

IN BRIEF

THE LEGAL MAGAZINE FROM THP SOLICITORS | ISSUE 1 | SUMMER 2021

GETTING ON THE PROPERTY LADDER



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- THE LEGAL MAGAZINE
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WELCOME TO THE NEW MAGAZINE FROM THP SOLICITORS, IN BRIEF

If recent times have taught us anything, it is that succinct and clear communication is key, so we have created a magazine, written by our legal experts, that provides clarity on some of the legal issues affecting our clients.

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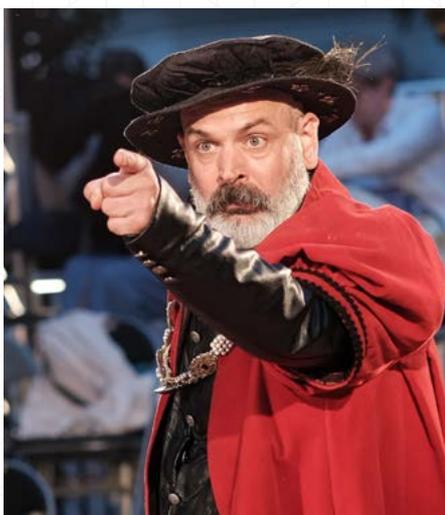
With the law changing all the time, we've picked a few topics that we think will have a general interest and which reflect some of our specialist practice areas. If there is a specific topic you'd like us to cover in future editions please let us know.

We would also like to take the opportunity to express our gratitude to our clients who have adjusted and collaborated with us in new ways and remained patient as we managed unprecedented workloads

in many departments. Whilst face-to-face meetings are still a good format to discuss legal matters, many clients have expressed a preference not to travel to meetings and as such we will continue to offer remote consultation services via video platforms as an ongoing service, where appropriate.

The pandemic has reminded us that what affects one of us, affects all of us, and in unprecedented times we drew on our connections with our

clients, colleagues and professional peers as we confronted the impact of Covid-19 together. It required us to draw on skills and attributes that helped us adapt to the changing way we had to deliver our legal services, and thankfully, our long-term investment in technologies and a flexible working culture meant the transition to remote working could be made quickly and with minimal disruption.



The award-winning theatre production from RABBLE.

One thing we have really missed is the ability to get together as a firm and get involved in charity work. We were delighted therefore to take part in the Reading Legal Walk this July, a sponsored 10km walk that raises thousands of pounds for frontline

free legal advice services in Reading and the Thames Valley such as the Citizens Advice Bureau. We have also continued to support the local charities with whom we had existing relationships such as RABBLE that produces award-winning theatre

and educational opportunities. We were so pleased when they were finally able to put on a sell-out production of the original play *The Last Abbot of Reading*, performed in the Reading Abbey ruins, that told the tale of Abbot Hugh Faringdon and his devastating relationship with Henry VIII.



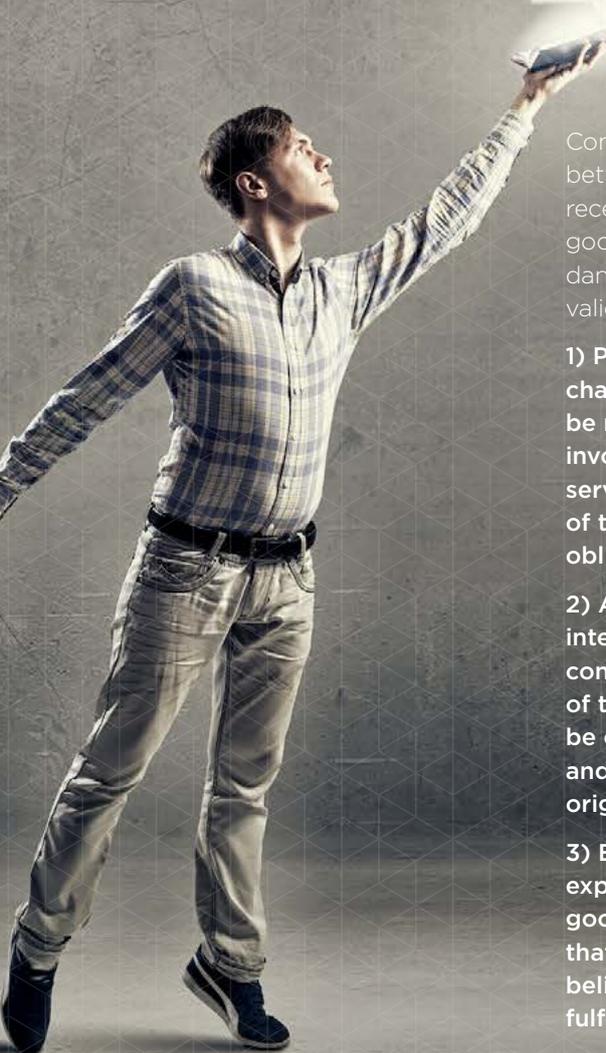
The THP team taking part in the Reading Legal Walk in July that raised over £11,000.

