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INSIGHT
JAN/FEB 2021

Welcome to the Jan / Feb 2021 edition of Poole Alcock Insight

This issue contains articles on:

CHANGE IS COMING...

WRITTEN BY

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Cherry Riddlesdin is a Partner and the Head of the Residential Conveyancing Department at Poole Alcock. Cherry originally joined Poole Alcock in 2005 and qualified in 2007. After spending some time with another prominent law firm, she returned to Poole Alcock in 2014. She is focused on achieving each client's objective, and has a practical, proactive approach.

IF YOU ARE PLANNING A MOVE, OR A REMORTGAGE, PLEASE GET IN TOUCH WITH CHERRY

She and her team would be delighted to help you.

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The long running review into leasehold practices appears to have taken a step forward, with the creation by the Government of a 'Commonhold Council' to prepare the industry for a switch from 'leasehold' to 'commonhold'.

WHAT ARE THE ISSUES WITH LEASEHOLDS?

Leasehold interests in their current form have been around since the late 1800s, and effectively create an interest in land for a fixed number of years (traditionally 999 years) in return for the payment of an annual ground rent. Issues have arisen because some freeholders have begun to exploit the system, granting leases for much shorter terms, with increasingly onerous ground rents. In addition, the lease can require the leaseholder to pay a fee to obtain the freeholder's permission for activities which in reality have no detrimental effect on the freeholder or the property, such as making alterations, or keeping pets.

The leasehold system can be deemed to be necessary where properties share facilities, gardens, or services – such as in apartment blocks – so that one person or company, the freeholder, can take responsibility for managing and maintaining the shared areas and services. However, this has become an area of concern as the fees for maintaining these areas are often inflated by the companies appointed to carry out the management. Also, until the recent review of leasehold practices, new houses which do not share any shared space or services were also being sold as leasehold – simply to provide an ongoing source of revenue to the freeholder, but with no benefit to the leaseholder.

WHAT IS THE SOLUTION?

1. A move away from leaseholds towards 'commonholds'. Commonholds already exist in England and Wales – they were introduced in 2002. But take up has been very low and currently there are only in the region of 20 commonhold estates in the whole of England and Wales. Commonhold allows people to own their property as if it were freehold with no ground rent and no limit on the length of time they own it, and all the commonholders within the development manage the site together through a 'commonhold association'. The newly announced Commonhold Council is intended to pave the way for more of these commonholds to be developed in the future.

2. For existing leasehold properties, legislation is set to be introduced which will make it cheaper and easier to either extend the term of the current lease, or to purchase the freehold outright. An online calculator is to be established to make the cost of extending or purchasing more transparent.

3. Where lease terms are extended, it is expected that ground rents will be reduced to zero.

For further information, **click here.**

HELP US TO HELP YOU

If you are currently in the process of moving house, you are probably very aware that we are currently in the final stages of the Stamp Duty holiday that was announced by the government last summer. The holiday has proved to be hugely successful in achieving its aims of ensuring that the property market had a quick rebound from the effects of the first lockdown earlier in the year. However, this is not without challenges and all areas of the property industry – estate agents, surveyors, mortgage lenders, search providers, conveyancers, and removal companies - are now under unprecedented levels of demand.

In addition to this, we are of course now in a further national lockdown. Whilst the housing market remains fully open the situation is undoubtedly more difficult with some lawyers, surveyors and lenders working remotely, which creates further challenges and pressures.

At the time of writing, there has still been no announcement of any extension to the holiday, so we face something of a 'cliff edge' on 31st March when the Stamp Duty holiday is due to end. A purchase completed on 1st April could cost the buyer up to £15,000 more than the day before. So obviously, most buyers are very keen to complete their purchase before then.

The abrupt end of the stamp duty holiday means that it is inevitable that there is likely to be at least 3-4 times as many people wanting to complete in the weeks before the end of the holiday than normal. For many buyers, this will not be possible.

Where there is a chain of people moving, every single part of that chain must be ready before anyone can complete. Lenders are taking longer to issue mortgage offers, deal with enquiries raised by the conveyancers, and can no longer release mortgage advances at short notice – simply due to the numbers of mortgage offers that they are currently dealing with. Search results are also taking longer with Hackney council, as an example, advising that searches requested now will not be available in time for the end of March.

In an effort to try to get as many people as possible moved whilst also protecting our colleagues from the vast pressure and expectation which will be on them, law firms are having to review the way that files are transacted.

