

CITATION

Winter 2022



THE IMPACT OF THE COST OF LIVING CRISIS ON DIVORCE

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CLIFTON INGRAM
solicitors

2022 ROUND UP

WELCOME TO CITATION
MAGAZINE FROM CLIFTON
INGRAM SOLICITORS.

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WELCOME TO THE FIRST ISSUE OF CITATION SINCE THE END OF 2019. WITH THE COMING OF THE GREAT LOCK DOWN THE PUBLICATION OF OUR REGULAR NEWSLETTER WENT INTO ABEYANCE AS WE ALL HAD TO MAKE ADJUSTMENTS TO THE NEW NORMAL, BUT WE ARE NOW PLEASED TO BRING IT BACK.

Clifton Ingram, like the rest of the country has been living through "interesting times" over the last couple of years. We were reasonably well prepared for lockdown in that our staff already had laptops to facilitate working from home. Lawyers are notoriously old fashioned in their working practices, and whilst we like to think we are ahead of many of our competitors with the adoption of technology the lockdown certainly dragged us into the 21st century in double-quick time. Before lockdown I could not imagine working paper-free and of course now I do, as do many of us.

The biggest change since our last edition is the opening of our new office in Farnham. This was a real challenge at a time when we were still in semi-lockdown and the team in that office have coped admirably with being part of a new firm and a new office.

We have also moved to a new office in Reading providing a much better environment for our teams and clients alike.

Like other firms we have seen some staff decide to leave for a different life following COVID, but we are confident that we continue to have a really strong team. Overall, we believe that we are well positioned for the future to support our clients as we head into what are likely to be choppy economic waters.

Supporting the communities within which we work in has also been an important focus for us this year. We have recently partnered with charities based in Wokingham, Reading and Farnham as set out in this edition, to provide practical as well as financial support.

2022 has been a busy and exciting year for us at Clifton Ingram and we look forward to all that 2023 has to bring.

Anne Deller

Managing Partner and Head of Family Law

NEW PARTNERS

WE HAVE WELCOMED THREE NEW PARTNERS SINCE JANUARY 2022, LORNA THOMSON, SONIA DHESI AND DAVID GODDARD.

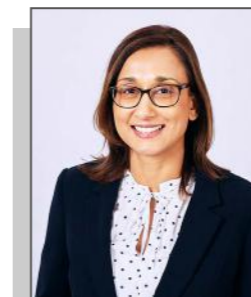


LORNA THOMSON

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Lorna Thomson joined Clifton Ingram through the acquisition of Bells Solicitors in 2021, becoming Head of Department for our Residential Conveyancing team across our offices. Lorna has brought with her a wealth of experience gained over 25 years in all aspects of residential conveyancing including freehold and leasehold sales and purchases, grant of new leases, remortgages, transfers of equity, Right to Buy, shared ownership, bridging finance, equity release and non-statutory lease extensions.

Professional, knowledgeable, and approachable, Lorna is known for ensuring clients receive excellent service, which can be shown in the Google reviews her team regularly receives "Thank you Lorna... A faultless service, delivered under pressure time-wise, which significantly lessened the stress of a house sale and purchase".



SONIA DHESI

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Sonia joined Clifton Ingram as a Senior Associate in our Wills and Inheritance team in September 2021. With over 13 years of legal experience, Sonia specialises in Wills, Powers of Attorney, Estate Administration, Trusts and Inheritance Tax. She has a particular interest in cross border estates and thrives on problem solving and, in particular advising on tax mitigation strategies in the administration of estates, including deeds of variation.

Sonia's experience and strong work ethic led to her being promoted to Partner in September 2022.



DAVID GODDARD

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David began his legal career and trained with Clifton Ingram, where he qualified and was a solicitor in our Dispute Resolution and Litigation team for over 10 years.

David left to become a Partner at another leading Thames Valley law firm but returned to Clifton Ingram in October 2022 as a Partner, now with more than 15 years' experience of litigious matters. David has a particular interest in insolvency and property litigation and he regularly acts of behalf of Estate Agents. He has also successfully represented clients in a wide range of matters including contentious probate, and regularly acts for clients in respect of professional negligence claims, boundary disputes, partnership disputes and almost all aspects of commercial and residential property law.

David is known for providing straight forward pragmatic advice and takes pride in securing the best outcome for his clients, through either court proceedings or negotiated settlement including ADR and most predominantly mediation.



