



Welcome to the March/April edition of Poole Alcock Insight

This issue contains articles on:

-  Conveyancing - Sunak saves the day for thousands of home buyers
-  Employment - The workplace of the future - key issues to consider post COVID-19
-  Family - The Domestic Abuse Bill
-  Litigation - How can I avoid a Dilapidations claim?
-  Wills and Probate - Five reasons to update your Will

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SUNAK SAVES THE DAY FOR THOUSANDS OF HOME BUYERS



WRITTEN BY

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CONVEYANCING

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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FOR THE PAST FEW MONTHS ANY CONVERSATION RELATING TO THE PROPERTY MARKET HAS BEEN DOMINATED BY THE SDLT HOLIDAY WHICH HAD BEEN SCHEDULED TO COME TO AN ABRUPT END ON 31ST MARCH.

The Chancellor has now finally announced that the holiday has been extended. 'Normal' rates of stamp duty will not return until 1st October 2021.

Currently, stamp duty is not payable on properties up to £500,000, and this will now continue until 30th June. After this date the nil-rate band will be lowered to £250,000 until 30th September. From 1st October normal rates will resume and stamp duty becomes payable on any property over £125,000.



What is the SDLT holiday?

The holiday was announced in July 2020 and means that no SDLT is payable for the first £500,000 of a property's purchase price until 30th June; and no SDLT payable for the first £250,000 of a purchase price between 1st July and 30th September.

This can mean a saving of up to £15,000 if the purchase completes on or before 30th June 2021.

In Cheshire, where the majority of sales are semi-detached properties with an average sale price of £229,421 (according to Rightmove), many home buyers will have a further six months in which to complete, and either avoid paying stamp duty completely, or benefit from a reduction.

AVERAGE HOUSE PRICES IN CHESHIRE*

Overall average:	£273,616
Average terraced:	£175,140
Average semi-detached:	£229,421
Average detached:	£411,625

*according to Rightmove.co.uk

For example, a £400,000 purchase of a main home would normally be subject to a £10,000 SDLT payment. Up until 30th June, that liability will be zero. After June, and until 30th September 2021, the payment would be reduced to £7,500 – a saving of £2,500 on the 'normal' land tax.

The extension means that hundreds of thousands of transactions that had previously been in jeopardy if any party in the chain withdrew because the transaction could not complete by 31st March now have a lifeline.

Over the past six months, transactions have taken longer to complete as the increased demand which has been generated due to the SDLT holiday has combined with current national lockdown. Many professionals and organisations have been working remotely which can create delays simply due to having to work in a different way. In addition, if any party in the chain becomes ill or displays symptoms and need to isolate this can delay moves. And natural concern for job security has made it more difficult for some buyers to secure, and keep, mortgage offers.

But the new deadlines extend beyond the dates planned for easing of lockdown restrictions. At Poole Alcock we are hugely optimistic that this will result in an exciting year for the property market, and anyone wishing to move house. As we head into summer and the lockdown restrictions are lifted, the conveyancing process will be able to speed up and we will make every effort to ensure that as many buyers as possible can take advantage of the reduced taxes.

To calculate your potential stamp duty liability on any given completion date, [click here](#)



If you are moving home and wish to discuss the impact of the Stamp Duty holiday on your purchase, please call us on 0800 389 7093.

SDLT HIKE FOR NON-UK RESIDENTS

From 1st April, any non-UK residents who are purchasing a property in England will become liable to the non-UK resident SDLT surcharge, which adds an extra 2% to each SDLT rate. It is payable on any purchase over £40,000.

This liability depends on residence, not nationality. So a UK national who is a resident of Spain, for instance, and now purchasing a property in the UK could potentially be liable. Whereas a Spanish citizen, who is a resident of the UK would not be liable.

In addition, if there is more than one purchaser, both (or all) purchasers must be UK residents to avoid the surcharge, unless you are married or civil partners. Spouses, or civil partners, will both be treated as UK residents where they are living together and one member of the couple is a UK resident.