At Poole Alcock, we still believe that clients should expect to hear from us regularly, by phone or email. However, during the current situation, it would be really helpful if they could resist calling us to request updates in the meantime – we would like to spend as much time as possible progressing files. Don't feel that you can't call or email us, but please accept that your conveyancing teams are under unprecedented pressure from almost every single client to complete before the end of March. They will deal with your messages, but are likely to respond fully when they are working on your file, rather than responding to individual messages one at a time.

IN THE MEANTIME...

Give serious thought to the possibility of a completion after the end of March. If you are buying, what would be your stamp duty liability after that date, and would you be prepared to carry on with your transaction? Some people – for instance, first time buyers who will still benefit from First Time Buyers Relief after the end of the holiday - may even prefer to complete after March: removal companies are likely to be easier to book, and the current COVID restrictions may be eased, meaning that friends and family would be able to help you move. If this is you, let us know!

Finally, please have understanding. We really want your transaction to complete. We are doing everything we possibly can. No doubt we will all be working longer hours than normal in the run up to 31st March, but it is important that our staff are also allowed some downtime at the evenings and weekends. You need your conveyancer to be healthy and alert so that they can move your transaction forward as quickly and safely as possible.

However stressful the situation is – and moving house is always stressful – let's try to work together.

We give you our promise that we will do everything we can for you. So please, be kind and help us to help you.

To calculate your potential stamp duty liability, **please click here**, making sure that you enter a 'date of transaction' after 31st March 2021.

RECENT TESTIMONIALS:

"At a time when solicitors are under such pressures dealing with the needs of their clients, Nicola and her team went above and beyond at every turn. Thank you!"

Thomas Pierce and Katie Goulbourn

"A very good service from Chloe and the team, gave me the greatest of confidence throughout the purchase of my home."

Mr Bourne

"James, Nicola and Chloe were exceptional in providing their services to ensure we completed on our house purchase before Christmas. They were extremely efficient and helpful with our queries and I would recommend their services to all."

David Y

"James Williams and Chloe did a great job. Always communicative, helpful and reassuring."

Mark Caddick

"We dealt with Andrew Roberts and Kate Heath both of them were excellent."

Barbara

"We highly recommend Poole Alcock Solicitors. This is the second time we have used their services to move home. We found Tania Zompi and her team to be extremely professional, always on the end of the phone or email when we have had any questions, knowledgeable and ready every step of the way."

Dawn

"Great value service when compared to the impersonal process machines of the conveyancing factory firms. You might pay a bit more but the saving in terms of time and emotional well-being is more than worth it!! Team Tania Zompi have done a first-class job for us on 2 transactions to date and I wouldn't hesitate to use again."

Paul Edwards

FINANCIAL NEEDS ON DIVORCE OR DISSOLUTION

WRITTEN BY

HELEN STOLLER,
PARTNER - DIVORCE & FAMILY LAW TEAM

If you need help to progress your case, to commence a new application, or to discuss any issues you are experiencing- do get in touch with me.

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Happy New Year! Here in the family department we have had a typically busy start to the year helping our existing clients, and new clients, navigate their way through their family issues.

This January's return to work has been even more eventful with the addition of three stunning new offices based in Manchester, Birmingham and Chester. These offices all primarily deal with family-based work and I'm looking forward to when we can get together to celebrate their opening. You can take a look **here.**

You may remember from December's edition that I explained some of the key terms that are referred to when dealing with the division of your finances upon your divorce or dissolution.

In this edition I wanted to delve a little deeper into the financial matters that arise and explain a little more about the court's approach in these cases.

FINANCIAL DISCLOSURE

In every case, the starting point for deciding what a fair settlement may be is you each gathering together all of your financial information. This includes information about all of the assets you have, whether in your joint names, sole name or held on your behalf by another.

You should approach this process with the aim of being clear, open, transparent and honest about your financial situation. Taking this approach at the outset can often save you additional costs and additional stress in the long run.

If the other party doesn't approach the financial disclosure process in the same way, ultimately there can be financial

penalties imposed by the court. The court could also determine that the fairest way to resolve matters when they are dealing with a serial 'non-discloser', is to infer that the financial interest or assets do exist and can be taken in to account in the overall financial division.