THE IMPACT OF THE COST OF LIVING CRISIS ON DIVORCE



AS THE COUNTRY FACES A PERIOD OF ECONOMIC UNCERTAINTY, THE PRESSURE MAY NOT ONLY CAUSE MORE PEOPLE TO DIVORCE, BUT EQUALLY IMPACT THOSE WHO ARE ALREADY GOING THROUGH A DIVORCE. PEOPLE WILL UNDERSTANDABLY BE CONCERNED ABOUT THE IMPACT UPON SEPARATING, DIVORCING OR HAVING ALREADY DIVORCED WHERE THERE IS A FINANCIAL ORDER IN PLACE.

When dealing with your finances upon a divorce, a court will focus upon the needs of any dependent children of the marriage followed by the needs of the parties. You will therefore need to assess your monthly outgoings and review the budget periodically as well as think about the resources that you have available to help meet your needs. It is more important than ever that you assess your ability to meet your outgoings both now and for the future. Consideration for the rise in living costs and mortgage rates will need to be accounted for as far as possible.

When divorcing, most parents with young children wish to retain the family home. However, given the increasing costs of living, this may not be sustainable if neither party is able to maintain the costs of running the property, meaning they may be forced to sell.

Parties should take a pragmatic approach and be as realistic as possible in budgeting their needs. It is understandable that no one wants to be bound by an agreement that is no longer affordable or providing for needs, but the law hasn't changed, and a Court will only vary agreements reached in certain limited circumstances. It is therefore important that parties are flexible in their approach and review their finances as they go through the process.

Careful consideration should be given to the following:

- Child maintenance
- Spousal maintenance
- Financial resources & benefits
- Pensions

1. Child maintenance

If you have children together, you should assess how much child maintenance should be paid by applying the calculator from the Child Maintenance Service (CMS), which can be found at Calculate your child maintenance - GOV.UK (www.gov.uk). This will take into account the paying parent's gross income, how many children are involved, the number of children living with the paying parent and the number of nights the children spend with the paying parent. It is important to note that maintenance may still be owed even where there is a shared care arrangement.

Parents can agree the arrangements for paying maintenance between themselves, but it should still be at the calculated amount, assessed by the CMS unless the paying parent's income exceeds £156,000 per annum.

2. Spousal Maintenance

Unlike child maintenance, there is no specific formula for assessing spousal maintenance. One party may be entitled to maintenance from the other. The amount is calculated by balancing the income and earnings of each party against their reasonable needs. This will also depend upon whether one spouse has the means to pay the other maintenance. Each party's income needs budgets will need to be carefully assessed and cutbacks made where possible.

You may also want to make the maintenance order "index linked". This means the maintenance payments will automatically be varied in line with any increase in the Consumer Prices Index (CPI) or Retail Prices Index (RPI).

3. Benefits

Both parties should also assess their entitlement to benefits such as Council tax discount, Child Benefit and Universal Credit. To find out if you are eligible, you can check the government website at www.gov.uk. However, be careful as spousal maintenance can affect your entitlement to Universal Credit!

4. Pensions

As claims can be made against a party's pension, typically involving a pension sharing order, depending upon the type of pension involved, its value may be impacted by the market conditions and inflation rates. It may be best for the parties to get independent financial advice even where there is a pension report. In addition, where a pension share has been agreed, it is important not to delay in implementing the order.

WHAT CAN YOU DO IF YOU ALREADY HAVE A COURT ORDER DEALING WITH YOUR SETTLEMENT, WHICH IS NO LONGER SUITABLE?

Where a financial settlement has been approved by the court, it will not be possible to change it, save in exceptional circumstances.

Any order dealing with spousal maintenance can be varied but only where there has been a significant change of circumstances. Before making such an application, both parties would need to review their monthly budgets.

Whilst court's will be sympathetic to the rise in the cost of living, this will not be enough to justify making an application to vary the Order.

Moreover, there are strict costs consequences of applying to vary existing order. It is therefore important to take legal advice as soon as possible to assess the merits of such an application carefully.

SUMMARY

By way of a summary, apply the following steps:

1. Be pragmatic
2. Create a detailed budget of your current and future expenses
3. Take legal advice from the outset
4. Take financial advice

This article is written by Rashi Dawson, Senior Associate Solicitor, Family Law.

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Unlike child maintenance, there is no specific formula for assessing spousal maintenance.

COVID RENT ARREARS

THE RECENT DECISION IN LONDON TROCADERO V PICTUREHOUSE CINEMAS PROVIDES AN INDICATION OF THE COURTS' ATTITUDE TOWARDS COMMERCIAL RENT ARREARS ACCRUED DURING THE COVID PANDEMIC AND IS LIKELY TO BE A CRUCIAL COURT DECISION FOR COMMERCIAL LANDLORDS AND TENANTS.