The test to determine whether or not you are a UK resident for the purposes of this tax is different to the normal UK statutory residency test used for income and capital gains tax purposes. For individuals (as opposed

to companies or trusts) the test depends on whether you have been, or will be, present in the UK for 183 days during the year before or the year after the purchase. Which means that it could be very easy for someone who travels for work, or who studies abroad to be caught out.

If, at the point of purchase, you have not spent 183 days of the year prior to the purchase in the UK, you will need to pay the surcharge within 14 days of completion of the purchase. If during the following year, you then spend 183 days in the UK to meet the UK-residency test, you would then be able to reclaim the overpayment. Any such claim needs to be made within 2 years of the purchase completion date.

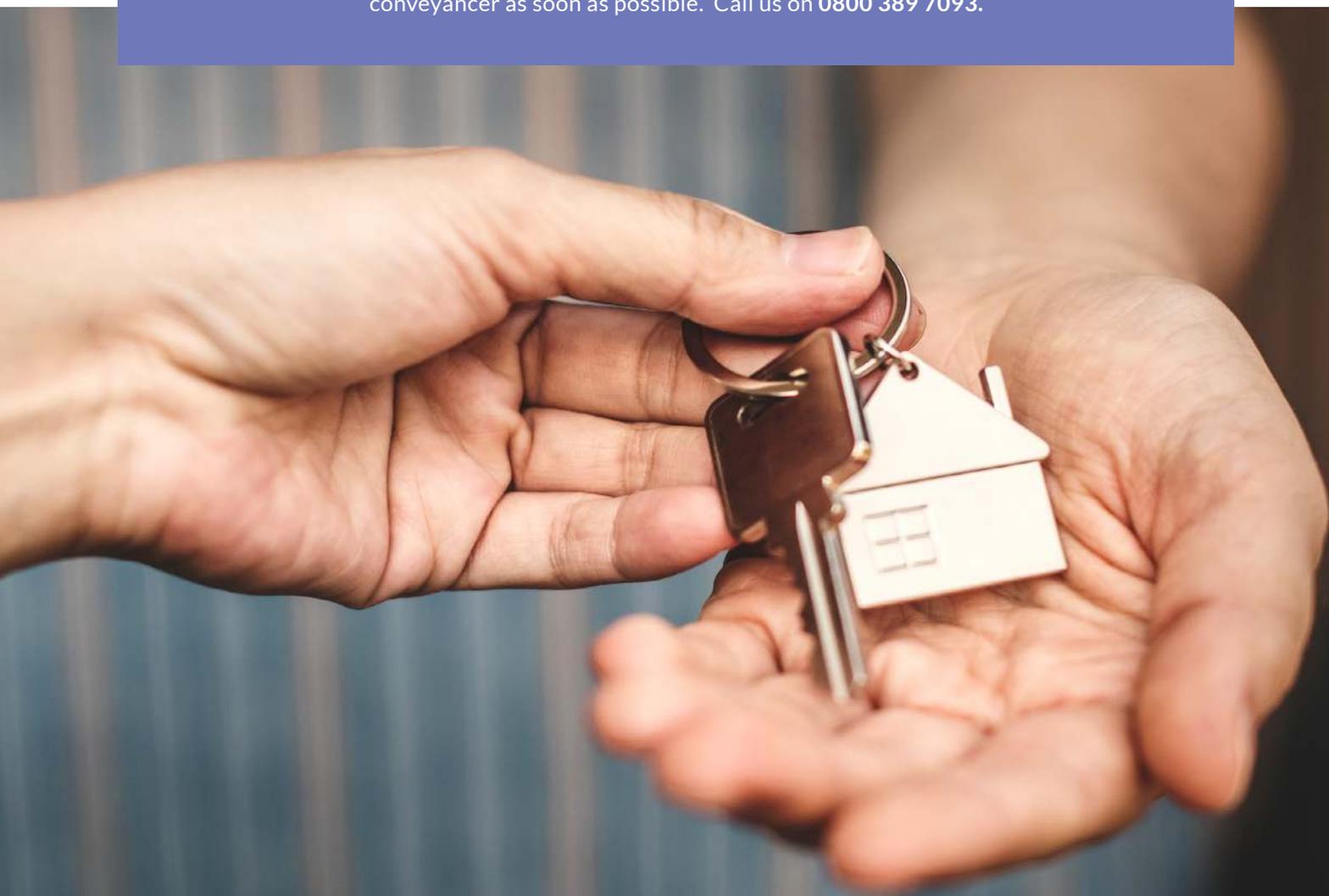
The rule for companies, partnerships or trustees purchasing residential property is slightly different. The test for these organisations will only consider the year prior to the purchase – were they present in the UK for at least 183 days during that year? Companies will be unable to claim a refund if their residency changes in the year following the purchase.