So start as you mean to go on and be full and frank in your disclosure:

- Get the properties and any assets valued or appraised by a suitable expert;
- Collate your statements for all of your savings and investments covering the last 12 months;
- Contact your pension administrator and request the Cash Equivalent Transfer Value, or Cash Equivalent Benefit, if in payment;
- Work out who you owe money to and get updated statements showing the amounts owing on any credit cards and loans;
- Make contact with your lender, if you have one, and request the mortgage redemption statements for any properties and for confirmation of any early redemption charges;
- If you have insurance or endowment policies, dig the documentation out and check whether there is any surrender value for the policy;
- If you're self-employed have a chat with your accountant and get them on board to assist you with obtaining the correct and up-to-date information regarding your business and the last 2 years of accounts;
- If you're employed, the last 3 months payslips will usually suffice, if you are paid the same amount each month. Along with your latest P60 and details of any other benefits such as bonuses;
- You'll also need to think about what your current and anticipated future outgoings are and whether you will need financial assistance from the other party, both in the short and long term. Or, whether you need to budget for assisting the financial weaker party adjust to the separation of your finances.

Once you have all of this information the next step is to exchange the information so you each know what the financial assets of the marriage are.

SECTION 25 FACTORS

When both of you are satisfied that you know what's available for division, you then need to think about how the assets and income can be shared fairly between you. At the very forefront of your mind should be the welfare of any dependent children of the family.

In each case all of the circumstances should be considered and lots of clients are surprised to learn that there is no standard formula applied.

Fortunately, there are a number of factors that will be taken into account and these are set out in section 25 of the Matrimonial Causes Act 1973, as follows:

- The capital and income resources available to you both, either existing or reasonably foreseeable.
- Details of your respective financial needs, taking into account:
  - Standard of living
  - Ages and the length of the marriage
  - Any disabilities
- The court also considers the following additional factors:
  - The respective contributions you have each made to the marriage
  - The conduct of each of you (although only in exceptional cases)
  - Any benefit that will be lost as a result of the divorce (such as a spouse's pension)

There is a great deal of judicial discretion available to judges in interpreting what is fair. Putting the final financial decision in the hands of a judge means that you lose the decision-making power. An order will be made, which you will be bound to in most cases.

Wherever possible the aim is for you both to achieve financial independence so that you are no longer financially dependent upon one another. This is referred to as a 'clean break'. Sometimes the financial needs and circumstances of one party will mean that they need time to transition to financial independence and an immediate clean break just cannot be achieved.

FINANCIAL DIVISION

The starting point is that assets that have been accrued during the marriage should be divided equally, and the guiding principles that apply are 'sharing', 'needs' and 'compensation'. In some cases, if you have been married for a short period, have no children, both have your own incomes and separate finances then an equal division of matrimonial assets may not be appropriate.

In reality, in most cases, the financial needs exceed the assets available and these are 'needs' cases. This can be so even where the assets are relatively high.

The seminal case of White v White, now over 20 years old, fundamentally changed the approach to the way that family assets are divided. The judgment of Lord Nicholls in this case set out that "As a general guide, equality should be departed from only if, and if to that extent, there is a good reason for doing so".

In White, the House of Lords redefined how the section 25 exercise should be carried out and confirmed that where one party cares for the home and the children and the other party makes the financial contribution by going out to work, although these contributions are different, they should be considered equally. Any other approach would be discriminatory.

The case introduced the concept of the 'yardstick of equality'. Meaning that any financial agreement reached should be checked for equality, particularly in cases where the financial resources are sufficient to meet both parties' needs.

In many cases the financial needs of one party are such that equal sharing will have to be departed from in order to meet their needs.

Baroness Hale addressed the importance of meeting needs rather than pursuing equal sharing of assets in lower value cases in Miller/ McFarlane in 2006- stating 'giving half the present assets to the breadwinner achieves a very different outcome from giving half the assets to the homemaker with children.'

MEASURING 'NEEDS'?

