

the zone

Commercial News



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'Corporate Social Responsibility'

The Latest Business Buzzwords

The last few years have seen exponential growth in corporate ethical trading with initiatives such as 'Fair Trade' products trail-blazed by the Co-op. More recently, innovative Sainsbury's announced plans to reduce its carbon footprint by transporting goods on Britain's Waterways. And it seems the skies may not be limit, for in July 2007 Boeing launched its new "Green" 787 Dreamliner aircraft. This article explains the new wave of ethical business planning.

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FJG's Socially responsible lawyers collect the Legal Aid Lawyer of the Year Award 2007 from Cherie Booth QC

Once upon a time companies engaged in social philanthropy by donating money to charity at the end of the financial year or through employee initiatives such as sponsored events. Today the government and business leaders see this as an all year round responsibility, requiring businesses to think strategically by focusing on the environment around them, best working practices, engagement in the local community and recognition that brand names depend not only on quality, price and uniqueness, but equally how the company contributes towards some aspect of sustainable development. The Companies Act 2006 reinforces this by requiring company directors to promote the success of the company, whilst having regard to the impact of the company's operations on the community and the environment.

For many customers social responsibility is what makes a company sassy, and its engagement in socially responsible activities is as important as the USP's attributed to the company's products and services.

Fisher Jones Greenwood's award winning community project

Knowing how to begin to be socially responsible need not be difficult. In 2005, Fisher Jones Greenwood LLP decided to put something back into the community by utilising its most valuable attribute – the expertise and enthusiasm of its socially responsible lawyers.

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Protecting the Family Business in the Event of a Divorce

Divorce, or other personal relationship breakdown, can often have a damaging, sometimes catastrophic, effect on a business. FJG's family law partner Simon Osborn explains how Collaborative Family Law can be used to preserve the family business.

The traditional way of resolving financial business disputes at a time of relationship breakdown, is for parties to adopt an adversarial approach, putting forward what they and their advisors perceive to be the strongest position. This process can prove wasteful in terms of costs and energy expended by both parties and ultimately, may lead to a financial settlement which neither party considers ideal. This can have a devastating impact on children and familial relationships, which is further complicated by the need to foster a continuing financial relationship through the family business.

Until recently there has often been no alternative but to ask the Court to resolve the dispute. This can ultimately lead to a third party, a Judge, who often only has a short time and limited information upon which to base his or her determination, making fundamental decisions which will affect a family's life and business for many years to come. At Fisher Jones Greenwood LLP, our family lawyers are committed to assisting our clients achieve a more favourable solution. Many of our family law solicitors are members

of Resolution (formerly the Solicitors Family Law Association), which promotes the adoption of a non-confrontational approach to resolving issues between parties in relationship breakdown, known as 'Collaborative Family Law'.

Collaborative Family Law is a refreshingly different approach. The parties and their lawyers enter into a participation agreement in which they commit themselves to settle issues through a series of 4-way meetings, without going to Court. The lawyers cannot represent the parties in Court proceedings except for the purposes of asking the Court to make an order where the parties have reached agreement. If parties decide that they want to go to Court, they both have to find new lawyers.

In Collaborative Family Law the focus is on the interests of the parties rather than their "positions". The lawyers are there to support and advise their client but, at the same time, to work with the other side's lawyer to try to meet the interests of both parties. This approach can tap into the experience and skills of both lawyers and can often result in a broader range of more creative solutions than is possible using a Court process.

Collaborative Family Law allows for experts, such as accountants or financial advisors, to be brought in to the meetings. These experts are there to advise both parties, again with a view to producing a broader range of more creative solutions for the benefit of both parties. Often the business accountant or the financial advisor used by both parties is of invaluable assistance to the process.

Timing is often an important consideration where businesses are concerned. Sometimes it is important to resolve issues very quickly, for instance



The FJG Charter Court Family Law Team

if a change in the structure of the business is taking place at that time. On other occasions it is important to delay a decision until other important information is available. With Collaborative Family Law, the parties decide how quickly or slowly the process progresses.

Collaborative Family Law allows parties to set their own agenda and address other issues which are not part of the Court based process. The resolution of these issues can allow parties to maintain a business relationship or a personal relationship for the benefit of children which would be lost if the parties battle through a Court process.

The process is favoured by many because it firmly places control of the final decisions into the hands of the parties. It is a constructive and creative process which can preserve and expand assets and relationships.

While there can rarely be a good divorce, Collaborative Family Law offers the best chance of achieving a better divorce, reducing distractions and allowing business owners to get on with developing their business!

For further information about Collaborative Family Law contact Simon Osborn 01206 835325 or Kate Taylor on 01206 835321.