The legislation comes into force on 1st April but as yet only draft legislation has been published. We await more specific guidance on exactly how the new surcharge is to be applied, but on a current reading it appears that the rates will be as follows:

NEW TERMS

	SDLT rates for UK Residents	SDLT rates for non-UK Residents	SDLT rates for non-UK Residents buying a 2nd property
On the first £125,000	0%	2%	5%
On the next £125,000	2%	4%	7%
On the next £675,000	5%	7%	10%
On the next £575,000	10%	12%	15%
On any remainder	12%	14%	17%

If you are purchasing and believe that the surcharge may affect you, speak with your conveyancer as soon as possible. Call us on **0800 389 7093**.



RECENT TESTIMONIALS:

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

Tom and Katie

"Thank you for all your hard work and kindness."

Susan

"Nicola and team have been amazing, always friendly and have gone the extra mile. We would highly recommend them"

Rebecca and Anthony

"Throughout the selling process Cherry and Michele kept me up to date with any issues that came about, and dealt with them professionally and speedily. When I asked questions, they responded efficiently and fully, which was very much appreciated."

Roger

"Very clear communication and always available when I needed to speak. Great advice given"

Sarah

"Chloe team has been great and very professional in dealing with a chain resolving many issues experienced on both sides, always answering the telephone calls and email very promptly despite been extremely busy."

Ahmed

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

Mr Bourne

"I found Emily and the team to be very courteous, responsive, helpful and professional at all times. We are in the midst of a global pandemic with all the disruption that brings to life and work and yet at no time did they let that get in the way of conveyancing our property at the earliest opportunity. Thank you to Emily and the team and all the very best."

Mr Bourne

"James and the team dealt with the conveyancing on the purchase of our property swiftly and kept us informed at every stage, making the process easy and stress free. Would highly recommend."

Jennifer & Andrew

"Amazing service in the purchase of my new house. James Williams was the principle solicitor who was excellent. The team kept me updated on progress throughout. They were quick in responding and always friendly and translated all the law jargon to simple terminology. Could not recommend more."

Jim

"Poole Alcock were a breath of fresh air, an absolute pleasure to deal with. Professional, honest and super-efficient."

Michelle

"We used Poole Alcock for residential conveyancing and they were just absolutely brilliant throughout. We were really pleased with how swiftly everything went and how well they communicated with us at every step of the way."

Angharad

"I have used Tania and her team for two transactions recently and have been exceptionally impressed by the organised, communicative service provided. I would definitely recommend their services to anyone going through the conveyancing process. From the paperwork through to the people they are clear and consistent."

Elizabeth

"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



THE DOMESTIC ABUSE BILL



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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As we enter the beginning of the end of restrictions, with vaccine rollout and children returning to school, many families are reflecting on the past 12 months. Now may be the time when families feel that they are able to make changes in their relationships.

Where domestic abuse is a feature it can feel like an impossible task to detangle from an abusive partner. But it doesn't have to be and there are ways we can help you to leave a relationship and move forward, in a safe way.

Helping families who are suffering, or have suffered domestic abuse is important to our family team and we

work with domestic abuse charities nationally to provide support to victims. We are all following with keen interest the progression of the Domestic Abuse Bill which has been in the making for well-over 12 months.

When I last wrote about domestic abuse in June of last year, the Domestic Abuse Bill was in the committee stage, following its re-introduction in March 2020. The long-awaited Bill is now at the report stage in the House of Lords. This entails further detailed examination of the Bill and scrutiny of proposed amendments. The Bill will then move to third reading- which is this final chance for the Lords to amend the Bill.

