



V&S FOCUS

THE PARTNERSHIP
FOR SUCCESS

VANDERPUMP & SYKES
SOLICITORS

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New to V&S



Welcome to our Autumn edition of V&S Focus, designed to keep you and/or your business abreast of legal developments which may affect you. We do hope that you find it informative.

New to the partnership are: Karen Chapman, Philip Lancaster, James Porter and Clare Wills who have been recognised for their contribution to the firm. See page 7 for further details regarding our recent promotions. A newcomer to V&S is Jonathan Goldsmith who joins us in the company commercial department having previously worked at CMS Cameron McKenna and Ernst Young.

A step into new ventures, sees Vanderpump & Sykes shortlisted in LawNet's Annual Awards 2011 category for 'Best Website'. A credible first attempt for us amongst LawNet's national network of firms who are committed to delivering clear and practical legal services to their clients.

A recent client care survey (using a sample audience of 50) revealed that 98% of our clients felt that our legal advice provided value for money; 98% would choose us to represent them again and 100% would recommend us to others. A big 'Thank You' to our clients and staff! However there is always room for improvement so tell us what you think via our website survey.

Stephen Quy is a partner in the commercial department and can be contacted on: 020 8370 2853 or stephenquy@vanderpumps.co.uk.

If you would prefer to receive V&S Focus via our new look email newsletter please notify us at: market@vanderpumps.co.uk. Your email address will be entered into a prize draw where one winner can choose from: a brand name digital camera (up to the value of £150); £100 worth of Marks & Spencers vouchers or £100 discount on Vanderpump & Sykes LLP legal services. So please help us to help the environment!



The Conveyancing Quality Scheme – What it Means to You

Conveyancing is often thought to be a straightforward process, but the truth is very different. Problems with potential fraud, claims by lenders and title disputes are not infrequent. In order to protect consumers, the Law Society launched, in January 2011, the Conveyancing Quality Scheme (CQS) in order to provide a recognised quality standard for residential conveyancing practices.

The CQS is supported by the Council of Mortgage Lenders, the Building Societies

Association and the Association of British Insurers.

Vanderpump & Sykes are currently undergoing the qualification process to become members of the CQS which involves having to:

- demonstrate at least three years' conveyancing experience;
- satisfy checks on their probity;
- show that their practice has high quality standards, consistently applied;
- subscribe to a 'clients' charter', designed to ensure high-quality service delivery; and

- have robust quality assurance backed up by a regulatory regime including 'spot checks' and audits by trained assessors.



Ruth Muthoni

Ruth Muthoni is a solicitor in the conveyancing department and can be contacted on: 020 8370 2897.

Reality is What Counts in an Employment Contract



Employers have been given a warning about using employment contracts to try and get round working time and minimum wage regulations. The judgment from the Supreme Court in the recent case of *Autoclenz Ltd v Belcher and others*, has shown that an apparently cast-iron contract will not help an employer to avoid their responsibilities.

Instead, the Court has said, what matters is the reality of the relationship rather than the wording of the employment contract and companies must not try to outwit the system.

Autoclenz provided car cleaning services to motor retailers and auctioneers and described their valeters as sub-contractors in their contracts, rather than employees. The contract also said that the valeters could get other people to carry out the valeting for them; that they were not obliged to provide their services and that Autoclenz did not guarantee that it would provide work on any specific occasion.

The aim of the contract was to make the valeters self-employed, so that they would not qualify for paid leave and the minimum wage.

But 20 of the valeters, supported by their union, brought a case against Autoclenz claiming that they were really 'workers' for the purposes of the Working Time Regulations and the National Minimum Wage Regulations. When the case reached the Supreme Court, the judges ruled in their favour, saying that they were employees in spite of the wording of their contract.

In the ruling, the Supreme Court said that a contract for work or services is different from an ordinary commercial contract between parties of equal bargaining power. Very often a company

that is offering work is able to present the individual worker with a written contract on a take it or leave it basis. Because of this, the Court ruled that relative bargaining power of the parties must be taken into account in deciding whether the written contract represented the truth of what was agreed, saying that they had to consider all the circumstances, not just the written word.

