

CITATION

Winter 2019



FLYING HIGH

Legal advice at the highest level



ALSO IN THIS ISSUE:

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- Claiming your Inheritance
- No Fault Divorce-Bill
- Are your T&Cs Watertight?
- Property Round Up
- Tax and the Family Home
- Appreciating the Arts

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WELCOME TO
CITATION MAGAZINE
FROM CLIFTON INGRAM
SOLICITORS.

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FLYING HIGH LEGAL ADVICE AT THE HIGHEST LEVEL

WE ARE DELIGHTED THAT CLIFTON INGRAM HAS
RETAINED OUR TIER 1 POSITION IN THE LEGAL 500,
UNITED KINGDOM 2020 EDITION.



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The Legal 500 is the leading guide to UK law firms, and ranks and recommends solicitors based on their specialist skills. These findings are based on evidence gathered by the Legal 500's team of independent researchers who analyse the practices of more than 1,000 law firms across the UK.

Clifton Ingram's Family team are ranked Tier 1 for the Thames Valley, Berks, Oxon, M4/M40 region and Managing Partner

Clifton Ingram LLP Solicitors has a strong reputation for handling all matters relating to family law, ranging from pre-nuptial and co-habitation agreements, complex divorce with cross-border elements to cases involving children, including child abduction and abuse claims. Anne Deller has experience dealing with disputes arising between unmarried couples including claims under Schedule 1 of the Children Act for financial provision, while Kate Grant focuses on divorce and related financial cases including those involving partnerships, companies and trusts. Nick Rodriguez is also of note for children arrangements and local authority issues, as is Rekha Joshi for financial work and acting on behalf of financially dependent spouses in separation proceedings.

'The team at Clifton Ingram provide a very good service, very experienced team with fair and reasonable billings.'

South East: Family: Thames Valley, Berks, Oxon, M4/M40

Clifton Ingram LLP Solicitors houses one of the 'best client-orientated' private client practice in the Thames Valley. The department, headed by Peter McGeown and Stephanie Rose advise clients on administration of estates and trusts, the preparation and drafting of Wills, codicils and lifetime disposals, in addition to cross-border tax and estate planning. McGeown is particularly experienced in inheritance and capital gains tax planning, while Rose has a niche within the specific issues affecting the elderly.

'We found Clifton Ingram Solicitors to be completely professional and very sympathetic to our needs from reception staff right up to senior partner.'

South East: Personal tax, trusts and probate: Thames Valley, Berks, Oxon, M4/M40

Anne Deller was once again rated as a 'Leading Individual' in her specialist field of divorce and family. Other highlights included Commercial Property Partner Lewis Djemal being recognised by the Legal 500 as a 'Rising Star', which highlights standout performers coming into their own at leading firms, and Rekha Joshi, Family Partner, being ranked as a 'Next Generation Lawyer' for making a material difference to our legal practice's offering.



The team at Clifton Ingram LLP Solicitors 'have a vast depth of knowledge and experience' particularly in leaseholds for landlord and tenant in the industrial, retail and office sectors. The practice also regularly advises developers and landowners on sales, acquisitions and land developments. The 'well integrated team' also have the ability to draw upon advisers experienced in planning law and litigation. Tim Read is 'simply fantastic' for lease work, advising both landlords and tenants, while Ian Graham has a 'has a wealth of knowledge' in commercial acquisitions, disposals and lettings. Lewis Djemal and Jonathan Foulds are also of note.

'The staff at Clifton Ingram Real Estate team are immediately knowledgeable about all aspects of commercial property. They have a depth of knowledge and experience particularly of the local area.'

South East: Commercial property: Thames Valley, Berks, Oxon, M4/M40

Clifton Ingram LLP Solicitors provide a 'practical, solution-focused and efficient' service to SMEs and owner-managed businesses in commercial transactions, shareholder agreements, corporate structures and restructuring work. Practice head Barry Niven's recent mandates include advising shareholders in disposal of shares, sales and acquisitions and management buy-outs and buy-ins.

'Barry Niven is a brilliant corporate lawyer - always responsive, knowledgeable and tailors advice to suit the requirements of the client and the business.'

South East: Corporate and commercial: Thames Valley, Berks, Oxon, M4/M40

Here is a summary of the coverage, including quotes from some of our clients who kindly responded to The Legal 500 when they were conducting their research:



Clifton Ingram LLP Solicitors has been active in representing employers as respondents to unfair dismissal, disability discrimination, bullying in the workplace, sex and pregnancy discrimination claims. The firm has specialist sector expertise within the technology and pharmaceutical industries. Robert Cherry, who was promoted to partner in May 2018 and department head Alison Gair are the main contacts.