There is no denying that Covid-19 changed the world in ways we never could have envisioned but we are pleased to say it also brought our values to the fore. The future is hard to predict. But one thing is clear—we will hold our course as a law firm that delivers our best work for our clients, provides an environment that is diverse and inclusive, and makes a positive impact in the communities where we live and work.

The THP Solicitors Partners.

THE BIG IMPLICATIONS OF SMALL PRINT

If you run a business, spending time drafting and reviewing contracts is unlikely to be at the top of your agenda but they are crucial elements that can drive and protect and improve your company as well as raising its reputation in creating respect for the way you approach negotiations and the completion of commercial agreements.



Contracts document the relationships between parties for the supply and receipt of goods or services or even goods and services combined. The dangers of not having a clear and valid contract in place are:

1) Personalities and relationships change and cannot any longer be relied on as new people get involved in the supply of goods and services who have a different view of the “deal” and the respective obligations of the parties.

2) A current trend in the law which interprets actions emails and conversations as being the basis of the contract which could well be construed to your disadvantage and not be in line with what was originally intended.

3) Each party’s perception and expectation of the delivery of goods and services differ so that on completion one party believes that the other has not fulfilled its obligations.

Clarity is vital in the contract wording and its descriptions of terms on which goods and services are to be supplied and received.

Understanding the terms of contracts you enter into enables you to manage the relationship as the contracts progress and spot actions and omissions which may become a problem under the contract before they “explode”. One of the fundamental mistakes made in documenting business relationships and the creation of contracts are phrases which “agree to agree”. Leaving a lack of clarity on issues relating to the supply of goods and services or the delivery of goods and services can then be again misconstrued and place an obligation on one of the parties to accept the reasonableness of terms and conditions which was not their intention.

To be clear if both parties agree then the terms of a contract can be varied by that mutual agreement.



Many business owners have gotten themselves into sticky situations by not reading a contract properly.

There is never a need in a contract to incorporate wording that says that the parties may agree to vary it because all that does is place an onus on the people to come to an agreement rather than maintain their discretion not to vary the contract.

As business owners you will have a variety of contractual relationships with employees, contractors, suppliers, customers/clients and other third parties.

Whether they are “click to accept” terms on your website or printed on the back of an order form your standard terms and conditions are the unsung saviours of your business. They give your clients clarity about what to expect when they work with you.

Other key contracts that most businesses will have in place will include:

- **Confidentiality agreements/non-disclosure agreements**
- **Service level agreements**
- **Sales contracts for the supply of services or goods or goods and services**
- **Partnership or shareholders agreements**
- **Employment contracts**
- **Contractor and subcontractor agreements**
- **Website agreements**
- **Privacy policies**
- **Licences**
- **Letters of intent**
- **Software supply and distribution agreements**
- **Framework agreements and statements of work**

- **Purchase agreements and lease agreements relating to property**
- **Loan agreements and financial agreements for the supply of funding**
- **Agreements relating to intellectual property rights**

KEY TERMS

It's important to make sure your contract terms are specifically written for your business, so avoid the temptation to copy someone else's terms as their business is different and their terms may not be legally valid in your case. If you don't specify terms and conditions, you put yourself at risk of uncertainty and misunderstandings – it's vital to establish the actual arrangement between the two parties involved in any deal.

The most important aspect of any contract is to ensure that you fully understand all terms in the contract before you sign it. Many business owners have gotten themselves into sticky situations by not reading a contract properly. If you have signed agreements with other business entities you need to know whose terms take precedence – theirs or yours? And are the details fleshed out or just contain overarching principles? You need to understand who it is you are actually contracting with (company, individual, partnership) and for how long.

KEY TERMS INCLUDE:

- **How can you/they terminate the contract?**
- **Who's doing what?**
- **What Goods and/or Services are included (or excluded)?**
- **What is the process for delivery?**
- **Are there any minimum standards and who decided if they have been met?**
- **On what basis is everything charged (advance or arrears) and what happens if someone defaults?**
- **Who will own what?**
- **Is confidential information protected?**

Hopefully, you'll never have to take legal action based on the contract, but even after an agreement comes

to an end it is important to keep a copy on file for several years in case a later issue should arise.

As a supplier it is vital that the contract not only documents your obligations but also the customers obligations. It is very easy for a contract to focus on the suppliers obligations but there needs to be protection for a supplier that identifies what a customer must do to enable the supplier to deliver and a provision that says the supplier will not be in breach if that breach results from a customer being in breach of their obligations.

IF YOU DO NOTHING ELSE...

The whole idea is to get legal protection for your business and its resources as your business grows.