Said Richard Stephens, partner in the employment law department of Enfield town solicitors Vanderpump & Sykes: "This case demonstrates that even if an employer comes up with an apparently cast-iron contract, it will not help them to get round the Working Time and Minimum Wage Regulations. Employers must accept their responsibilities and not try to outwit the system."



Richard Stephens

Richard Stephens is a partner in the employment department and can be contacted on: 020 8370 2875 or richardstephens@vanderpumps.co.uk.

When Can I Access My Neighbour's Land?

Disputes between neighbours can cause a lot of unpleasantness. If you need to deal with your neighbours over matters related to land or property it is always advisable to try to get things done in a friendly way, whilst at the same time making sure you know your legal rights and responsibilities.

However, if your neighbours flatly refuse to grant you permission to gain access to their land in order to carry out vital maintenance work to your own property, there are steps you can take to enforce your right of access.

The Access to Neighbouring Land Act 1992 enables access to adjoining or

adjacent land for the purpose of carrying out 'basic preservation works' to one's own property. Basic preservation works include:

- maintenance, repair or renewal of a building;
- clearance, repair or renewal of a drain, sewer, pipe or cable;
- filling in or clearing a ditch;
- felling, removal or replacement of a tree, hedge or other plant that is dead, diseased, insecurely rooted or which is likely to be dangerous.

If you need to be granted right of access, proceedings must be commenced in the County Court. The court will grant an access order if it is satisfied that the



preservation works are: reasonably necessary for the preservation of the relevant land; that they cannot be carried out, or would be very difficult to carry out, without entry onto the adjoining land.

The court may still refuse access if it considers this would cause hardship to the occupier or significantly interfere with their enjoyment of the land in question.

The access order will specify what work is to be carried out, when and where and may also provide for any loss or damage to the owner or occupier of the land.



Jenny Howe
Jenny Howe, is a solicitor in the firm's litigation department and can be contacted on: 020 8370 2890 or jennyhowe@vanderpumps.co.uk.

Families Need Father's Too

Parental separation often results in both parents leaving the family home. Where parents share parental responsibility it is not possible to leave the UK without the written consent of every parent who has parental responsibility or permission of the court.



Relocation cases can be agonising for the family concerned. The tension lies between the reasonable desire of the primary carer to relocate, weighed against the impact on the child's relationship with the parent left behind.

Since 1970, permission to relocate abroad has been granted in almost all reported cases because the court places great weight on the reasonable wishes of the relocating parent. Often, contact between the child and the parent left behind is not maintained for a number of reasons. These include: difficulty in obtaining mirror orders overseas; no incentive on the relocating parent to preserve contact once permission has been granted; distances involved and infrequency of contact for both parent and child, making it hard for either to want to persevere.

In the last year there have been a number of developments which suggest the emphasis is shifting and that these cases are no longer the carer's prerogative. Reunite, the charitable organisation has published a report setting out the difficulties of enforcing contact when a child is relocated overseas. Additionally in March 2010 the Washington Declaration on International Family Relocation set international guidelines to help promote a more child centred approach so that the wishes and feelings of the relocating parent may no longer be the deciding factor. As such the court must now make certain that any proposals to relocate, (however reasonable) must be compatible with the child's welfare otherwise permission may be refused.

When considering whether to make or oppose an application it is crucial to examine: what the reasons are for relocating; whether the plan is thought out properly; whether there is a commitment to contact by the re-locator; the cost of contact and whether it is feasible. It also involves looking at the wishes and feelings of the child and whether any mirror orders overseas are likely to be effective.



Meryll Llewellyn-Jones
Meryll Llewellyn-Jones is a paralegal in the family department and can be contacted on: 020 8370 2888 or mljones@vanderpumps.co.uk.