South East: Employment: Thames Valley, Berks, Oxon, M4/M40

Clifton Ingram LLP Solicitors regularly advises on all aspects of corporate and personal insolvency. The team, which is headed by Barry Niven, contains specialists in both contentious and non-contentious insolvency law and advises on all aspects of insolvency-based work ranging from administrations to receiverships and liquidations, through to voluntary arrangements and bankruptcies. The majority of instructions come directly from insolvency practitioners or the directors of insolvent companies.

South East: Insolvency and corporate recovery

For more information on any of our specialist legal teams please contact us on
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OFF-PAYROLL (IR35) REFORMS

WHAT BUSINESSES AND CONTRACTORS NEED TO KNOW

FROM APRIL 2020, THE RESPONSIBILITY FOR ASSESSING THE EMPLOYMENT STATUS OF A CONTRACTOR WILL BE PASSED FROM THE CONTRACTOR TO THE MEDIUM AND LARGE PRIVATE SECTOR COMPANIES THAT ENGAGE THEM, UNDER CHANGES TO IR35.

If you are a contractor, or a business who engages contractors, you will no doubt have heard of IR35. First introduced in 2000, IR35 is designed to reduce “tax avoidance” by contractors whom HMRC believe to be “disguised employees” – people who bill for their services via an intermediary (usually their personal service/ limited company), typically paying themselves in dividends and so avoiding paying employee income tax and National Insurance contributions (“NICs”), when, in reality, their working arrangements reflect employment.

One of the key questions under the IR35 legislation is whether the individual would have been an employee of the business (the “Engager”), if they had been working directly for it. Therefore, the case law looks at various tests for employment status such as whether there is mutuality of obligation, control by the Engager over the individual and whether the individual has been integrated into the Engager’s business. Although HMRC has an online tool to check employment status for tax (“CEST”) to determine employment status, there are concerns about its accuracy, as it is necessarily formulaic, rather than holistic, in approach.

If IR35 applies, the current rules treat the individual and the intermediary as employee and employer for both income tax and NIC purposes. This means that the burden falls on the individual through the intermediary, rather than on the Engager. HMRC can go back at least six years to determine

whether or not IR35 applies and can request payment of outstanding extra income tax, National Insurance contributions, as well as penalties and interest.

However, as from 6 April 2020, the IR35 reforms that have already taken place in the public sector are set to be extended to private sector contracts. The burdens of proving if a working relationship is within or outside of IR35, and ensuring that the correct amounts of tax and NICs are deducted, are moving to the Engager rather than the contractors themselves.

Medium and large companies in the private sector that contract with personal service companies for the provision of a worker’s services will have to account for tax and NICs through PAYE. These changes make hiring contractors a riskier business, as the Engager will be liable for a fine if they incorrectly identify an IR35 contractor as falling outside of IR35.

Where services are provided to small businesses by contractors operating via intermediaries, the intermediary will continue to be required to ‘self-assess’ and to account for tax and NICs where it is concluded that the IR35 rules apply. Small businesses are those that meet two or more of the following criteria:

- **Turnover – not more than £10.2 million**
- **Balance sheet total – not more than £5.1 million**
- **Number of employees – no more than 50**



Although the IR35 rules only apply to tax, the question of whether a worker is an employee or some other form of worker has implications in employment law as well, as employees benefit from more comprehensive statutory rights than other workers.

If you are a contractor working through an intermediary or a business that engages contractors, you should review those arrangements now, well in advance of the new rules coming into effect and get advice from legal experts to make sure you are compliant with IR35 and other laws and regulations.

For more information on this or any other employment law issue please contact

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CLAIMING YOUR INHERITANCE

The death of a loved one is a time of sadness, but unfortunately it is also a time when many legal issues have to be dealt with.

In most cases the deceased will have made a Will which follows the usual conventions of leaving their estate to their spouse, children etc. However, on occasion the contents of a Will is sometimes not as expected, which can leave family members who had expected to be beneficiaries in a state of confusion and sometimes financial difficulty.

The good news is that there is potentially help at hand in the form of the Inheritance (Provision for Family and Dependents) Act 1975 ("the Act").