Keeping in Touch Days (KIT) were introduced by the new maternity regulations which came into force on 1 April 2007. The problem used to be that if a mother worked during her maternity leave she would lose her entitlement to statutory maternity pay (SMP). As a result, employees on maternity leave did not keep up with changes at work and their return to work was more difficult.

The new regulations provide that an employee can work up to ten days during their maternity leave without it affecting their right to statutory maternity pay. The right to KIT applies to women whose expected week of child birth started on or after the 1 April 2007. The ten days apply to either ordinary maternity leave of six months or additional maternity leave of a further six months. If an employee takes any KIT days they do not lengthen or shorten the period of maternity leave.

Even if a mother works only part of the day during a KIT day, it will be treated as a whole day for which they must be



Keeping in Touch Days The Latest 'Must Know' for all Employers

by FJG's Employment Law Expert Matthew Welch

paid for the whole day. It is not totally clear, but it appears that the employee will be entitled to be paid her normal contractual pay for that day. However, it also seems that the day's pay is set off against the statutory maternity pay liability for that day and some commentators say it may apply to the SMP for the whole week. We'll just have to wait and see.

The idea behind KIT days is that the employee will return to work to be involved in training or any activity undertaken for the purposes of keeping in touch. This could include not only receiving training but also providing training. However what work is actually done is eventually a matter for agreement between the employer and employee and unfortunately an impasse could be reached because on the one hand the employer cannot

require the employee to work and on the other hand the employee does not have the right to work KIT days. Further there are no consequences if an employee refuses to work a KIT day. What work is actually done, when, for how long and for how many days is up to the employer and employee to agree.

Given the uncertainty over pay and the fact that keeping in touch days only work by agreement, employees are only likely to agree to work KIT days once their statutory maternity pay has come to an end. Under the new regulations statutory maternity pay is now payable for up to 39 weeks.

For expert advice on all aspects of employment law, contact Matthew Welch on 01206 835235.

Leasehold Enfranchisement – New Protection for Property Investors

by Rosalind Peckham

If you own a leasehold apartment either as an investor or home-owner, you might have found yourself frustrated by the lack of control you have over the management of the building, or dismayed at the depleting value of your property. If so, Rosalind Peckham explains how new laws enable you to protect your investment more effectively.

Changes to leaseholders' rights have been introduced by the Leasehold Reform Act 2002, and introduced piece-meal over the last 5 years. Outlined below are the key changes:

Commonhold

The Act introduces 'commonhold' a new method of property ownership which is a hybrid between leasehold and freehold. The purchaser owns a unit in the block absolutely (i.e. not for a limited number of years as with leaseholds), with the added benefit of the right to control and manage the common parts of the property through a 'commonhold association'. Commonhold is generally expected to take

over from leasehold as the preferable mode of residential property ownership, where there is a need for management of the common parts.

Leaseholders' right of first refusal

If the freeholder of the apartment block was to decide to sell the freehold of your building, leaseholders who meet the qualifying criteria, generally have a collective right of first refusal to buy the freehold on the same terms that the freeholder is offering to sell to prospective purchasers. It is a criminal offence for a freeholder not to offer leaseholders the right of first refusal, punishable by a fine.

Forcing the sale of the freehold – Leasehold Enfranchisement

In very general terms, leaseholders of long residential leases collectively have the right to compel the freeholder to sell them the freehold of the property of which they hold a long lease, so long as at least 50% of the leaseholders join in with the purchase.

Extending the Leasehold

Due to the complexity of the enfranchisement procedure and the fact that it may be difficult to persuade the requisite number of leaseholders to participate in a claim for leasehold enfranchisement, leaseholders who meet the qualifying criteria, may wish instead to consider exercising their right to extend their lease. The leaseholder will have to pay the freeholder a premium for the extension of the lease and in return will acquire a new lease for a further term of 90 years after their old lease expires.

Leaseholders' right to manage

If leaseholders feel that their block is being badly managed, they can, if the qualifying criterion is met, exercise their right to take over the freeholder's management functions and set up a 'Right to Manage' company to do the job instead.

It is still far from simple to exercise these rights. Care should be taken to ensure that the procedures are accurately followed. **Contact Rosalind Peckham on 01206 835230**

Independent research carried out by the University of Essex and the Social Welfare Law Coalition highlighted high levels of social deprivation in some areas of Tendring. In response the firm launched The Tendring Outreach Project. FJG Partner and project leader Nigel Humphreys explains "The project was set up in October 2005 to plug an advice desert in one of the most deprived wards in Essex. Typically the service helps people by preventing them from losing their homes as well as enabling vulnerable families facing poverty caused by disability and long-term illness, to stay together. We also deliver training courses for advisers in the voluntary sector so they can provide basic advice to people on their rights and entitlements to statutory services."