- **Know your contracts and ensure they reflect changing realities.**
- **Timetable key dates to avoid unnecessary costs that could harm your business**
- **Let your contract help manage your relationships rather than simply govern them**
- **Make sure contracts add value**
- **Protect your Intellectual Property**

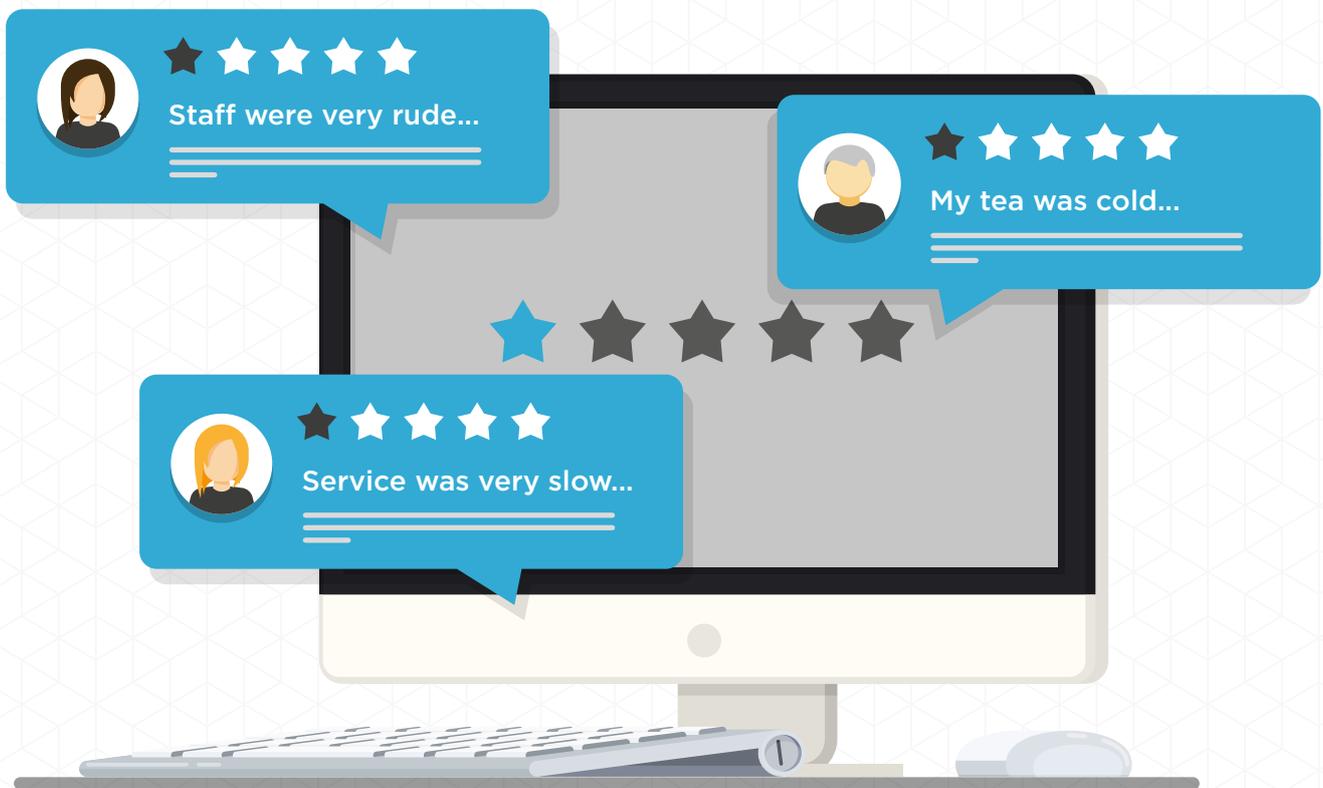
Sadly, it is often not until something goes wrong that many people appreciate the true value of a contract. Resolving these issues can be extremely costly in terms of time, money and stress whereas having a well drafted legally binding contracts in place would have been cheaper, simpler, and eliminated these problems in advance.

If you would like to know more about the contracts you should have to protect your business, or would like us to review the terms of a contract before you sign, please contact Malcolm Head on Tel: 0118 920 9490 or Email: malcolm@thpsolicitors.co.uk.

Our Corporate & Commercial team have a wide range of UK and cross border experience in contract and contract negotiation for international corporations to owner managed SMEs, in a host of different sectors, e.g. construction, software and services, retail, food industry, events and hospitality, and even offshore businesses.

REVIEW SITES AND DEFAMATION

Third-party review sites such as TripAdvisor, Trustpilot and Google are hugely important for many types of business. Independent feedback from customers on their experiences can have a great influence on prospective clients and whether not they make a purchase.



But like anything in the public eye that is out of your control, it can be a gamble. Whilst lots of positive reviews can help a business grow, negative reviews may cause it to struggle.

SO, IF YOU GET A NEGATIVE REVIEW WHAT CAN YOU DO?

The starting point is that if a review is someone's honest opinion, it is usually perfectly permissible. If a person felt that someone was rude, the tea was cold or the service was slow, they are allowed the right to

freedom of expression. The business owner can decide if they wish to either ignore the view or respond to it. If the latter, it is often best to keep responses short, measured and polite so as not to exacerbate the matter.

This is the point when you need to decide if your loss is worth the effort required to remove the defamatory post and/or pursue damages. While all businesses can expect some level of criticism from time-to-time, defamation that is likely to cause

serious financial and reputational damage to a business may need more forceful action and you might want to consider taking legal action.