Under the Act there are categories of individuals that can potentially bring a claim against the deceased's estate for reasonable financial provision when such provision has not been made under the Will. Those individuals are the spouse or civil partner, former spouse or civil partner (who has not remarried or entered into another civil partnership), a child of the deceased, any person who was treated by the deceased as a child of the family (most commonly a step child), any person who was living in the same household as the deceased as 'husband or wife' or as 'civil partner' of the deceased for a period of 2 years ending immediately upon the deceased's death (most commonly a cohabitee), any person who immediately before the death of the deceased was being maintained either wholly or partly by the deceased (i.e. someone financially dependent on the deceased).

It is important to note that, just because a potential claimant falls into one of the above categories, it does not mean that they will have a successful claim. The claimant will have to show that reasonable financial provision should have been made from the estate and there are a number

A QUITE COMMON EXAMPLE OF SUCH A SITUATION IS WHERE A DECEASED DID NOT MAKE A WILL AND HAD BEEN LIVING FOR SOME TIME WITH HIS/HER PARTNER AND HAD ADULT CHILDREN FROM A PREVIOUS RELATIONSHIP.

of factors that the court will take into consideration. Therefore if you find yourself in this position, it is important to take legal advice. It is particularly important to note that there are tight timescales in which to bring such a claim, namely six months from the date that probate is granted to the deceased's estate and therefore whilst this may be the last thing on someone's mind during a time of grief, it is important that legal advice is taken promptly.

Most claims of this nature can be settled by way of negotiation or mediation long before court proceedings are required but it is important to commence the process early in order to give sufficient time to deal with such negotiations.

Claims of this nature do not only arise in circumstances where the deceased has not made adequate provision in his/her Will, they also arise when no Will has been made. A quite common example of such a situation is where a deceased did not make a Will and had been living for some time with his/her partner (having never married or entered into a civil partnership) and had adult children from a previous relationship. Under the intestacy rules the deceased's partner is not entitled to any distribution from the estate and the estate will be wholly divided between his/her adult children from his/her previous relationship. In such a situation the deceased's partner would potentially have a strong claim against the estate for reasonable financial provision.

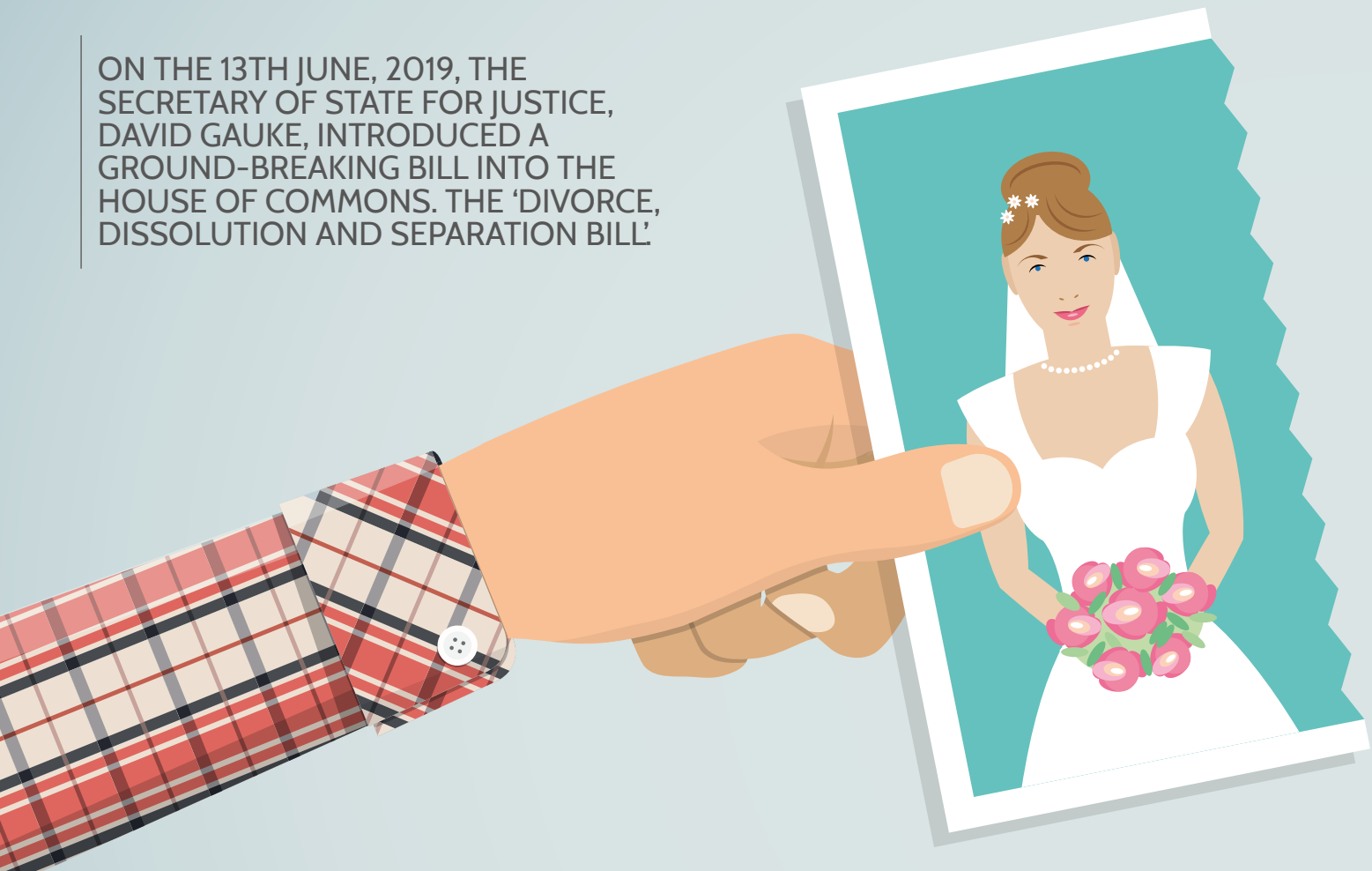
Finally, there are of course also occasions when the deceased has deliberately left an individual out of his/her will and leaves a statement setting out the reasons for this. However this does not prevent a claim from being made under the Act. Whilst it is an important principle that an individual should be entitled to dispose of his/her own property in any way that he/she chooses, a claim can still potentially be made under the Act and legal advice should be taken upon potential claims at an early stage.