★ ★ ★ ★ ★ ★ ★ ★
CASELAW UPDATE:
LONDON TROCADERO V
PICTUREHOUSE CINEMAS
★ ★ ★ ★ ★ ★ ★ ★

ADMIT ONE



The landlord (London Trocadero) sought to recover rent and service charge payments, in the region of £2.9 million...

ADMIT ONE



ISSUES AT HAND

The Commercial Rent (Coronavirus) Act 2022 imposed a period of suspension to prevent enforcement action being taken in relation to protected rent debts for six months. This period has now expired meaning now is the time landlords will be seeking recovery of such arrears.

DETAILS OF THE CASE

The landlord (London Trocadero) sought to recover rent and service charge payments, in the region of £2.9 million, which were owing since June 2020 (up to July 2021). The tenant (being Picturehouse Cinemas) argued that, during the period in which it was unlawful to use the property as a cinema

due to a Covid lockdown, there was no obligation on them to pay rent and service charge as a result of an implied term in the lease. The tenant also separately argued that there had been a failure of consideration / failure of basis in relation to the period when the premises could not be used as a cinema.

WHAT HAPPENED IN THE CASE?

The court accepted the facts of the case i.e., that it had been unlawful or unviable for the tenants to operate the premises as a cinema for the relevant period.

However, the court decided that the tenant's implied term argument was unfounded and reiterated that the default position is that nothing should

be implied into a contract. To satisfy the test for implying a term, that term needs to either be "so obvious as to go without saying or be necessary to give the contract business efficacy", and the court determined that the requirement to continue paying rent and service charge did not deprive the leases of business efficacy.

The courts also held there had not been a failure of basis/consideration on payments of rent to use the property as a cinema. Use of the premises as a cinema was not necessary for the lease to work and neither was it fundamental to the basis on which the parties entered the lease.

KEY TAKEAWAYS

This case and several others in this area show a clear indication from the courts that they believe the pandemic does not give opportunity to depart from legal principles established over time, no matter how unfortunate tenants may have been throughout. Tenants who may have previously been positive about their arguments in relation to rents and service charges should now be receiving advice to seek to settle their disputes with their landlords as swiftly and favourably as possible. Landlords may feel more confident of their ability to enforce the rent provisions in their leases, although it is important the key provisions in their leases are reviewed by legal professionals before they take further action.

If you have any questions about the content of this article or your property matters more generally, please contact our Commercial Property team.

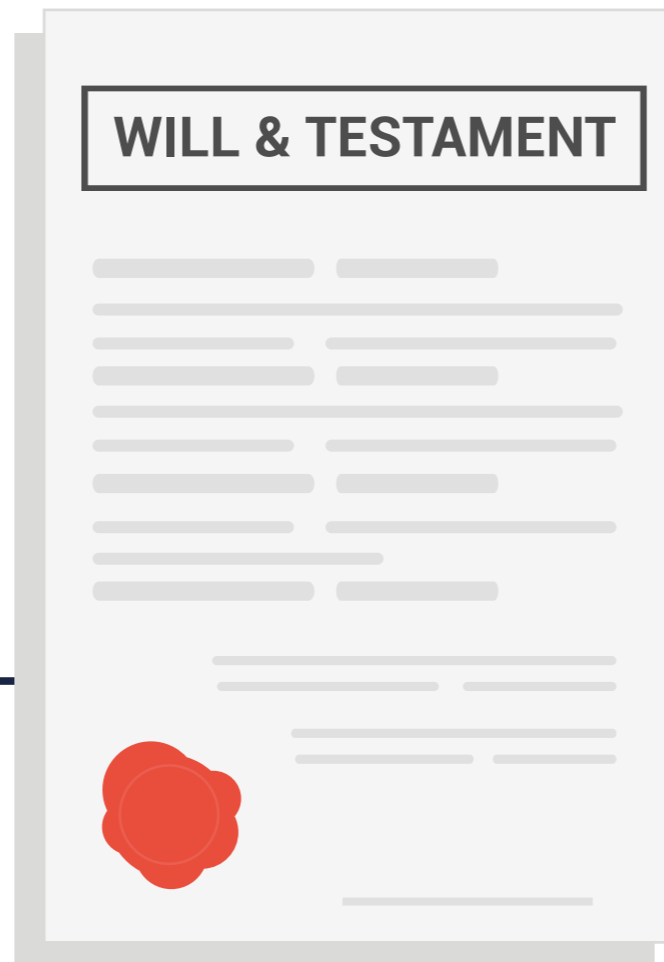
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CONTENTIOUS PROBATE

CONTESTED PROBATE MATTERS ARE ON THE INCREASE. THE MINISTRY OF JUSTICE REPORTED THAT IN 2021 THERE WERE 104 CONTESTED PROBATE CASES AT THE HIGH COURT, UP FROM 68 CASES IN 2020; AND THESE ARE JUST THE CASES THAT ENDED UP AT THE HIGH COURT, WITH NO MENTION OF ALL THE CLAIMS THAT ARE SETTLED OUTSIDE OF COURT.