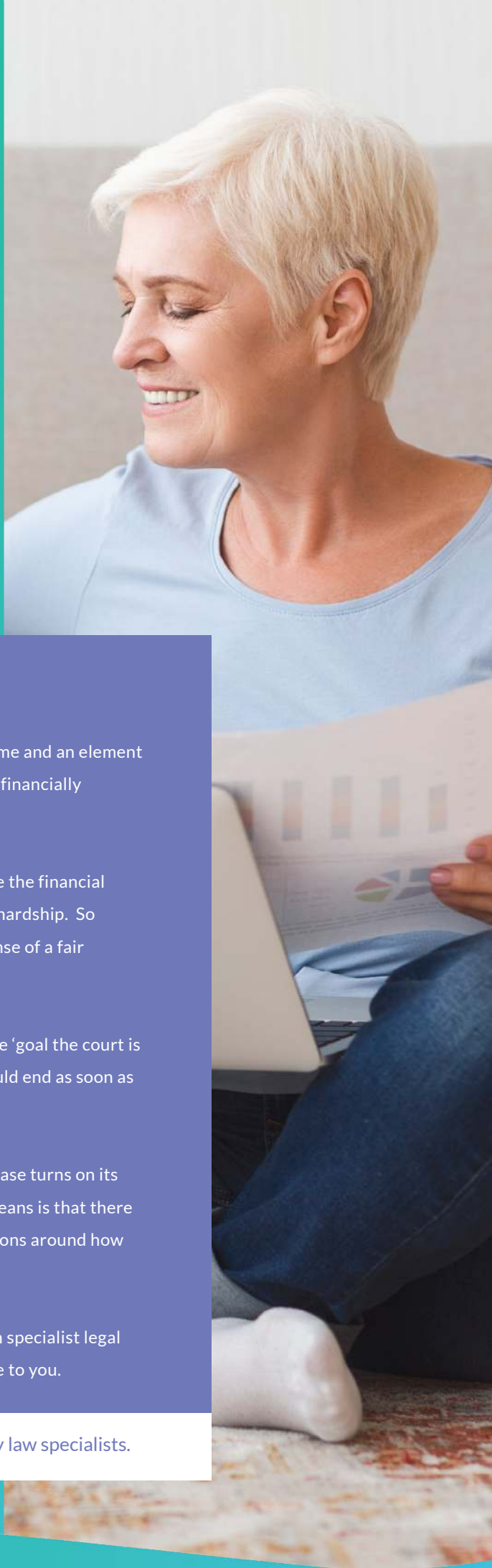
There is no single definition of 'needs' in family law and the term encompasses a wide range of provision but most importantly; a need for a home for you and any dependent children and a need for income - both now and in the future.

This is why it is important that you disclose your financial positions at the outset and your needs will be determined by measuring your available financial resources. In needs cases it is necessary to stretch the finite resources that previously met the financial needs of one home to now cover two separate homes. To achieve this it can mean

that there is a requirement to reduce the standard of living enjoyed before the relationship breakdown, with the view to transitioning into financial independence.

The Law Commission described the objective of financial orders:

'We conclude that the objective of financial orders made to meet needs should be to enable a transition to independence, to the extent that that is possible in light of the choices made within the marriage, the length of the marriage, the marital standard of living, the parties' expectation of a home, and the continued shared responsibilities (importantly, child care). We acknowledge the fact that in a significant number of cases independence is not possible, usually because of age but sometimes for other reasons arising from choices made during the marriage.'



INCOME NEEDS

Initially it may not be possible to achieve financial independence for some time and an element of ongoing financial support or maintenance payment may be needed by the financially weaker party.

In the majority of cases, lifelong financial support is unlikely but to terminate the financial support, the receiving party must be able to adjust without suffering undue hardship. So despite the clear steer towards a clean break, this should not be at the expense of a fair outcome when considering all of the circumstances.

Lord Nicholls again observed in the leading case of Miller/McFarlane that the 'goal the court is required to have in mind is that the parties' mutual financial obligations should end as soon as the court considers just and reasonable'.

There is no definitive answer as to how your finances will be divided, every case turns on its own facts and the court will exercise its discretion. Fortunately, what this means is that there is a menu of options available and lots of creative thinking and judicial decisions around how both parties' financial needs can be met.

It is a complex area and is very fact specific. I would encourage you to obtain specialist legal advice from a family law specialist to discuss what options might be available to you.

Get in contact with our family team HERE and speak to one of our family law specialists.

ENDURING POWER OF ATTORNEY

WRITTEN BY

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If you are thinking about making a Will, putting in place a Lasting Power of Attorney, or are in the heartbreaking position of having lost someone and need some help, please get in touch.

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A lot of people have heard of a power of attorney but many get confused when they hear the words lasting power of attorney or enduring power of attorney. My aim is to shed some light on the topic and answer some of the most common questions we get asked.

OFFSETTING

An enduring power of attorney (EPA) is a legal document that appoints someone (an 'attorney') to help manage your money, property and financial affairs. It can only be used for your financial affairs and does not cover decisions surrounding your health and welfare.

The person or people you appoint can help you make decisions or, if need be, make decisions on your behalf if you are not in a position to make these decisions for yourself.