For more information on legal disputes and how to resolve them please contact

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NO FAULT DIVORCE-BILL

ON THE 13TH JUNE, 2019, THE SECRETARY OF STATE FOR JUSTICE, DAVID GAUKE, INTRODUCED A GROUND-BREAKING BILL INTO THE HOUSE OF COMMONS. THE 'DIVORCE, DISSOLUTION AND SEPARATION BILL'



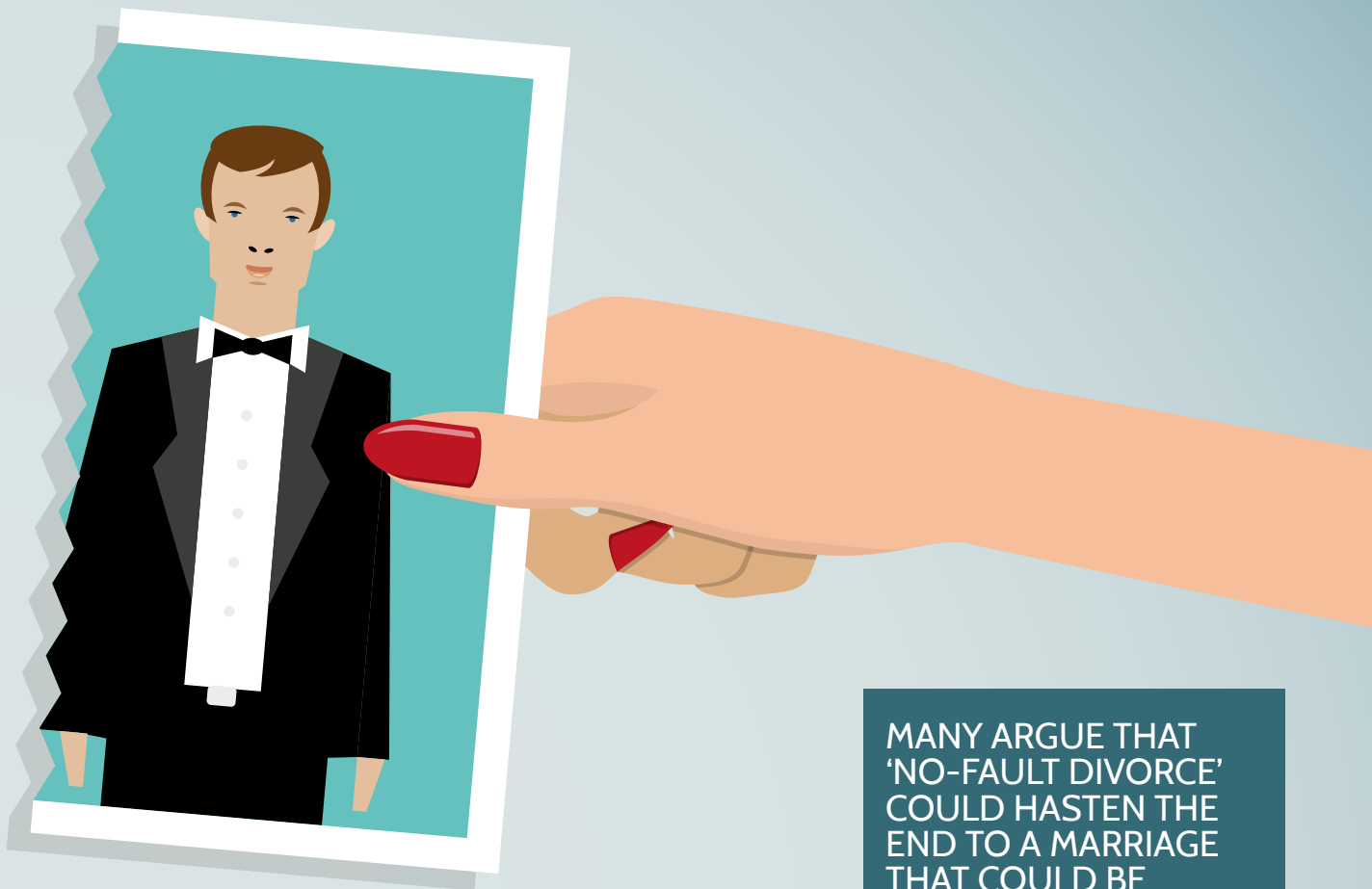
This Bill, once enacted, will enable individuals in both England and Wales to obtain a divorce by simply filing a joint statement that the marriage has broken down irretrievably, without any need to illustrate that the other spouse's, or civil partner's, behaviour is unreasonable, or to prove that they have been living separate and apart for two consecutive years.