ASKING FOR A DEFAMATORY REVIEW TO BE REMOVED

A review that isn't truthful is likely to be considered defamatory. Defamation is an untrue spoken or written expression that when published is deemed likely to harm someone's reputation and/or cause financial damage. If the defamatory statement is in permanent form e.g.

online video, written email or review site etc it is known as libel. If it is in temporary form, such as spoken words, is known as slander.

The first step if you receive a defamatory review is to see if it can be removed. In some cases, the business owner may be able to do this themselves although usually they will have to put in a request to the review site explaining why they wish it to be removed. Unfortunately, many review sites are loath to remove negative reviews and will only do so in a limited number of cases, as they wish to preserve their reputation as a neutral space where both good and bad customer experiences are represented.

CAN YOU TAKE ACTION AGAINST THE REVIEWER WHO MADE THE DEFAMATORY STATEMENT?

Disputes for a defamation claim are governed by the Pre-Action Protocol for Defamation. The Protocol requires a formal Letter of Claim to be sent to the reviewer inviting their cooperation in the removal of the libellous review. If this is unsuccessful

Court proceedings (in the High Court) may become necessary, at which point the reviewer will not only find themselves with the burden of proving that the comments they made were true, they are also at risk of having to pay compensation as well as legal costs which could be substantial.

There is no cap on the damages that can be awarded in Court as the amount would depend on the level of financial loss suffered. The legal costs will depend on how long the case took to resolve.

WHEN IS A REVIEW WEBSITE LIABLE?

What about the review site that fails to take down defamatory comments or otherwise take action? The Defamation Act 2013 specifically addresses the issue of defamation and has a procedure for defamation victims to follow with website operators like review sites. Under the Act, the Pre- Action Protocol and accompanying Regulations a Notice and Takedown procedure has been implemented under which

a victim may issue a Letter Before Action with a Notice of Complaint to the operator of the website. The operator has an obligation to process the Notice within forty-eight hours of receipt. If the author is not known and can't be contacted, the Operator has 48 hours to take down the statement. In most cases that may well be the end of the matter.

If the author is known and is contacted by the Operator, the author has until midnight on the fifth day after the Notice was sent to respond. The author may refuse to allow the statement to be taken down. In this case, unless they consent for the Operator to release their details to the company that has been reviewed, the company will need to get a court order to obtain the Author's details.

You are expected to follow the Pre- Action Protocol and Notice procedures before issuing any court proceedings for defamation. An operator can be liable for the defamatory comments of a user only if it fails to follow the procedures under Section 5 of the Act.

★ ★ ★ ★ ★ THE RECENT TRUSTPILOT CASE ★ ★ ★ ★ ★

In February 2021, the review site Trustpilot was at the centre of a high-profile libel claim by a law firm who wanted the website to take a review down but Trustpilot refused under the principle that the post was a matter of freedom of speech.

The law firm's client had engaged the law firm for help with a dispute and paid a £200 fixed fee. Unhappy with the legal advice he had received the client posted to Trustpilot that his experience had been 'A total waste of money another scam solicitor'.

The law firm told the Court that after the negative review was posted there was a 'measurable decline' in the number of new business enquiries in the weeks following. In his defence to the libel action, the client argued honest opinion, public interest, truth and whether the claimant suffered serious harm. He

also offered to remove the review in return for a refund of the £200. The Court struck out the defence of honest opinion, as the law says this cannot succeed where the words used – in this case, 'scam' – convey an allegation of fraud. They also said that demanding money to remove the review "wholly undermines the defence of public interest".



The Court said the client never fully articulated why he was so dissatisfied and that, rather than engage with the law firm in accordance with its dispute resolution procedure, he had left the review. The law firm was awarded £25,000 from the client in damages

and Trustpilot was ordered to remove the defamatory review on the basis that the law firm's client was unlikely to take it down himself. It should be noted that at the time of writing, Trustpilot said it had not yet been served with any order requiring the post to be removed, but in the event, this did happen, the order would be challenged.

In many cases, a single bad review may not be terribly damaging to your business if it is negated by lots of positive reviews. However, in cases where the reviewer is defaming your reputation and financially damaging your business, then it may well be advisable to take forceful action.

**Contact Laura Colebrook
Tel: 0118 975 6622 or on
Email: l.colebrook@thpsolicitors.
co.uk or who will be happy to
assist you.**



REDUNDANCY

A BRIEF GUIDE

Redundancy situations can be overwhelming and unsettling for everyone in the workplace. Should an employer need to consider redundancies it is a legal requirement that they follow the set redundancy procedure carefully to ensure that employees have been treated fairly and to avoid unfair dismissal claims.

Here is a brief outline of some of the essential steps in the redundancy process. This process can take 2-4 weeks depending on the number of employees affected.

- An employee only qualifies for statutory redundancy pay if they have worked for their employer for at least 2 years. There are varying levels of statutory redundancy pay, based on age and length of service (capped at 20 years).
 - 0.5 week's pay for each full year worked under 22
 - 1 week's pay for each year worked between 22 and 40
 - 1.5 week's pay for each full year worked aged 41 and up



When determining which roles will be placed at risk of redundancy it is important that the employer focuses on the role, rather than the individual...