In October 2007 the EPA was replaced by the lasting power of attorney (LPA) for finances and after this date you could no longer create an EPA.

WHAT IS A LASTING POWER OF ATTORNEY?

A lasting power of attorney (LPA) for Property and Finances is the direct replacement of an EPA. So, it does the same thing just in a slightly different way. A new LPA can be set up at any time and an LPA for Health and Welfare was also introduced to enable you to appoint someone to make decisions about your health and welfare which was not previously possible.

WHAT IS A LASTING POWER OF ATTORNEY?

We often get asked whether an EPA is still valid, whether it can still be used and whether it is still basically any good. The simple answer is that if you made an EPA that

was signed and witnessed before October 2007 you can continue to use it for your property and financial affairs.

You cannot however change an existing EPA; so, if you want to change who you've appointed or how they are appointed, you would have to cancel it and set up an LPA instead.

HOW DO I USE AN EPA AND HOW IS IT DIFFERENT TO THE LPA?

The EPA works in a different way to an LPA in that whilst you still have mental capacity, you can allow your attorney to use an EPA to help manage your finances without the need to have the document registered with the Office of the Public Guardian (OPG). With an LPA it has to be registered with the OPG before it can be used but, unlike with the EPA, this can be done in advance. With an EPA you cannot register it with the OPG until someone has lost capacity.

To use the EPA, you or your attorney will need to show signed copies of the EPA to the bank or anyone else you want to deal with such as utility companies, pension providers etc.

WHEN YOUR EPA NEEDS TO BE REGISTERED

If you lose mental capacity your attorney must register to start or even continue using the EPA. So, if your attorney has been assisting you with your finances, if you were to lose capacity then they have to stop until the EPA has been registered, which can take a couple of months. This was one of the most significant changes when the LPA was introduced allowing registration in advance so there is no longer a period of inaction whilst you are waiting for the registration to be processed.

When it's registered, your attorney has to involve you in any decision making where possible. They should only make decisions on your behalf if you are not in a position to make them yourself and they must follow any instructions you've given in your EPA if applicable.

SHOULD I CANCEL MY EPA AND GET AN LPA?

There is no easy answer to this question. A lot of people manage perfectly well with their EPA and therefore there is no need to update it to an LPA. Reasons you may consider updating to an LPA however include:

- You want to update who you've appointed.
- You don't want your attorneys to have to wait for your EPA to be registered and want them to be able to use it straight away if you were to lose capacity.
- You may just wish to have the more up to date document and to put it in place in conjunction with the Health and Welfare LPA.

HOW DO I CANCEL AN UNREGISTERED EPA?

To cancel an EPA before you lose mental capacity, you have to make a 'deed of revocation' stating that you're cancelling it. You do not need to send the unregistered EPA and deed of revocation to the Office of the Public Guardian just keep them for your records.

You also must of course let your attorney or attorneys know that you're cancelling your EPA and if it has been used you must also let any banks, etc. know you've cancelled it and that it can no longer be used.

CANCELLING A REGISTERED EPA

To cancel a registered EPA you have to apply to the Court of Protection. Cancelling a registered EPA is likely to be uncommon as a person has to have lost capacity to have had it registered in the first place, but it can happen for example if someone was to recover from an injury, etc. and want to take back over their own affairs.

If you have an EPA and want to discuss whether you should update it, put in place the Health and Welfare LPA, have an EPA you think you need to register or if you just want a chat about power of attorneys in general then please get in touch on either **01270 613939** or claire.ellis@poolealcock.co.uk and we will be happy to help.

2020 - A YEAR IN REVIEW

WRITTEN BY

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- Covid-19 was (and continues to be) the clear focus in 2020. In March 2020, we saw the introduction of a bespoke government support scheme which was designed to safeguard jobs and protect the economy; the Coronavirus Job Retention Scheme (CJRS) or the 'furlough scheme' as it is most commonly referred to. When we were first presented with the scheme most people hadn't even heard of the word 'furlough'. Now, 10 months, three versions and various updates down the line, you'd be hard pushed to find anyone that hasn't.

- Redundancies were rife throughout 2020 and the Office for National Statistics (ONS) figures show there were approx. 800,000 fewer employees on company payrolls in November than in March (just as the pandemic struck). With the furlough scheme currently running to the end of April 2021 we are yet to fully grasp the true extent of the economic damage caused by the pandemic.

