term effect on UK employment law.

Much of EU employment law has been brought into effect via UK legislation, which will remain in force post-Brexit until amended. Changes to primary legislation require Parliamentary approval and with the pressure on parliamentary time in the face of a looming EU exit the most probable effect will be delays to the implementation of employment law reform such as those proposed in 2018's Good Work Plan which included the proposal to extend the length of the gap in employment necessary to break continuity from one week to four weeks.

Many employment rights, including unfair dismissal and the minimum wage, do not in fact stem from the EU and in some cases the UK deliberately provides protection which exceeds the EU minimum, a prime example being maternity leave.

Although, post-Brexit, UK courts and tribunals would not refer cases to the European Court of Justice or be obliged to follow new decisions from that court, it is less clear how they would deal with existing UK case law stemming from EU decisions. The UK has come to expect a certain level of workplace protection, and wholesale changes to the likes of, for example, discrimination law, seem highly unlikely. Like the rest of the world, we will just have to wait and see...

So on to an Employment issue where we do know the outcome...

Is an employer responsible for the actions of an employee who has 'gone rogue' and deliberately posted sensitive employee data online? Yes, the Court of Appeal has said in Morrisons v Various Claimants. Mr Skelton was an internal auditor at Morrisons. He had been recently disciplined and held a grudge against the company. He took sensitive personal data relating to thousands of employees and posted it online. He then told newspapers it was there. The data included names, bank details and salary information.

Mr Skelton was convicted of fraud and various other offences. He was sentenced to 8 years in prison. The employees sued Morrisons. Amongst other things, the employees claimed that Morrisons was vicariously liable for the actions of Mr Skelton in leaking the data.

The Court of Appeal agreed that Morrisons was vicariously liable. There was enough connection between Mr Skelton's job role and the conduct in question. Mr Skelton's motive (to cause harm to the employer) was irrelevant. The Court highlighted that to conclude otherwise might leave an individual who suffered financial loss (because of a data breach) with no recourse except against the perpetrator. The Court advised that employers should insure against the risk of losses caused by dishonest or malicious employees.

This is a worrying case for employers. The safe storage of personal data is vital for employers. Insurance should be secured if it is not already in place. The actions of even the most trusted employees should be monitored. Particular attention should be paid to employees who might bear grudges due to recent disciplinary or grievance proceedings.

For more information please contact

ALISON GAIR

e: alisongair@cliftoningram.co.uk

t: 0118 912 0300

Protecting your business, whatever the forecast.

Clifton Ingram LLP Solicitors

Wokingham Office:
22-24 Broad Street
Wokingham
RG40 1BA

T: 0118 978 0099

Reading Office:
County House
17 Friar Street
Reading RG1 1DB

T: 0118 957 3425

CLIFTON INGRAM LLP SOLICITORS

www.cliftoningram.co.uk