The current law surrounding divorce can make separations unnecessarily acrimonious, with 'fault-based' divorce (unreasonable behaviour or adultery) taking as little time as four to six months compared to 'no-fault' divorces which cannot even get off the ground for a minimum of two years from the time one party or the other determines the marriage is over. From 2016 to 2018, the 'unreasonable behaviour' ground accounted for nearly half of all petitions for divorce in England and Wales.

THE CURRENT LAW SURROUNDING DIVORCE CAN MAKE SEPARATIONS UNNECESSARILY ACRIMONIOUS

Not only will the Bill remove unnecessary "mudslinging", but it will prevent the other spouse from refusing to cooperate in the proceedings, as the statement of irretrievable breakdown will, of itself, be conclusive evidence that the marriage has failed.

Although such contests are rare, the case of *Owens v Owens* illustrates that if one party has the motive and the financial means to defend an unreasonable behaviour petition, the other can be left tied into the marriage until as long as five years after the separation (when the Respondent party's consent is no longer required.) In 2018, the Supreme Court unanimously refused to grant Tini Owens' divorce petition on the grounds that she was unhappy within the marriage. Going forward, the Bill provides that contests will only be legitimate on the basis of jurisdiction, coercion or fraud, or the legal validity of the marriage.



MANY ARGUE THAT 'NO-FAULT DIVORCE' COULD HASTEN THE END TO A MARRIAGE THAT COULD BE SALVAGEABLE IF GIVEN TIME AND THAT THE CURRENT TWO-YEAR SEPARATION REQUIREMENT ALLOWS COUPLES TIME TO REFLECT.

However, the 'no fault divorce' is not without its critics. Many argue that 'no-fault divorce' could hasten the end to a marriage that could be salvageable if given time and that the current two-year separation requirement allows couples time to reflect. In short, some say that the no-fault principle undermines the sanctity of marriage.

Nevertheless, the Bill has accommodated these criticisms by the introduction of a new minimum period of 20 weeks between the start of proceedings and confirmation to the court that the conditional order should be made. This delay is in addition to existing time bars, namely, petitions for divorce cannot be filed until after the first anniversary of the marriage, and the mandatory six-week gap between Decree Nisi and Decree Absolute.

Regardless, no-fault divorce will help couples to move on as amicably and constructively as possible, as Gauke has stated: "The requirement for one person to blame the other...can introduce or worsen conflict at the outset of the process, conflict that may continue long after the legal process has concluded." It is also the case that a long hard slog over the approach and content of the divorce itself can "bleed into" the subsequent financial negotiating, making those too all the more entrenched.