The Bill is welcome news to Family Law practitioners. The hope is that greater understanding leads to greater awareness, support and protection for families involved in domestically abusive relationships.

It is intended to create, for the first time, a cross-government statutory definition of domestic abuse and it is hoped that this will help ensure that domestic abuse is properly understood by professionals and the public alike.

The starting point has to be for victims and abusers to be able to recognise when behaviour is inappropriate and

could therefore amount to domestic abuse. Having a statutory definition and clear guidance, which is applied consistently across all public agencies and support services, will help to ensure that this message begins to be heard.

I've set out below some of the other features of the Bill.

DOMESTIC ABUSE ORDERS

The Bill will repeal the existing Domestic Violence Protection Orders (DVPO) and Domestic Violence Protection Notices (DVPN) but Non-Molestation Orders and Restraining Orders will remain available. The intention is that Non-Molestation Orders and Restraining Orders will be used in cases which are not domestic abuse related- such as stalking or harassment and the perpetrator is not a current or ex-partner or a family member.

Two new orders are proposed- a Domestic Abuse Protection Notice (DAPN) to provide immediate protection following an incident of domestic abuse and a Domestic Abuse Protection Order (DAPO) which is intended to provide flexible, longer-term protection.

A DAPN would be issued by the police, in a similar way to DVPNs are currently and would require a perpetrator to leave the victim's home for a period of time, up to 48 hours. They provide limited protection beyond an initial 'cooling-off' period.

A DAPO is intended to become the 'go-to' protective order in domestic abuse cases. The proposed DAPO contains a raft of additional powers such as requiring a

perpetrator to attend a parenting course, an alcohol or drug rehabilitation programme or to access mental health treatment. Electronic tagging can also be imposed and all DAPOs will include notification requirements, meaning that perpetrators will need to notify the police of their name and address and any change to this information.

These proposed changes will mean that being subject to a DAPO will be far more onerous for perpetrators, but the hope is the wide range of prohibitions and requirements available will enable the courts to impose a tailor-made order that will adequately protect the victim according to their specific case.

Any breach will be a criminal offence- with the risk of a maximum of 5 years' imprisonment, or a fine, or both. Where there is a positive requirement imposed upon the perpetrator, the order will specify the person responsible for supervising compliance with the requirements and reporting any breach to the police. It's not clear who will carry this responsibility and potentially it will fall to course providers.

CROSS-EXAMINATION OF VICTIMS

The Bill also intends to prohibit alleged perpetrators from cross-examining their alleged victims within the family court arena. Similar to criminal proceedings where a defendant may have a court-appointed legal representative in certain circumstances, the suggestion is that a legal representative may be appointed and paid from central funds in relation to cross-examining the alleged victim only.

This is a much-needed change to ensure that those who are perpetrators of domestic abuse are not able to continue to abuse their victim through the court process. It is vital to help the accuser to put forward their allegations without his or her evidence being tainted due to fear or intimidation.



SPECIAL MEASURES IN COURT

The intention is also to provide automatic eligibility for 'special measures' to support more victims of domestic abuse to give evidence. Special measures could include giving evidence via video-link or from behind a screen so the accuser does not have to face the alleged perpetrator in court. Special Measures are widely used in family proceedings already, but usually require a specific application to be made.

LIE DETECTOR TESTS

Under the Bill high risk domestic abuse perpetrators will be required to take a polygraph test three months post release from custody and every six months afterwards. If they fail the test they will have to attend more regularly. The test will monitor adherence to licence conditions and the information gathered will be used to refine and improve risk management plans.

Polygraph tests are already used by Probation Officers in the management of sexual offenders since January 2013 and it is expected that qualified Probation Officers will carry out the examinations.

SECURE TENANCIES

Where a victim of domestic abuse is housed in social housing, leaving an abusive relationship can result in that person losing the security of a lifetime tenancy. A lifetime tenancy means that the tenant can stay in their home for the rest of their lives, providing they comply with the terms of the tenancy agreement.

Under the Bill, when re-housing an existing lifetime social tenant, Local Authorities will be required to offer them a new sole tenancy in their own name.