Recently the Tendring Outreach Project gained national and regional acclaim. Fisher Jones Greenwood's lawyers not only scooped the solicitors' category in the prestigious Legal Aid Lawyer of the Year Awards,

but the firm also won the Business in the Community East of England Leadership Award for Pro Bono Company of the Year. Both awards were made in recognition of the firm's pioneering work carried out by lawyers involved in the 'Tendring Outreach Project', providing essential legal advice on welfare issues to vulnerable people living in the Tendring area.

Find out how your company can be more socially responsible

Fisher Jones Greenwood LLP has two exciting events on corporate social responsibility coming up. The first of these will be held on Thursday 15th November. On behalf of the Essex Community Foundation and the local ProHelp groups based in Colchester and Chelmsford, we are proud to host an evening seminar, commencing at 6pm. The event is titled "Social Philanthropy: Giving or Getting?" and is designed to provide delegates with an opportunity to learn more

about how they can make a difference to their local community. The seminar will be held at Fisher Jones Greenwood's Charter Court offices on the Severalls Business Park and will include speakers from the Essex Community Foundation and ProHelp. **For further details of the 15 November event, please contact Tara Lee - tlee@fjg.co.uk**

Then, in the New Year, Fisher Jones Greenwood LLP in conjunction with the Human Rights Centre at the University of Essex, and Essex Chamber of Commerce, is holding a seminar entitled 'Ethical business: don't get left behind', at Waterside Chelmsford. Speakers will include academics and company directors who have proven how socially responsible business can work equally well for large and small enterprises. **For more information about this event, contact Donata Rio at Essex Chambers of Commerce donatario@essexchambers.co.uk**

Wimbledon Without Strawberries? : Legal Update on Migrant Workers

The agricultural sector in East Anglia is heavily dependent on migrant labour for seasonal crops, but a shortage of migrant workers this summer resulted in farmers informing the Home Office that soft fruits would be left to rot because there was no one to pick them.

The Seasonal Agricultural Workers Scheme (SAWS) was originally implemented to allow nationals from outside the European Union to work in the United Kingdom on a temporary basis in the agricultural sector. The scheme is to be kept in place only for nationals of Romania and Bulgaria, since these countries joined the EU on 1st January 2007. Currently low skilled migration from Romania and Bulgaria is restricted to sectors of the economy where the UK has low skilled schemes. The decline in overseas workers in these schemes has been put down to other EU nations opening their labour markets and the improving national economies of Romania and Bulgaria. According to Home Office figures, for the first 3 months of this year only 8,000 Romanians and Bulgarians were officially registered to work in the United Kingdom. As restrictions have been placed on SAWS applicants from countries other than Romania and Bulgaria, the quotas are not being filled to enable summer fruits and salad vegetables to be picked.

Bulgarian and Romanian nationals entering the UK for employment are subject to restrictions and must enter in an employment category such as SAWS, Sector Based Scheme (SBS) Highly Skilled Migrant Programme (HSMP) and the work permit category. The reason for the restrictions is due to the unexpected large numbers of nationals who moved to the UK from countries joining the EU in 2004.

Romanian and Bulgarian nationals entering the UK for employment must for the first 12 months of employment have a work authorisation document. After 12 months legal employment, the Romanian or Bulgarian national would be able to obtain a registration certificate confirming their unrestricted right to access the UK labour market. Higher skilled Romanian and Bulgarian nationals are often able to enter the Highly Skilled Migrant Programme, or obtain work permit employment in the Business and Commercial sector.

Employers don't be caught out
The employment categories referred to above are tightly regulated and employers must be familiar with their operation before employing a migrant worker to ensure strict compliance. As part of the government's five-year plan further legal changes are due later this year, and in 2008. Employers must keep abreast of these changes. For specialist legal advice on migrant workers and business immigration contact Louise Boyes or Rose Carey on 01206 835273

News In Brief

Minimum Wage

The new minimum wage rates came into force on the 1st October 2007. The new rates are £5.52p per hour for adults, £4.60p for 18-21 year olds, and £3.40p for 16-17 year olds.

Breakfast Club

The Severalls Business Park Breakfast Club, organised by FJG, has recently celebrated its first year anniversary. A special celebratory breakfast was held on Wednesday 24th October at The Food Factory and a guest speaker from Colchester Borough Council's Enterprise Team enlightened attendees on local business development. For further information about future events, please contact Nikki Allen of 01206 835230 or nallen@fjg.co.uk