- Both before and during the redundancy process an employer has to be completely sure there is a genuine redundancy situation and there are no alternatives, including changes to an employee's terms and conditions such as reduced working hours or pay, or alternate roles.
- To be considered a suitable alternative, a role needs similar duties, skills and terms and conditions. If an employee refuses a role that is deemed a 'suitable alternative', then they would not necessarily be entitled to redundancy. If the role is not 'suitable' in legal terms, e.g. a more junior, it can still be offered to an employee but if they don't accept it they would be entitled to redundancy pay.

- When determining which roles will be placed at risk of redundancy it is important that the employer focuses on the role, rather than the individual employee undertaking that role.
- If several people perform the same or a similar job within the area of business, they will all need to be included within the 'pool' of people at risk of redundancy to make selection fair. Once an employer has selected the pool for redundancy, they need to let people know their post is at risk and why, and be completely clear on their reasons for redundancy
- Employers need to develop logical and objective criteria to score staff against to determine who will be dismissed for reason of redundancy.
- Following the group meeting, which can be done remotely, employers will need to hold individual meetings with everyone in the 'pool' to get their input on the selection criteria, seek volunteers for redundancy, and provide an illustration of redundancy entitlements. Employees have the right to be accompanied in consultation meetings and suggest alternative options to redundancy. It is important that thorough and accurate notes are taken during these meetings, and that an outcome letter written to the employee after the meeting addresses any points raised.
- After the first round of consultation meetings employers need to evaluate the feedback they have received from their employees on both the proposed redundancy situation and the selection criteria, and consider this when scoring. At the second consultation meeting employers should explain how an employee scored and offer them the opportunity to comment. An employer does not have to comment on how others in the pool scored in comparison.

- After the second consultation, the employers should address any additional points raised and invite the employee to a final consultation meeting, at which the outcome may be redundancy.
- At the final consultation an employer can issue the employee with notice of redundancy. This needs to be in writing and detail their leaving arrangements, notice and redundancy terms. This letter must also include their right to appeal this decision.
- If an employee is required to work their notice, the employers is legally required to continue looking for alternatives to redundancy during this period.



Both before and during the redundancy process an employer has to be completely sure there is a genuine redundancy situation and there are no alternatives...

- The right to appeal. For the process to be considered fair, an employee needs to be able to challenge a redundancy decision. The appeal process should be as objective as possible.

The above is a very simplistic look at the redundancy process and does not take into account all of the issues that may arise. Whether an employer or employee, we are able to deal with all conflicting aspects and comprehend both sides of every argument. We will always provide clear and up to date information on the anticipated timescales and costs and carefully manage both aspects.

We can advise you on the redundancy procedures, check over any paperwork and advise on possible claims. Contact Alexis Lane for more information on Tel: 01491 570 909 or Email: a.lane@thpsolicitors.co.uk.

The Government's Stamp Duty Holiday may finally be ending in September 2021, but there are still a number of other schemes open to try and help people get on the property ladder.

GETTING ON THE PROPERTY LADDER

The government mortgage guarantee scheme launched in April 2021 and is available to existing homeowners as well as first-time buyers and is not restricted to new homes. It allows buyers in England to obtain a mortgage on homes worth up to £600,000 with only 5% of the property's value as a deposit.

Around 86% of properties up for sale currently have an asking price of £600,000 or less, according to property website Rightmove. The government will offer lenders the option to buy the guarantee they need to provide mortgages that cover the other 95%. The guarantee will compensate them for a portion of their losses if the homeowner defaults on their loan. The usual affordability checks will still be carried out before a loan is approved.

Most low deposit mortgages were pulled in 2020 because of the pandemic, as they are often seen as riskier by lenders as they are vulnerable to falling house prices. There were just eight on the market in January 2021 according to the Treasury. All lenders under the new scheme will also offer mortgages fixed for at least five years as part of their range of products, giving buyers some sense of security by knowing their mortgage rate won't go up over the short term.

The new mortgage guarantee scheme sits alongside the other schemes already available for first time buyers:

- **Help to Buy ISA** which is now closed to new applicants but those who already hold one have until November 2029 to use it. It is a tax-free savings account where for every £200 saved the government will add an extra £50. There is a maximum limit of £3,000 which is paid to your solicitor when you move.



Most low deposit mortgages were pulled in 2020 because of the pandemic, as they are often seen as riskier by lenders...

- **Help to Buy equity loan** where the government lends up to 20% of the home's value – or 40% in London – after the buyer puts down a 5% deposit. The loan can only be used to buy a new build property. The scheme was replaced with a new one with the same name on April 1, 2021. Under the old scheme, the property value had to be worth less than £600,000 to be able to qualify for a loan but loans under the new scheme are capped at 1.5 times the average first-time buyer property price by region in England.

- **Lifetime ISA** gives anyone aged 18 to 39 the chance to save tax-free and get a bonus of up to £32,000 towards their first home. You can save up to £4,000 a year and the government will add 25% on top.

- **Shared ownership.** Co-owning with a housing association means you can buy a part of the property and pay rent on the remaining amount. You can currently buy anything from 25% to 75% of the property but you're restricted to specific ones.