- In 2020, we were also introduced to other Employment Law changes:
  - The ACAS early conciliation time frame for example has been extended to 6 weeks. This was previously a 4 week timeframe with the option to then extend for a further 2 weeks. This option has been removed and it's now a 6 week timeframe as standard.
  - In April 2020 we saw changes made to the requirements for employment contracts. Not only are these a day-one right, there is now additional information that needs to be provided for in the Contract of Employment (or s.1 particulars of Employment). These include, entitlement to benefits, details of any mandatory training and that which the employee is also required to pay for and/or carry out in their own time.

- As well as being introduced to new legislation and changes we have also become reacquainted with older, less used legislation. Health and Safety has always placed certain obligations on businesses but 2020 has certainly thrust this to the forefront of our attention. Similarly, if an individual is dismissed because they have stayed away from work in circumstances where they reasonably fear serous and imminent danger then they are protected by the Employment Rights Act and would be eligible for a claim for unfair dismissal. This particular legislation was initially aimed at protecting coal-miners but it's become quite a prominent piece of legislation in the recent year.

- Due to the anti-cyclical nature of employment litigation work, we've also seen an increase in cases this past year. When the economy is thriving there seems to be fewer cases; this possibly being due to the fact that aggrieved employees are usually in a better position to find alternative employment and to simply move on and put things behind them. It might also be that under such economic conditions, employers are more likely to be in a better financial position to settle such disputes. However, when economic times are bad and people lose their jobs, they can't move on as readily to other jobs due to limitations imposed by market conditions. Employees are therefore more likely to have greater periods out of work (increasing their loss of earnings) and employers are less likely to have the finances (or the inclination) to settle which then leaves employees with no other option but to pursue a claim against the employer.

- Another prominent feature of 2020 is the change in the way in which we operate. This includes the way we live, work, consume, spend etc. Despite the Chancellor's wishes for life to promptly return to 'normal' conditions to which we were previously accustomed, it likely that many changes are here to stay. For example, whilst I would concede that it is unlikely to be on quite the same scales as this past year flexible working, particularly home working is likely to be a key feature of working practices moving forwards. The shift in usage of virtual

meetings and hearings has enabled certain areas to continue to operate (albeit with some early teething problems). In some instances, this has proved to be beneficial as it can actually be more productive and efficient in terms of time and resources. A shift to e-commerce for those with no previous online presence has been a lifeline for many businesses and I've no doubt that this will continue to be vital to the survival of many. Whilst some of these changes were likely to have happened anyway, there is no doubt that the pandemic has accelerated this.

So, what's in store for 2021?

Unfortunately, it looks like this will be much of the same - certainly for the first half of the year at least. It's not all gloomy news though! We do have the vaccine rollout which is a welcome and warm light at the end of the tunnel.

WHAT TO EXPECT THIS YEAR

The Furlough Scheme is currently open to 30th April 2021. Up to this date the government grant will cover the full 80% of wages (there was initially going to be a review of this at the end of the month but this has since been removed from the guidance). Employers will not be required to contribute or top-up for the hours not worked but will still need to pay employer National Insurance contributions and employer pension contributions, these cannot be claimed for under the scheme. The latest guidance largely mirrors the original CJRS guidance and so on the whole will make for familiar reading.

These are some very brief highlights:

1. Employers can claim under the current scheme even if they, or the relevant employee, had not previously used the CJRS.
2. Flexible furlough is still be permitted under the current scheme i.e., employees can continue to do some work.
3. Employees who have previously been furloughed continue to have their reference pay and hours based on the existing furlough calculations (as under the old scheme). Employees who have not previously been furloughed will have a different pay/ hours reference period.
4. Employees can be furloughed if they are shielding in line with public health guidance (or need to stay at home with someone who is shielding) or if they have caring responsibilities resulting from coronavirus, including the need to look after children. That does not, of course, mean they have to be furloughed – this is up to each employer.
5. The scheme is not intended for short-term sickness absences.
6. Employees that were employed and on the payroll on 23rd September 2020 who were made redundant or stopped working for their employer after that date can be re-employed and claimed for under the scheme.
7. Since 1st December 2020 claims cannot be made for employees serving their notice period.
8. From February 2021 HMRC will publish information about employers who claim for periods starting on or after 1st December 2020. From February furloughed employees will be able to see details of claims made for them after 1st December 2020 in their Personal Tax Account on GOV.UK.