Local Authorities already have the power to terminate a tenancy and evict the perpetrator of domestic abuse, and in this scenario the Bill will ensure that where the victim has a joint lifetime tenancy with the perpetrator, the new sole tenancy will also be on a lifetime basis.

DOMESTIC ABUSE COMMISSIONER

A Domestic Abuse Commissioner will also be established to raise awareness of issues around domestic abuse and to be a voice for victims and survivors. The Commissioner will be expected to monitor the provision of domestic abuse services, carry out research, raise public awareness, make recommendations and hold to account local commissioners, statutory agencies and national government on how they can improve their response.

The House of Lords considered the new amendments on the 8th March 2021 and the suggestions include:

NON-STRANGULATION

The new amendments being considered by the Lords include a new specific criminal offence of non-fatal strangulation which would carry a 5-year prison sentence. This follows concerns raised that perpetrators avoid harsher punishment because strangling or intentionally restricting the victims breathing often doesn't leave a visible mark and so it is harder to prosecute under existing laws, such as Actual Bodily Harm (ABH).

CONTROLLING AND COERCIVE BEHAVIOUR EXTENSION

There are also plans to strengthen the legislation around controlling and coercive behaviour so that it is no longer a requirement to live in the same household as the perpetrator. Instead, it will be necessary to show that the parties are 'personally connected'.

This will mean that ex-partners and family members who do not live together can be prosecuted for controlling and coercive behaviour. Often we find that during and following a relationship breakdown the controlling and coercive behaviours can intensify as the perpetrator tries to retain control over their ex-partner.

REVENGE PORN MEASURES

Another extremely distressing situation is where an abuser threatens to disclose intimate images. There are plans to extend so-called 'revenge porn laws' to further

protect victims in this situation, with those who threaten to share images being subject to up to two years' imprisonment.

BARRING ORDERS

Under Section 91(14) of the Children Act 1989, where a parent repeatedly makes applications to court, a bar can be placed upon any further applications being made for a period of time. It can also require that any applications by that parent are to come before a particular judge. A barring order is used to prevent a perpetrator from continuing to abuse the other parent by way of prolonged and protracted court proceedings throughout a child's life.

The Lords have asked that the Bill clarifies the use of barring orders within the context of domestic abuse.

Whilst we await the finalised Bill to become an Act of Parliament, hopefully at some point over the next few months, please be assured that there are various protective measures that can be put in place to protect victims of domestic abuse and their children.

If this is affecting you and your family call our family team for an initial consultation and we can also signpost you to other sources of support.



FIVE REASONS TO UPDATE YOUR WILL



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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☎ 0800 389 7093

Once you have written your Will it is so easy to put it to the back of your mind and forget about it. While having a Will is important, it is equally as important to ensure it is up-to-date and relevant to your current circumstances.

It is imperative to review your Will when a major life event occurs, such as a marriage, a divorce, the birth of a

child, the death of a relative or a change in your financial situation. Such events may have an impact on the validity of your current Will or your wishes for the distribution of your estate. We always suggest that you take a look at your Will every three to four years to check it still meets your needs and when something major happens in your life.

1. MARRIAGE

Under the law in England and Wales, if you marry, any previous Will is automatically revoked and is no longer valid. This means that if you die without making a new Will after you get married, your estate will be distributed under the intestacy rules, which might not be what you want.

2. BIRTH

If you have a child or grandchild after writing your Will, they may not automatically become a beneficiary even if you have named your other children or grandchildren as beneficiaries. You may also want to choose a legal guardian to look after your children if you die before they reach the age of 18. Therefore, it is important to update your Will as soon as possible after the birth of your child or grandchild to ensure it accurately reflects your wishes.

3. BEREAVEMENT

If someone you have named as a beneficiary in your Will has passed away, you may want to change your Will to state who will now receive this inheritance. It may also mean that there is a change in the value of your estate. It is important to review your Will and change any gifts accordingly to make sure it is up-to-date. In the event that an executor in your Will passes away it is important to choose an alternative executor to ensure your estate is dealt with by people you trust.