- **First Homes affordable housing plan,** which is set to include 1500 new property units. These will be no different from other properties except they will be sold to first-time buyers with a discount of 30%.

For more information on Residential Property purchases or sales please contact Emily Jones on e.jones@thpsolicitors.co.uk or call 0118 975 6622.



KATE GARRAWAY AND LASTING POWERS OF ATTORNEY

The heart-breaking impact of Covid-19 has been publicly apparent for journalist Kate Garraway whose husband Derek Draper was diagnosed with the coronavirus in March 2020, and even after a year in hospital, still needs round-the-clock medical care.



During an already stressful time, Kate had to juggle the needs of Derek and her children with managing their household's finances. This was made more difficult as Derek was often the named person on the bills, investments, bank, and insurance policies. Derek didn't have a Lasting Power of Attorney (LPA) which would have legally enabled Kate to access the assets in his name. Without an LPA it has been a very complicated and drawn-out process for Kate to gain access to Derek's key accounts and sort out financial matters. In fact, it is impossible to access investments in someone's sole name without an LPA.

In cases when someone has not made an LPA for their Property and Finances, it is possible to apply to the Court of Protection to be appointed as their Deputy however, this is far more expensive and lengthy process than putting an LPA in place. It also requires the vulnerable person to have lost their mental capacity and be unable to make decisions for themselves. Whilst in some cases this test of capacity is easily satisfied, in Derek's case it is borderline because his medical team are still trying to assess the extent Covid-19 has had on his cognitive health.

Kate has spoken very openly in press interviews about how not having an LPA in place has also caused her worries about Derek's health. Whilst you may think that

Kate as his wife would be able to make decisions about his health and welfare without the LPA in place, in this case it would be Derek's medical team. Kate does not have a legal right to access his medical notes due to data protection. It is extremely difficult and only in exceptional circumstances that a Deputyship for Health and Welfare shall be granted by the Court.

It is impossible to access investments in someone's sole name without an LPA.

All of this could have been avoided if Kate and Derek had appointed each other as their attorneys. As a married couple in their early 50's they probably hadn't considered an LPA to be something that they needed, but unfortunately the nature of illness or accidents is that often they occur unexpectedly and at short notice. This is why it is important to plan ahead just in case you need someone else to handle your affairs and make decisions on your behalf if you are no longer able to do so due to either a short or long-term incapacity.

There are two types of Lasting Power of Attorney:

- **Property and Finance LPA** allows a person to appoint someone to look after their financial affairs. It will come into effect as soon as it is registered which means that the attorney will be able to start making decisions about property and financial affairs straight away if that is the wish of the donor.
- **Health and Welfare LPA** gives an attorney the power to make decisions regarding the consent for medical treatment and care. It is not possible to use a health and welfare LPA until the person who made it has lost their mental capacity, through illness or accident, but it should be registered with the Office of the Public Guardian before it can be used.

An LPA allows you to appoint individuals who you trust, who can assist with your property and financial affairs and/or health and welfare decisions if like Derek you are ever in the position of not being able to give your own instructions.

Like an insurance policy, whilst we all hope an LPA will never be required if the worst happens your loved ones will have the necessary authority to deal with your finances and make decisions about the care you should receive.

Contact solicitor Elizabeth Moffitt today on Tel: 01491 570 900 or Email: e.moffitt@thpsolicitors.co.uk who can help you create, register or alter Lasting Power of Attorney.

THE WORD FROM THE STREETS

THAMES VALLEY COMMERCIAL PROPERTY SURVEY RESULTS



THP Solicitors has polled over 100 commercial property surveyors and agents in Thames Valley to get their insights into trends in the local market, now and in the future.

Collectively the respondents felt that the decline in high street shopping, rise in e-commerce and shift in social behaviour to working from home, would be the biggest influential factors on the commercial property market in the Thames Valley in the next 5 years.

With footfall across high streets and shopping centres decreasing year on year for the best part of a decade even before the pandemic this is no

great surprise. Whilst some retailers will always feel a physical space is a synonymous part of their marketing strategy, and those with personal service-based businesses have no other option, poor performing outlets will be under threat and landlords of retail space may need to consider their options, with many looking to convert to residential.

With flexible working becoming the norm and the need to be physically

present in your place of work no longer a priority, a mass exodus of people from the cities to the more comfortable suburbs is underway. The proportion of buyers within London postcodes registering with estate agencies outside of the capital has reportedly almost doubled, which is great news for the Thames Valley, with larger properties, where working from home options are more comfortable and commute time is less of a factor, fuelling the demand.

MARKET DEMAND

Industrial distribution/logistic units were in the most demand by far with 75% of the survey votes, closely followed by industrial units for manufacturing. Next came flexi-space/ serviced office and out-of-town/provincial office space. Retail units, both in town centre and out of town locations, together with pubs/hospitality venues were in the least demand after suffering the effects of Covid-19 and numerous lockdowns. These trends have been reflected in the transactions THP Solicitors are retained on, with a number of our manufacturing clients looking to increase their industrial space to absorb the growing demands of their businesses.