The validity of a Will or the administration of an estate can be challenged for lots of different reasons...



Contested probate matters is the general name given to disputes that arise in relation to the administration of a deceased person's estate.

The cost of bringing a claim can be expensive but given the sharp increase in property prices over the most recent decades, many claims are now being seen as worth pursuing.

This is perhaps unsurprising with an increase in blended families, an ageing population and a cost-of-living crisis, there are now competing interests even within the same family. We have also seen that people are trying to save money by making home-made wills

or using unqualified and unregulated will-writers which in turn can increase the risk that a Will may be challenged.

Another factor that may be behind the increase in contested Wills, is in situations where family members live further away from one another and people want to benefit neighbours, carers or charities in their Wills instead of family members.

HOW TO CONTEST?

The validity of a Will or the administration of an estate can be challenged for lots of different reasons but there are typically three main paths:

1. The formalities required for a Will have not been followed and therefore not a valid document.
2. Someone feels that they did not receive an adequate amount in the Will.
3. The person making the Will lacks capacity to understand what they are signing or there has been undue influence and someone has been coerced to signing the Will.

There are certain categories of people that can make a claim against an estate under the **Inheritance (Provision for Family and Dependents) Act 1975**. They can bring a claim where they feel that inadequate financial provision has been

made for them. A claim is also more likely to be successful if the person bringing a claim can show that they were financially dependent on the deceased during their lifetime. Please note that the surviving spouse of the deceased does not need to show a level of maintenance to bring a claim.

WHAT TO DO?

Clifton Ingram has a team of experienced lawyers skilled in drafting Wills to minimise the risk of claims and ensuring your wishes are carried out; because we understand that drafting a Will is not just about preparing a single document but helping to understand your family and your individual needs.

When drawing up a Will, it is often advisable to talk to family members about its contents and what is intended so that there is less risk of any surprises when that person dies.

We also have a highly experienced dispute resolution team, recently bolstered by the addition of Partner David Goddard who specialises in this field, who are able to advise you on contested Wills, whether a claim is brought against you as an executor or beneficiary of an estate, or if you wish to bring a claim yourself.

This article is written by Peter McGeown, Partner and Joint Head of Wills & Inheritance

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STATUTORY REGISTERS

WHAT THEY ARE AND WHY YOU NEED THEM

STATUTORY REGISTERS, ALSO KNOWN AS STATUTORY BOOKS OR COMPANY REGISTERS, ARE A COLLECTION OF DOCUMENTS PROVIDING A STORY OF A COMPANY FROM ITS INCORPORATION.

Many companies will usually be issued paper statutory registers on incorporation but then go on to put them in a drawer and forget they exist. Although a common reality, it is in fact a legal obligation for most UK companies to keep statutory registers, and just as importantly update them as and when changes happen within a company.

In practice most owners don't think about their statutory registers until they are ready to sell their company. As they are a requirement at sale many companies then need to reconstitute or at least update their statutory registers, which can result in delays in transactions and additional costs to owners at an already busy time.

WHAT DO YOU NEED?

Private limited companies are required under the Companies Act 2006 to keep the following statutory registers:

- Register of Members (s.113)
- Register of Directors (s.162)
- Register of Directors' Usual Residential Addresses (s.165)
- Register of Secretaries (s.275)
- Register of People with Significant Control (PSC register) (s.790M)
- Register of Charges (only for charges created before 6 April 2013) (s.876)

That is a comprehensive list of what is needed, but there may be some registers that are not applicable to every company. An example is if there has never been a company secretary, there would be no need for a Register of Secretaries.

WHERE SHOULD YOU KEEP THEM?

Statutory registers are required to be kept at either the Company's registered office, a Single Alternative Inspection Location (SAIL address), or at Companies House.

Many people believe that completing annual confirmation statements is sufficient as evidence of statutory registers, but this is not the case and does not satisfy the statutory requirements. It is possible to choose to keep the required information at Companies House, but the company must specifically choose to do so. This involves sending information to the Registrar of Companies to be shown on the public register at Companies House. Although tempting, many companies choose not to do this as it increases the amount of information that is made available publicly, such as director and shareholders home addresses.