4. DIVORCE

When dealing with a divorce people may not have considered amending their Will. Either party is unlikely to want to continue to make a former partner an executor or beneficiary of their Will. Being divorced does not revoke the existing Will, however it does prevent your former spouse from receiving anything; it basically treats your former spouse as if they have died. It's important to note, however, that until the divorce is finalised the provisions of your Will remain valid, so your ex will inherit if you pass away before the divorce goes through. This may mean that you need to make new provisions for both the executors and beneficiaries of your estate. Furthermore, beneficiaries of your estate may have also divorced or are commencing the divorce process which may affect how you want your estate to be passed on.

5. CHANGE IN FINANCIAL CIRCUMSTANCES

If the value of your assets change significantly it is essential to update your Will. If your estate increases or decreases in size you should review your Will to change any gifts accordingly and to ensure it takes advantage of the latest position in terms of tax. It is also important to take into account changes in tax laws and the effect these changes may have on your estate.

If you have a Will and you want to discuss whether you should update it, or don't have a Will at all then please get in touch on either 0800 389 7093 or by email at claire.ellis@poolealcock.co.uk and we are happy to help.





THE WORKPLACE OF THE FUTURE - KEY ISSUES TO CONSIDER POST COVID-19



WRITTEN BY

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On 22nd February 2021, The Government set out its “Roadmap” for the gradual easing of the current lockdown restrictions in England. Very briefly, the four key steps for this are as follows; step one commences on 8th March 2021 with a return to school for all students, and the easing of restrictions on childcare where necessary. Some sectors of the economy will re-open in step two (not before 12th April 2021), with further sectors re-opening in step three (not before 17th May 2021) and remaining sectors in step four (not before 21st June 2021). The government states that people should continue to work from home wherever possible during steps one to three - plans for step four are yet to be considered.

The government has been keen to emphasise that the gradual easing of restrictions is going to be data driven and will be based on an assessment of four key conditions:

- 1 The vaccine deployment programme continues successfully.
- 2 Evidence shows that vaccines are sufficiently effective in reducing hospitalisations and deaths in those vaccinated.
- 3 Infection rates do not surge in hospitalisations which would put unsustainable pressure on the NHS.
- 4 The assessment of the risks is not fundamentally changed by new variants of concern.

Whilst this is very much a cautious approach by the Government, the aim is for this to be irreversible and in any event, the reminder that this crisis will not remain with us forever is very comforting.

Full details of the government's roadmap can be found [here](#). As the guidance is subject to review it's important to keep up to date with any changes.

From a business perspective, one of the most visible changes to come from the pandemic was the overnight switch to working from home for a large proportion of the population. The pivotal moment will inevitably be when the restrictions are lifted though - will businesses default to pre-COVID-19 practices or has the pandemic resulted in permanent change?

There are a large number of people who will be used to and who can see the mutual benefits from the new modes of working and will inevitably like it to continue in some form or another, even after the lockdown restrictions have been eased.

Company policy and the wishes of the workforce will determine this moving forwards. Some organisations might find the shift more organic. Others might really have to work towards implementing new practices. On an individual basis though, whichever way you look at is there are likely to be an increase in flexible working requests moving forwards. As a reminder, any employee with over 26 weeks continuous service is able to submit a request. If you receive a flexible working request in accordance with the statutory framework, you are under a duty to consider such a request. You are able to refuse the application where one or more of the following reasons apply:

- It will cost your business too much;
- You cannot reorganise the work amongst other staff;
- You cannot recruit more staff;
- There will be a negative effect on quality;
- There will be a negative effect on the business' ability to meet customer demand;
- There will be a negative effect on performance;
- There's not enough work for your employee to do when they've requested to work;
- There are planned changes to the business, for example, you intend to reorganise or change the business and think the request will not fit with these plans.

Lockdown restrictions have shown that employees can maintain decent productivity rates and high levels of efficiency. This, together with an increased use in technology, will make it harder for employers to find one or more of the legitimate business reasons to deny a flexible working request. It's also important to remember that flexible working isn't just all about home working. It could also involve; flexitime, job sharing, compressed hours or even annualised hours.