TENANT ACTIVITY IN GENERAL

With many tenants struggling to pay their rent, we wondered what types of terms they might be seeking from their landlords. The most popular demand, 64%, was rent payments on a monthly basis rather than a quarterly basis, allowing tenants to manage their cash flow more effectively. To date all our landlord clients at THP Solicitors have accepted these requests from tenants and are conscious that any decision as a landlord at the moment needs to avoid a tenants insolvency, leaving the landlord with no rent, difficulty in securing a new tenant at a similar rent and possibly even a liability to pay rates on the empty property. Shorter terms and rent reduction were the next most popular options along with more tenant-friendly break clauses.

Interestingly, the survey indicates that there has been very little movement between tenants and landlords to instigate direct discussions on which to base negotiations. This hesitancy by both landlords and tenants to communicate won't help either weather the storm, and just kicks the issue down the road. At THP Solicitors we are helping many clients start these conversations and act as a third party in exploring the options. However, whilst we would encourage discussions, both sides should resist the temptation to reach an informal agreement as that may

Hesitancy by both landlords and tenants to communicate won't help either weather the storm.

result in unintended consequences. Our advice is that any agreement to vary the existing terms should be very carefully considered and concessions, time limits, interest payments and mechanisms for ending the agreement documented.

PROPERTY OWNER ACTIVITY

We asked what property owner/investor clients were considering in terms of activity. Results from the survey showed that 45% were enquiring about converting commercial space to residential and an equal number were enquiring about selling off all/part of their property portfolio and/or passing their property business/management onto family/ others. This re-invention of commercial portfolios to residential can be challenging as the scale isn't always attractive for investors, especially retail to residential. However, with an ever-increasing population and national shortage of housing stock, residential demand should be self-fulfilling so potentially a less risky investment. Permitted Development Rights, originally introduced by the government in 2013, allow offices to be converted to residential use and has led to a significant amount of conversion activity, even pre-pandemic.

THP Solicitor's portfolio clients are carrying out strategic reviews of their property stock in consideration of the change in risk of some of their tenants and impact the pandemic has had on the retail and office sectors in particular. These reviews are likely to continue until the market is more settled, and we are able to assist clients following these reviews with lease re-gears or other asset management implementation.

OFFICE

Unsurprisingly, with the majority of office-based workers still working from home at the time of the survey, 63% of agents had seen a decrease in new enquiries for rented office space both in town centres and more provincial locations. Where there were new enquiries, these were centred around serviced office/flexible workspaces (30%) or the ability to demand more flexible lease terms.

Flexible working will undoubtedly be one of the legacies of the pandemic. It will have made many occupiers evaluate their office requirements and reflect on how much of the traditional workspace space they need to run their businesses. Whilst for many 'home working' maybe be losing some of its charm after numerous lockdowns, a hybrid of home/ office agile working is expected, and landlords and office space operators will have to be equally flexible in their offerings to remain relevant. Social distancing, staggered shifts/ work bubbles, a non-reliance on public transport to gain access etc will all play a part whilst the immediate effects of the pandemic remain the shift to home looks set to stay as our habits change permanently.



INDUSTRIAL

We asked if the survey participants had seen any trends emerging in the industrial sector and over 66% had seen an increased demand for rented industrial premises and 50% increased demand for industrial units to purchase. This they felt was reflected in the value of industrial units on the market with over 40% seeing an inflation in prices. The industrial and logistics sector has been on a tremendous run over the past few years fuelled by many factors including the UK government encouraging manufacturing and the need for storage/warehousing and logistics space to support the e-commerce sectors. This trend doesn't look like reversing anytime soon.



A reduction in office commuting, change in shopping habits, and increased attraction of independent traders, if sustained, may see retail reinvent itself in the suburban shopping parades/retail centres as spend is reallocated locally.

Regional distribution centres that serve not only the shops but smaller logistics hubs close to major towns and cities, which in turn serve home deliveries, are in high demand. Multi-let industrial estates benefit from the stability the diversity of their tenants bring, as they often span a number of industries and business types. The increased demand for industrial units, especially those that are small /medium sized, may result in rents increasing as demand for space exceeds supply following the end of lockdown. The transactions the commercial property team at THP Solicitors are handling include taking increased space for manufacturing clients and also an appetite amongst our investor clients to look to acquire industrial sites in the South East to increase their portfolios.

RETAIL

We asked participants what were the most common enquiries from tenants of retail spaces. By far, enquiries relating to exercising break clauses and/or regearing leases were the most common with 50% of the vote. Next came enquiries regarding early termination for tenants who cannot see a sustainable future. Interestingly there were very few enquiries regarding the option of a turnover based rent, but this may be due to tenants not realising this could be an option and/or landlords not wishing to share more economic risk. Some investors will be looking to offload their retail investments and rents and capital values are expected to continue to fall across the sector, especially in expensive prime locations, as more retailers focus on their online offerings. At THP Solicitors we are also seeing a clear trend of retail units being re-let as food and drink orientated businesses and the application of the new use class E has assisted in this.