Further details will inevitably be released by government as to how the Furlough scheme is to be phased out (or even whether there will be a further extension) and what measures are to introduced in place of the same. We might see a return of the Job Support Scheme and the Job Retention bonuses (or something similar). Businesses will inevitably need to assess and plan how to respond for when the furlough scheme comes to an end.

- The pandemic will inevitably continue to present challenges for businesses, including how to manage for business continuity, possible redundancies and ensuring the health and safety of staff and visitors. The current National lockdown runs to mid-February. The stay-at-home guidance states that people are only permitted to leave their homes with a 'reasonable excuse'. One such excuse permits people to leave their homes for work purposes only where it is 'unreasonable for them to do their job from home'. It's important to keep up to date with the latest government guidance and consider how this will impact your business. Continued school closures will mean that a number of working parents will be struggling to juggle work obligations with childcare and home-schooling (from Peppa Pig to Pythagoras) responsibilities. Keep an open dialogue with staff and ensure that any assistance that can be provided is in place to support them. Consider your options under these circumstances i.e., is furlough available? Can you agree flexible working arrangements to assist in the short term? Can a period of unpaid leave or annual leave be agreed with the member of staff?

- The move to online sales and the increased use of e-commerce during the lockdown certainly has its positives but it can pose challenges to businesses who do not have the correct legal documentation in place. Our Corporate and Commercial Department can provide a suite of website polices (including a Privacy Notice, Cookie Policy and Acceptable Use Policy) together with bespoke terms and conditions of sale - please do get in touch if this is something that we can assist with.

- It is important for employers to familiarise themselves with the new points-based immigration system in place from 1st January 2021 and to review and update existing documentation (contracts and policies) to check for references to the EU.

- Businesses will need to understand and prepare for changes to the off-payroll working rules (IR35). From 6th April 2021, all public sector clients and medium or large-sized private sector clients will be responsible for deciding employment status for their workers. These changes were originally due to be implemented in April 2020 but were delayed until this year due to the pandemic.

- Increases to the national living wage (NLW) and national minimum wage (NMW) rates are set to apply from 6 April 2021. The NLW, which currently applies only to workers age 25 or over, will increase by 2.2% and will be extended to 23 and 24-year-olds for the first time.

The new rates will be:

- Age 23 or over (NLW rate): £8.91 (up 2.2% from £8.72)
- Age 21 to 22: £8.36 (up 2% from £8.20)
- Age 18 to 20: £6.56 (up 1.7% from £6.45)
- Age 16 to 17: £4.62 (up 1.5% from £4.55)
- Apprentice rate: £4.30 (up 3.6% from £4.15)
- Accommodation offset £8.36 per week (up 2% from £8.20)

The government is currently in the midst of a consultation on measures to reform post-termination non-compete clauses in contracts of employment. The proposals include altering the law so that such covenants are only enforceable if the employer continues paying remuneration during the restricted period. Another option would be to introduce a ban on post-termination restrictive covenants completely. The consultation is scheduled to close on 26th February 2021 – watch this space!

If you require any assistance in connection with any of the topic covered in this article, please do get in touch.

WHAT TO EXPECT AT A CIVIL TRIAL DURING THE COVID-19 PANDEMIC

WRITTEN BY

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TRAINEE - LITIGATION

Chloe has just joined the Commercial and Civil Litigation Team as a trainee. She experienced her first Civil Trial, in a hybrid fashion, during her first week with the team.

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The extension of the Government's 'lockdown' requiring people to stay at home will continue to have a significant impact on the administration of civil justice.

During the first lockdown which commenced in March 2020, over half of the Courts and Tribunals in England and Wales were suspended. The Courts that remained opened dealt with hearings remotely, these were conducted via telephone or video.

Following the first lockdown, the vast majority of Court hearings are still being conducted remotely. For more complex or lengthy hearings the Courts use 'hybrid hearings' where some parties appear at Court, in person, whilst others dial into the hearing via video, limiting the amount of people that are present in the Court room.

As we enter the third UK lockdown, the Lord Chief Justice published a message on the 5th January 2021. In contrast with the position in March 2020, the Lord Chief Justice confirms that Courts and Tribunals must continue to function and attendance at Court is permitted under the new regulations. Remote attendance at Court hearings should be available and participants in legal proceedings should not be required to attend Court in person unless it is necessary in the interests of justice.

SO, WHAT CAN BE EXPECTED AT A CIVIL TRIAL, WHETHER THAT BE HELD IN PERSON OR REMOTELY?