It's also worth noting that there have been reports of new legislation being considered in this area due to the current statutory framework not going far enough to protect individuals. For example, there have been hints that the 26 weeks continuous service requirement will be done away with - flexible working then becoming a day-one right. Proposals also include making flexible working the default position unless there are legitimate business reasons to justify otherwise.

Employers will have to carefully consider whether they still wish to return to "business as normal", or whether they should instead start to plan for a new normal which embraces flexible working practices. It might be that remote working was successful when applied across



the board but once the workplace reopens (with some members of staff continuing with homeworking) this quickly becomes problematic.

So, how can this be managed moving forwards? At the heart of this will be a rethink of current HR practices. This will include implementing new or reviewing existing systems to ensure that you can still effectively recruit, induct and train new employees whilst managing existing employees in an increasingly digital world.

There's great difficulty in replicating the camaraderie usually found in the workplace and the immediate feedback you get from working in close proximity with colleagues and managers. Additional virtual experiences might assist with this but this is then complicated further when you consider that there's likely to be a hybrid workforce with a mixture of remote workers and those who are keen to quickly integrate themselves back to the office environment. Can this be managed effectively, or will this result in two fragmented groups of staff tied together by nothing more than a Company name?

There's likely to be very few businesses that can completely do away with the office. After all, the office is the physical heart and soul of a business and is its way for an organisation to model corporate values and culture. Without this, organisations run the risk of having nothing tangible to tie its workforce together. Employers might be forced to reconsider the purpose of the workplace though. Will this solely be a place for collaboration and for people to connect? This then raises further questions for many organisations. Will remote working arrangements mean that the same office footprint is no longer needed. If so, there might be the option to cut costs by reassessing real estate investments.

Performance management is likely to be much different for employers moving forwards too. As indicated above, we've quickly established that being present in the workplace doesn't necessarily equate to productivity. Employers will

need to take another look at trust in their business and what this means for the employer/employee relationship. Adapting to this new way of working will be challenging for some but it's important that staff are measured not only on their output but their performance and productivity too. Trust flows both ways so it's also important that individuals have trust in a business' management and leadership.

Cultivating and maintaining a sense of belonging in a purely digital or hybrid model is going to be quite a difficult task for businesses. Reinventing the employee experience will be at the heart of this and will be a major factor both in terms of recruitment and retention. This will need to explore; work-life balance, well-being, connection and collaboration – businesses will need to find the sweet-spot between employee satisfaction and providing fulfilment in terms of what they want from their working life with the optimisation of business outcomes. The wheel doesn't have to be reinvented with this. Businesses have had to make drastic changes over the course of the last year in order to address the most pressing needs of its staff. Build on this trust by continuing to be open, honest and transparent. Whichever way you look at it, engagement and communication will undoubtedly be at the heart of these issues and those who invest in their organisation's social and cultural capital will be in the best position to weather the rest of this storm and to future-proof itself due to the return that this generates.

Where businesses are looking to vary terms and conditions of employment and implement new ways of working it is important that these processes are managed effectively and fairly. However well-intentioned these might be, if this isn't complied with then employers might find themselves having to, at best, deal with grievances or in the worst-case scenario, defend costly employment claims.

If you require advice or support with any aspects raised in this article, then please do get in touch – I'd be happy to discuss this with you further.



HOW CAN I AVOID A DILAPIDATIONS CLAIM?



WRITTEN BY

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Sarah-Jane joined the Firm in 2016 before becoming Partner and Head of Commercial and Civil Litigation in 2018. Sarah-Jane's career has seen her undertake a "mixed bag" of litigation work, from simple debt recovery actions to complex commercial litigation matters and everything in between.

Sarah-Jane is perfectly placed to help commercial and private clients in resolving any disputes that they may have, being sensitive to the real impacts of litigation (such as time away from other interests, stresses and costs associated with progressing a claim) and offering practical and pragmatic advice to seek a swift resolution to your dispute.

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The vast majority of commercial leases contain obligations which set out the extent to which a Tenant must maintain and repair the property.