But whilst the vacancy rate trend is likely to continue as the impact of the pandemic is worked through, hopefully it's not all doom for the retail sector. A reduction in office commuting, change in shopping habits, and increased attraction of independent traders, if sustained, may see retail reinvent itself in the suburban shopping parades/retail centres as spend is reallocated locally. However, these retailers will be at the smaller end, wanting secondary units and they are likely to demand shorter retail leases with more frequent break intervals. Landlords may also favour letting to tenants in 'essential retail' such as convenience stores, takeaways, and pharmacies.



DEVELOPERS

In good news for the property sector, only 20% of those surveyed reported instances of developers looking to defer land purchases until more clarity emerges in the market and/or deferring payments based on development or planning achieved. The overwhelming trend (70%) was in developers looking to purchase commercial sites to convert to residential with 60% being asked to look for land to acquire opportunistically. That being said, 40% reported that developers were looking to take options rather than purchase sites. There were no reports of any developers looking to develop non-residential building projects.

Based on this investor and development activity, those who responded to the survey felt the top 3 influencing factors for development projects in the Thames Valley would be the trend of people moving out of London into commuter belts such as the Thames Valley (90%), followed by the relaxation of planning laws (64%) and finally government incentives to stimulate the demand for residential developments such as the e.g. mortgage guarantee scheme. THP Solicitors have a strong working relationship with a number of active developers in the Thames Valley and all have been actively seeking developments during the pandemic. We have acted on a significant rise in both conditional and unconditional purchases as well as options as the thirst for development continues despite some of the other challenges to commercial real estate as a whole.

If you are an investor, landlord, tenant, or developer and would like legal advice on any commercial property transaction please contact Frances Watts, Head of Commercial Property on 0118 9209499 or frances@thpsolicitors.co.uk.

PENSION SHARING ON DIVORCE

Finances, along with children, are an intense focus between divorcing couples for obvious reasons. But whilst a lot of attention might be on the home and bank accounts, pensions are often overlooked, even though they can be a significant asset.



Research shows that three quarters of divorcing spouses do not consider pensions, disproportionately affecting women who are estimated to miss out on £5 billion in financial settlements arising from pension sharing each year.

Pensions may not feature in some divorce discussions because they are 'invisible finances' locked away for the future or a lack of awareness that pensions can be divided on divorce. The average couple's pension pot is worth £100,000 and not considering it when negotiating a divorce agreement could put one party at an unfair disadvantage when approaching retirement. If the separation happens later in life, an individual will have less time to rebuild their savings and may have to put retirement plans on hold for longer.

Divorces went up by nearly 20% in 2019 - the biggest annual increase since 1972 and with the introduction of 'no-fault' divorces in April 2022, where divorcing couples will be able to agree to a divorce without attributing blame, signs point to this trend continuing.

HOW PENSIONS CAN BE DEALT WITH IN DIVORCE

A spouse could be entitled to a portion of their ex's pension if they haven't had the opportunity to save themselves, for example if they took a career break to look after children, or if the values are different due to one party earning less during

the marriage. The starting point in divorce is an equal division of the assets which extends to pension assets. It is essential to obtain Cash Equivalent Transfer Values (CETVs) of all pensions as soon as discussions commence. It can take the pension administrator up to three months to provide these essential figures, particularly for public sector pensions. Members of pension schemes are entitled to obtain one CETV free of charge every 12 months.

Pensions can be divided when divorcing in three ways and it is vital that any arrangements are confirmed in a Court Order otherwise it cannot be implemented.

Each option has pros and cons, so it is important to understand these when deciding what approach to take.

- **Pension sharing order** – both parties' pensions are considered together and then one party gets a percentage of the other's pension(s) now, either topping up their existing pension pot or being paid into a new pension in the recipient's name. This is a simple process, enables a clean break and means both parties have their own pension pot. The pension cannot be converted to cash and cannot be accessed unless the recipient of the pension credit is over 55. The pension administrator can charge a fee of up to £3,000 to implement a pension sharing order.

- **Pension earmarking/pension attachment order** – one person keeps their pension but pays an income and/or lump sum to their ex-spouse once they access their pension pot upon retirement, similar to maintenance payments. This means that there is not a clean break. The person who doesn't own the pension is unlikely to have any control over when they receive the benefits and payments might stop when the person who has the pension dies, or where the person receiving the payments re-marries. There are also tax implications as any benefits will be taxed as belonging to the person whose pension it is.

- **Pension offsetting** – the value of the pension is offset against other assets, for example the matrimonial home. It achieves a clean break and could help if either party wishes to remain in their existing home. However, one of the parties may be left with little or no pension income in retirement and it can be hard to split assets 'fairly'. Capital and pensions cannot be treated as like for like and therefore there should not be offsetting on a pound for pound basis.

If you have any questions regarding pension sharing on divorce, or any aspect of family law, contact Julia Drury on 0118 975 6622 (Lower Earley office) or Richard Rodway on 01491 570900 (Henley-on-Thames office) who would be happy to help you.

GUIDING YOU THROUGH STORMY WATERS



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