It is also important to note that any information put on to Companies House will then remain there, even if the company choose to then record their statutory registers privately.



WHAT HAPPENS IF YOU DON'T HAVE THEM

There is a legal duty for company directors and secretaries to ensure that companies comply with the requirements of the Companies Act 2006. Officers of a company who fail to comply with statutory obligations are guilty of a summary offence. This includes not maintaining statutory registers and company officers can face penalties as a result. It is also important to note that this is applicable to all officers of the company, irrelevant to whose responsibility the keeping of statutory registers has been assigned.

A final key point to note is that as a shareholder, if you are not included on the register of members, you are not legally a shareholder. As you can imagine this can cause a number of issues when companies come to sell their businesses.

WHAT TO DO IF YOU DON'T HAVE THEM:

It is best to have this sorted as a priority given statutory registers importance. Should you need any assistance in reconstituting or updating your statutory books, please do contact us and we would be happy to help.

This article is written by Lily Holland, Solicitor, Corporate and Commercial Law.

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CHARITY PARTNERSHIPS

WE ARE PLEASED TO ANNOUNCE THAT WE WILL BE PARTNERING EACH OF OUR OFFICES WITH A LOCAL CHARITY FOR 2023. WE HOPE THAT THESE WILL DEVELOP INTO LONG-STANDING RELATIONSHIPS, TO ALLOW US AND OUR TEAMS TO SUPPORT THE LOCAL COMMUNITIES WITHIN WHICH WE WORK.

WOKINGHAM OFFICE

Our Wokingham office will be partnering with First Days. First Days give choice, restore dignity, and empower families who are living with a low income or are experiencing financial hardship.



First Days offer one-to-one coaching for parents as well as provide everyday essentials

for children who need them, such as school uniforms, new baby essentials, bedding etc. This year First Days will also be providing a warm space called 'The Snug' for people to go to, so that home heating, if at all affordable, can be limited. The Snug will be an inviting and comfortable space for local residents in need to come and keep warm, have a hot drink and access other services whilst charging devices and even doing some washing of clothes. They'll have access to warm clothes, jackets for children and teenagers, and energy efficiency items for the home, such as slow cookers and heated clothes airers.

Our Wokingham office will be supporting First Days by taking part in volunteer days throughout 2023. This will give our team the opportunity to support First Days with hands-on help at times when it is most needed. We will also help with a number of fundraising initiatives.

READING OFFICE

Our Reading office will be partnering with Berkshire Vision. Berkshire Vision provide vital practical and friendly

support, sport and activities to visually impaired children and adults and their families in Berkshire. They support over 1000 blind and partially sighted children and adults, helping them to live independently and live life to the full.

Berkshire Vision offer a whole range of services including sight loss support, equipment and technology, telephone befriending, adapted sports, social activities, 18-35 and dual sensory loss groups, and employability. They also have a programme of support and activities for children, young people and their families.

Our Reading office will support Berkshire Vision through fundraising initiatives and a volunteer program. This will



enable the team at our Reading office the opportunity for 'day release' to support hands-on with the wonderful initiatives that Berkshire Vision provide.

FARNHAM OFFICE

Phyllis Tuckwell Hospice is one of the oldest hospices in South East England, opening in 1979. Modern hospices were a new concept, spearheaded by former nurse, Dame Cicely Saunders, who led a campaign to create a place where terminally ill patients could find a restful and caring environment away from the hustle and bustle of a hospital.

Phyllis Tuckwell is the only Hospice Care service for adult patients, and their families, living with an advanced or terminal illness (such as heart, lung



or neurological disease) across the whole of West Surrey and part of North East Hampshire. Our passion is to support patients and their families, offering comfort

and understanding at this difficult time to ensure that they are treated with dignity and compassion, because we believe that every day is precious. We look after patients on our In-Patient Unit at the Hospice in Farnham, and another large part of what we do is within our two other key services of Living Well and Hospice Care at Home. Our Hospice Care at Home team gives patients, their families and carers, access to high quality, compassionate care in the place they most want to be... at home, or in their care home or community hospital. Our Living Well service is designed to help our patients, and those closest to them, to manage the impact of their illness, cope with changes, improve wellbeing and remain as independent as possible.

Our Clifton Ingram team at Farnham will be supporting Phyllis Tuckwell through a series of fundraising events and a volunteer program, where the team will be able to take time out from work to provide hands-on support.

For more information contact our Marketing Manager Gemma Glenn.
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MOVING HOUSE?

Get the red carpet treatment from Clifton Ingram



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