Buying From an Administrator

With businesses becoming insolvent in large numbers, opportunities abound to acquire assets from their administrators. However, the low prices sought for the assets are due, at least in part, to the additional risk to the purchaser.

Here are some of the main issues to be aware of when buying property from an administrator:

- Vacant possession of a property will not normally be guaranteed and the cost of clearance of items left in the building should be considered;
- No guarantees or warranties regarding the property will be given – undertaking proper due diligence to reduce risks is advisable;
- There may be items that appear to be a part of the property being sold which do not in fact belong to the insolvent business; and
- The administrator acts only as agent for the insolvent company and will accept no liability for errors or omissions.

Buying a property from an administrator is a risky business. At Vanderpump & Sykes, we can help you to control the legal risks.



Keith Thompson
Keith Thompson is a partner in the commercial department and can be contacted on: 020 8370 2863 or email keiththompson@vanderpumps.co.uk.

HELPING YOU TO PLAN AHEAD

We are living longer,
that's the good news....

Unfortunately, dementia and other mental illnesses are increasingly taking their toll on families.

A Lasting Power of Attorney can help chosen family members or friends assist you with decisions that arise.

Two types of LPA's are available so that your affairs can be looked after by someone else.

Setting up an LPA is a sensible precaution for many people giving peace of mind.

Services which can help you plan ahead

- Making a Will
- Probate
- Setting up and Managing Trusts
- Lasting Powers of Attorney & Deputy orders
- Minimising Inheritance Tax

Property and Affairs LPA

A Property and Affairs LPA enables an appointed person to help with your financial and property affairs.

If you were to lose capacity, decisions regarding your personal welfare can be arranged through a Personal Welfare LPA.

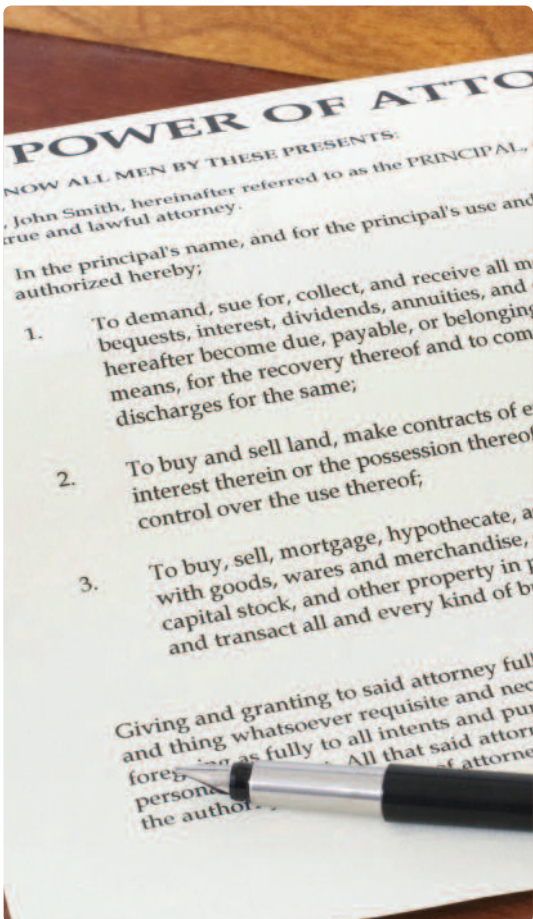
If you already have an Enduring Power of Attorney (EPA), you may wish to consider making a Welfare LPA to compliment it.

If you do not prepare an LPA, you may risk the following:

- Assets in your name being frozen if you lose the capacity to deal with them
- An application to the Court would be made so that someone suitable is appointed as your "Deputy"
- Ongoing involvement of the Court
- The process becoming a costly and drawn out affair

Creating an LPA is your opportunity to safeguard your personal wishes and decide who you want to manage your affairs should your abilities deteriorate.

At Vanderpump & Sykes, we help people make effective decisions in important areas of their life.