The trial is the final hearing; this is when a Judge decides who 'wins' and who 'loses' the case. A trial will only happen if the parties have not been able to come to an agreement and resolve the dispute.

PREPARATION FOR TRIAL

In the run up to the trial there may be some shorter Court hearings to decide what needs to be done to get the case ready for trial. The number of hearings that take place before the trial will partly depend on:

- The complexity of the case
- Whether the parties can agree how the case will be run
- Whether everyone completes the tasks that they have either agreed to do, or the Court has told them to do, on time

Once the matter is listed for trial and the parties are given a date, they will be expected to attend at Court with their barrister (if they have legal representation) either in person or remotely. In preparation for the trial, the parties will normally agree and organise a bundle of relevant documents, which is lodged at Court before the trial, for the Judge to read.

ATTENDANCE AT THE TRIAL

Once in the Court building, the parties will need to speak to the Court usher to make them aware that they have arrived. If the hearing is being dealt with remotely, the Court usher will dial the parties into the hearing via telephone or provide a link via email for a video call.

The hearing will commence once the Judge is present and the claimant's barrister will introduce the matter and make the Judge aware of what is in dispute. The claimant's barrister will usually outline both parties' positions and the defendant's barrister will then add anything that has been missed.

The claimant will then call their witnesses and the defendant's witnesses will follow. Witnesses are only called to aid your case but will be questioned by both the claimant's and defendant's barristers. Any witness who has given a statement is expected to be in Court to give evidence, unless there is good reason for them not to be there or the parties have agreed their evidence is not contentious and there is no need for cross-examination. For example, parties may decide that an expert who has provided a report for the case does not need to be present at the trial upon the basis that their report says everything there is to be said on the matter and with a view to save costs.

The Judge will usually have read any witness statements in advance of the trial as they will have been included in the bundle of documents sent to the court.

PREPARATION FOR TRIAL

Giving 'evidence in chief' is the process of asking your own witnesses questions so their evidence can be heard by the Judge. 'Evidence in chief' is usually provided through a witness statement, but may be "added to" in respect of any necessary developments, noting that Statements are usually prepared some time before the trial commences. During the trial, it will usually therefore just be a case of the advocate asking the witness to confirm that the contents of their statement is true. If there are discrepancies in the witnesses' statement, they need to be addressed at this point. If the advocate would like to ask their witness more questions, they will need to ask the Judge for their permission.

CROSS EXAMINATION

Cross examination is the process of asking the other party's witnesses questions. The purpose of cross examination is to test the evidence of a witness, to expose weaknesses where they exist and, if so, to undermine the account the witness has given.

During cross examination the advocate aims to control the witness and force them to answer questions which are potentially harmful to the case of the party who called them.

RE-EXAMINATION

Re-examination is the process of asking your own witness further questions once they have been cross examined. This is to give the witness the opportunity to explain things that have come up during cross examination and potentially repair any damage.

It is important to note that in civil proceedings, parties do not necessarily need legal representation and can represent themselves. However, should the matter go to trial, the parties will be expected to ask their own and each other's witnesses questions.

If experts were instructed in the case, and have not given evidence, the advocates will review their reports/ evidence with the Judge once the witnesses have given evidence. Both the claimant and the defendant will then provide their closing submissions, summarising the main factual points arising from the evidence and effectively summarise why their case should be preferred.

JUDGEMENT AND COSTS

The Judge decides who 'wins' based on 'the balance of probabilities', which is essentially the Judge deciding whose case is more preferable, and more likely to have happened. Saying something is proven on a balance of probabilities means that it is more likely than not to have occurred.

In civil proceedings, the Judge can order the 'loser' to pay the 'winner' compensation in the form of damages or other losses as will have been requested at the outset of the case.

They will also determine who should pay costs and, sometimes, decide on the level of costs to be paid (although often the specifics of any amounts are dealt with between the parties or in another hearing regarding costs).

It is usually the case that the losing party pays the winning party's costs, but the Court have far reaching powers in respect of such an award and it could be that each party bear their own costs, irrespective of "winning" or "losing" the case. Any party needs to bear this in mind before bringing a civil claim as costs can easily run to thousands of pounds and a party may either be ordered to pay this sum to the other side (having also incurred their own costs in the dispute) or not recover any such award as may have otherwise been expected.

Costs are complex and we always advise clients to ask questions if they have any questions as to what may happen in their specific case (although, the decision will always be up to the Judge at the end of the day).

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