For a while it seemed unlikely that these changes would be effected swiftly. Sir Paul Coleridge, head of the Marriage Foundation, which ran a successful campaign to bring forward the reforming legislation, said the Bill would 'inevitably be a casualty of the proroguing of parliament'. However, now Parliament has resumed, no-fault divorce is

very much back on the agenda. Ultimately, the constraints of the current legislation and the negative impact it has on both the couple and any children from the relationship can no longer be ignored.

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ARE YOUR T&CS WATERTIGHT?

THERE IS A TEMPTATION FOR COMPANIES TO DRAFT THEIR OWN TERMS AND CONDITIONS IN A BID TO SAVE ON LEGAL COSTS.



This can mean businesses are trading on unsatisfactory terms and leaving themselves open to risk. Sadly for business owners, they often only realise the true value of trading on watertight terms once that have been caught by the cost of litigating over inadequate terms and conditions.

Not only is it important to get it right from the outset, established businesses must take time to regularly monitor and review their terms and conditions to ensure they are compliant with the ever-changing rules and regulations, as well ensuring that they still accurately reflect the growing needs of their business.

1. CERTAINTY

Carefully drafted terms and conditions will clearly spell out the duties and responsibilities of all parties and remove any ambiguity as to what is expected from each. Having a written set of comprehensive terms and conditions

will enable you to confidently answer any questions should they arise and also help you avoid any costly disputes.

2. LEGAL PROTECTION

As a business owner, you will be able to easily identify the commercial and practical terms you want in place when you contract with other parties. However, without professional legal advice, it is easy to overlook important provisions such as limiting liability and the passing of title and risk, which are so imperative to ensuring your business is adequately protected.

3. COMPLIANCE WITH THE LAW

The law is constantly being updated and it is essential to keep on top of your terms and conditions to ensure that your business remains compliant.

4. INCORPORATION OF TERMS

Terms and conditions need to be properly incorporated into a contract in order for

them to be effective. Do not make the mistake of having watertight terms which are then not applicable to your contractual relationships with clients and customers.

As well as drafting your terms and conditions, we will be able to advise you on the key practical steps you can take in order to have the best chances of successfully incorporating your key terms into your contracts.

If you would like to speak to a member of our Corporate and Commercial Team about drafting your terms and conditions or if you would like us to review your existing terms to ensure they offer you sufficient protection, please contact us.

For more information please contact

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PROPERTY ROUND UP

A FEW PROPERTY TIPS FOR LANDLORDS, TENANTS AND THOSE THINKING OF BUYING OR SELLING LAND.



ENERGY AND RESIDENTIAL LETTINGS

A bit like fridges and cookers you will probably have seen that properties usually now have a colour coded Energy Performance Certificate (EPC). The property will be somewhere on a scale of efficiency from A to G. In the buy-to-let sector since April 2018 you have needed an EPC rating of A to E to be able to grant a new residential lease or tenancy. The latest version of the regulations governing the minimum energy efficiency standards (MEES) for buildings came into effect in April 2019. Those with long term tenants should now note that with effect from 1

April 2020 the same minimum standard will apply to existing lettings as well. The continuation of lettings of F and G rated residential property will (with a few exceptions) be prohibited from that date.

OVERAGE OF LAND SALES

Those with land or large gardens may be understandably enthusiastic about maximising its value, particularly in an area where demand for building land exceeds supply. When land is sold it is possible to add “overage” wording so that if a future owner develops or gets planning to develop the land the original owner gets a share of the increase in value. How long the arrangement lasts, what share of the spoils the original owner receives and when a payment is triggered can be the subject of considerable negotiation. For those selling it is well worth involving your solicitor in those discussions at the very outset and certainly before the heads of terms are finalised by the selling agent. Those buying property which is subject to an overage may find difficulty getting a mortgage. Some lenders are nervous of anything which they perceive to be out of the ordinary. If you do not need a mortgage bear in mind that someone buying from you in the future may not be so fortunate.

REPAIRING CLAUSES IN COMMERCIAL LEASES

If you are thinking of taking a lease of commercial property be careful to consider as a preliminary point the level of repair that is being requested of you. There can be a tendency to assume that, if some feature of the property is in disrepair at the start, the landlord could not possibly expect you to put it right once you have moved in or when the lease comes to an end. If you are taking a “fully repairing and insuring” (FRI) lease this is incorrect and such a lease may in effect be a hidden obligation to improve the property at your expense. Depending on the property it may be more appropriate to take a lease with a “qualified” obligation so that you don’t have to make it any better than it is at the outset. To reduce the scope for argument it is a good idea to have a record drawn up which sets out the condition of the property on day one. Digital photography has made this a much easier process than in the past.