"Dilapidations" is the term generally used to refer to any damages or defects to the property. A dilapidations claim can be brought by a Landlord to recover any loss they may have suffered as a result of the Tenant's failure to return the property to the correct condition, as outlined in the lease. A Landlord will usually make a dilapidations claim at the end of the tenancy, which could come as a nasty and very costly surprise to the Tenant.

The Landlord will produce a Schedule of Dilapidations which will outline what elements of the lease the Tenant has breached along with the repairs (and costings) required to the property. The Landlord will usually suggest that the Tenant repairs these themselves, however, the Landlord could make the repairs and charge the Tenant for their costs. The claim can also include any loss of rent for the period whilst works are being undertaken or until the property is in a position to rent out again.

The Tenant will then have the opportunity to put forward their own Counter-Schedule, arguing which clauses they



deny they are in breach of or suggesting alternative repairs / costings, usually with a view to limit any liability.

Usually, simply from a commercial viewpoint, agreement is reached between the parties, but Court action can be taken which, in turn, simply adds to the costs and stresses of the situation.

Sometimes, in order to seek to limit the Tenant's liability, a Section 18 Valuation Report can be conducted. This effectively caps the Landlord's claim when considering the overall value of the building. For example, a Tenant will not be held liable for £200,000 worth of repairs if the overall improvement in value, from its dilapidated state to its repaired state, is only, say, £50,000. A Section 18 Valuation Report can therefore be a useful tool in the Tenant's arsenal in such claims.

A Tenant may also want to consider arguing that the breaches / repairs being asked of them may not be within the remit of the repairing obligations. For example, if a Landlord is suggesting significant repair works because they wish to change the use of the property, it is not fair to expect the Tenant to cover the costs of any extra works to appease the Landlord, but which fall outside of the remit of the repairing obligations within the lease. The Tenant's obligations are only to repair the property and not to improve it, especially in cases where they will not see the benefit of those works.

Dilapidations are usually only considered when a lease is coming to an end, but should undoubtedly be considered at the very beginning of a lease when the parties are in negotiations. Some points to consider are:

1 Start thinking about dilapidations when the parties first start negotiations and are discussing the heads of terms. It is important to be clear about who is going to be responsible for what areas under the lease. Tenants should review any repair covenants in the lease in depth with their commercial property solicitor. If there is something that is not understood, this needs to be raised straight away and clarified before the lease is executed.

2 A Schedule of Condition can be a useful way of recording the condition of the property and the fixtures and fittings at the start of the lease. This is a Report compiled with a written and photographic record of condition. It may even assist in limiting a Tenant's liability under a lease as it evidences the condition of the property at the beginning of the term and negates any arguments about, for example, how worn a carpet was at the start of the matter and the liability on the Tenant to repair at the end – the liability is not usually to improve the property and so the cost of a new carpet may be reduced to take into account any existing wear and tear.

3 Before making any alterations to the property, a Tenant should obtain their Landlord's consent. Consideration should also be given to the terms of the lease and whether the alterations will need to be removed / the original condition reinstated at the end of the tenancy. This can be expensive and time consuming.

4 Tenants should be aware of the terms of the lease in respect of regular repairs and maintenance obligations. Some commercial leases contain decoration covenants that oblige a Tenant to decorate the interior or the exterior of the property every few years and often within the last year of the lease. If more work is required at the end of the term, the costs could be significant if the repairs are not kept on top of.

5 Any Tenant should keep safe records of anything that may be pertinent to the dilapidations issues for their lease. This may include anything from the lease negotiations to invoices for any alterations or repairs. These may help resolve any disputes at the end of the lease.



It is also worth noting that the costs a Tenant may face in a dilapidations claim may be significantly more expensive if the Landlord is left to do the works than if they are done by the Tenant themselves. There are often reasons why Tenants do not undertake the works themselves before leaving the premises, but it is a good idea to try and do so, or come to an agreement with the Landlord whilst the Tenant remains in occupation – it certainly makes access to do the works easier and is often a cheaper outcome for the Tenant.

Dilapidations issues are complex and can result in expensive claims. If you need legal advice in relation to a dilapidations claim please contact the Poole Alcock team on **01625 380060**.



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