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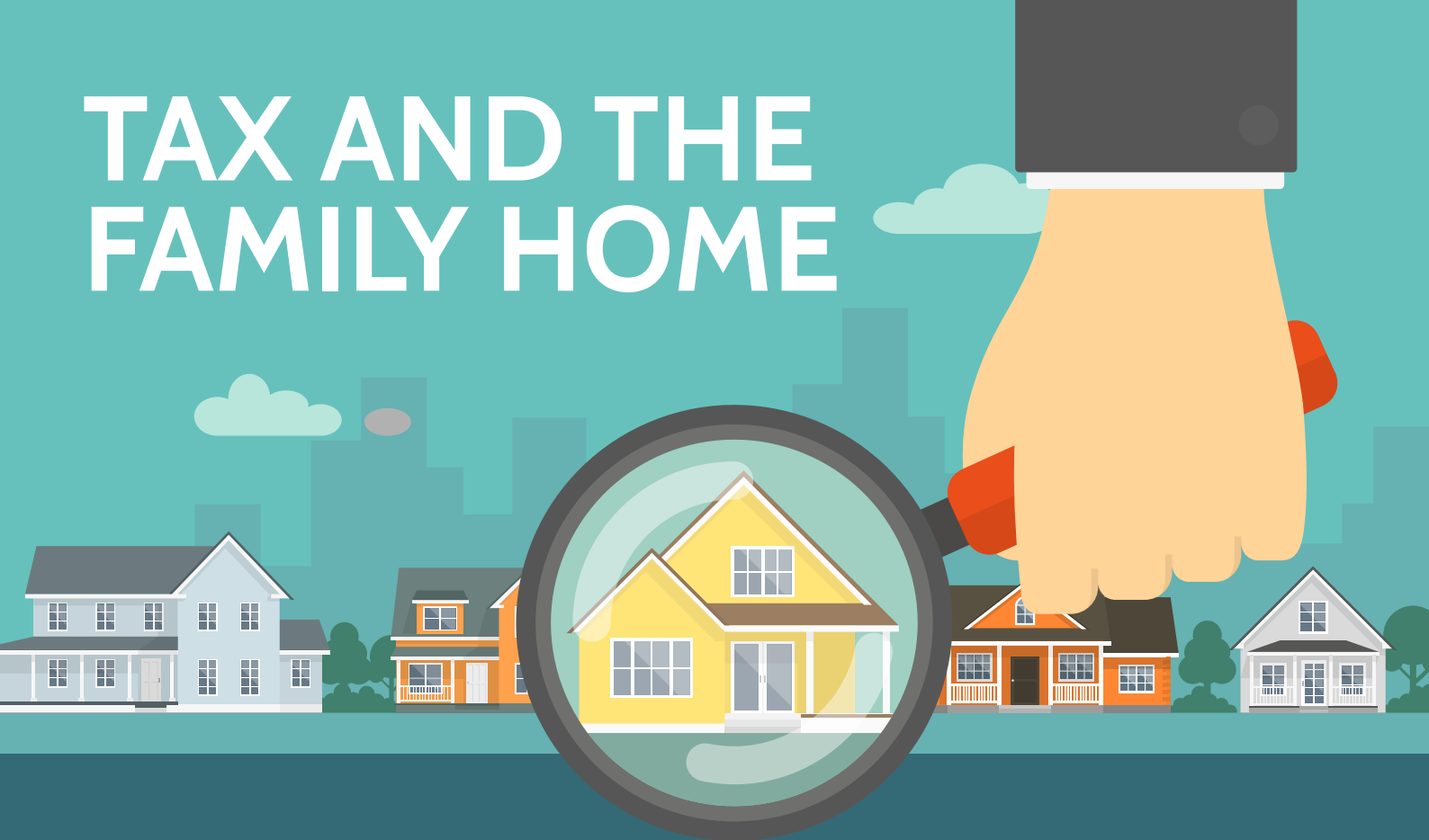
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TAX AND THE FAMILY HOME



INHERITANCE TAX (“IHT”) IS A BURNING ISSUE FOR MANY CLIENTS BUT PERHAPS ESPECIALLY SO FOR THOSE WHO HAVE MOST OF THEIR WEALTH TIED UP IN THE FAMILY HOME. THIS IS BECAUSE TAX PLANNING USING THE FAMILY HOME IS FRAUGHT WITH DIFFICULTIES.

For example, the suggestion is often made that mother and father make a gift of their family home to their children and carry on living there in the hope that after 7 years the value of the gift will drop out of account for IHT purposes. Unfortunately, this does not work as this transaction amounts to what is known as a “gift with reservation of benefit” and, assuming the parents in this case continue to live in the property until their deaths, the property will be subject to Inheritance Tax as if the gift had never been made. What is more, there will be a Capital Gains Tax problem for the children when they sell the property! However, there are a number of alternative approaches which could be considered.

First, for those clients who, perhaps, have a substantial income, they could consider making a gift of the property to their children who then lease it back to them at full market rent. This prevents a reservation of benefit arising and of course helps further to reduce the parents’ estate by the rental payments which they are making to their children. Planning of this type is recognised by HMRC but it does need to be

carried out most carefully to ensure that it does not fall foul of various tax traps laid for the unwary.

Another approach which could be considered in appropriate cases might be a shared ownership arrangement. This would be relevant where a child lives with his or her parents and intends to do so indefinitely (i.e. for the remainder of his parents’ lifetimes). In these circumstances, if the parents were to give a share of their home to their child, then provided the child continues to live at the property, this transaction would not give rise to a reservation of benefit. Great care needs to be exercised, however, to ensure that the arrangement does not fall foul of a number of tax traps and, in particular, it is of critical importance that the parents continue to pay their fair share of the maintenance and upkeep of the property.

More complex arrangements are available and which might be appropriate in some circumstances, including reversionary leases and the use of complex Trusts in Wills. On the other hand, more straight

forward options might involve a sale of the freehold reversion in a parents’ home to children preceded by a grant of a long lease, rent free, in favour of the parents (thus ensuring their security of tenure).

All the arrangements briefly looked at in this article require a great deal of care and thought if they are to be considered and implemented, not least as there are many tax traps to be avoided, or at least catered for, especially as an arrangement which might work for Inheritance Tax purposes could have Capital Gains Tax implications, and/or implications under the “Previously Owned Assets Tax” which should not be discounted. Accordingly, for further advice please speak with Peter McGeown, Head of our Wills and Inheritance Department, who specialises in this area of work.

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APPRECIATING THE ARTS



FOR CLIFTON INGRAM CLIENTS WHO WANT TO MAXIMISE THEIR ENJOYMENT AND UNDERSTANDING OF THE ARTS – AND DO IT LOCALLY - THEN LOOK NO FURTHER THAN THE ARTS SOCIETY WOKINGHAM.

For the third year running Clifton Ingram are proud to continue their corporate partnership of the Society, helping to support some of the many events that the Society holds, as well as the arts charity work they fund in the community, particularly for young people.

The Arts Society Wokingham, part of one of the biggest arts appreciation organisations in the country, embraces all aspects of the arts and organises talks, visits and study days for its members. At its heart are its monthly lectures at Newbold Church, Binfield presented by lecturers who are all experts in their field giving entertaining talks covering fine art, theatre, music, architecture and photography. In a pleasant environment with free refreshments it's a great way to spend a winter's evening.

The Arts Society Wokingham have kindly offered two free places to any Clifton Ingram client who would like to attend one of their lectures as a guest. To claim your two free places please email info@cliftoningram.co.uk and state which lecture you would like to attend.



Gustav Klimt. Portrait of Adele Bloch –Bauer (Public Domain) via Wikimedia Commons

Upcoming lectures include

MONDAY 25 NOVEMBER 2019 - CHRISTMAS BACKSTAGE AT THE OPERA

A first-hand account of how the Royal Opera House copes at Christmas, taking you into the wings, the dressing rooms, up in the flies and onto the stage.

MONDAY 27 JANUARY 2020 - REMBRANDT AND VERMEER: TITANS OF THE GOLDEN AGE OF DUTCH ART

By contrasting a celebrated and a lesser well known painter, these two artists provide an informed insight into Dutch art of the 17th century.

MONDAY 24 FEBRUARY 2020 - FIGURES IN THE CITY: PICTURING PEOPLE IN POST-WAR LONDON

A look at the changing face of post-war London as seen through the eyes of artists beginning to make their names. It's a journey that, for some, would lead to super-stardom.

A full list of lectures along with visits and study days can be found at www.theartsocietywokingham.org.uk together with membership details.

Moving house?

Get the red carpet treatment from Clifton Ingram



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