HELPING YOU TO PLAN AHEAD

No one likes to think about their own death and this is probably why most people don't make a Will

However, if you do not make a Will, the people you would like to inherit your estate may not get what you would like them to have.

It's especially important that you make a Will if you have young children, a handicapped spouse, you are separated, divorced, or have an unmarried partner.

Anyone over the age of 18 can make a Will. Even if you already have a Will it may be out of date or invalid because of:-

- Change in family circumstances
- Concerns regarding long term care costs for you or other family members
- Marriage
- Divorce
- Foreign property
- Guardianship
- Co-habitation

Since October 2007 new rules mean that the survivor of a marriage or civil partnership can benefit from up to double the inheritance tax allowance.

Making a Will and updating it regularly ensures that changes in legislation and your circumstances are covered. Whatever the size of your estate or the complexity of your arrangements, you will find the expertise of Vanderpump & Sykes' team of specialists valuable in helping you put together a Will.

The Probate legal system can be complex

Sorting out paperwork and administering the estate is the last thing that you may feel like doing after losing a loved one. At Vanderpump & Sykes we can help you handle all the formalities with or without a Will. We can help as you require including:-

- Registering the death
- Arranging the funeral
- Identifying assets and liabilities, administering them until they can be sold or transferred
- Selling any property (leasehold or freehold)
- Paying any debts or liabilities owed by the estate including inheritance tax
- Dealing with tax returns and any arising trust funds

We deal with estates of all sizes and pro-actively seek tax saving opportunities as they arise. We keep the beneficiaries and executors informed of progress at all times and are always available to answer any queries when they arise.

Contact us on: 020 8370 2899 if you require help with administrating the estate of someone recently bereaved.

Wills Still a Potential Minefield



According to a recent poll, more than one in eight wills is 'self-written' and one in 10 of those people who have made a will fails to tell anyone where it is.

Since nearly 4 out of every 10 adults have not made a will in the first place, the survey shows that approximately half of all families are likely to face the difficulties that more often than not accompany cases where there is no will or the will has a defect because it was made without the benefit of professional advice.

Making a will makes good sense for everyone. Having a will professionally drafted not only provides an assurance that it will not fail because of some simple defect, but it also means that your estate can be administered more quickly, and normally at less cost, than would otherwise be the case. Many people think that if they do not have sufficient assets to be caught by Inheritance Tax, it is not worth making a will. This assumption can cause those left behind unnecessary stress at a very difficult time and the intestacy laws could operate to distribute your estate in a way that conflicts with your wishes. Making these known in a simple will can avoid all such problems.



Clare Wills

Clare Wills is a partner in the Wills & Probate department and can be contacted on: 020 8 370 2899 or clarewills@vanderpumps.co.uk



Dealing With Pre-Pack Tenants

Businesses in financial difficulties are increasingly seeking ways of ridding themselves of extra costs and, in many cases, premises let in more promising economic times are viewed as a substantial and avoidable liability, especially for businesses which have expanded too quickly.

One of the more common ways for a business to be restructured on a more profitable basis is to arrange to take the profitable parts into a new business by doing a 'pre-pack' administration – a procedure whereby the business, or part of it, is transferred to a new entity. Prior to this, the business will be placed into administration, which imposes a moratorium on legal processes, such as the landlord's right to make the lease forfeit by peaceable re-entry.

The argument for pre-packs is that they maximise the chance of salvaging the business and preserving employment. On the downside, the creditors of the original business are often left nursing losses.

From the landlord's perspective, a tenant which undertakes a pre-pack may well leave the rented unit behind if it is uneconomic to retain it, thus leaving

the landlord facing the prospect of finding a new tenant and a loss of rental income.

If the new business wishes to retain the unit, there may be scope for the landlord to negotiate with the new occupier with regard to arrears of rent as well as adherence to the lease covenants.

The good news for landlords is that in most cases they should be entitled to retain a rent deposit paid by a tenant that goes into administration.

A recent case has also confirmed that it will be difficult in many circumstances for administrators to assign a tenancy 'by operation of law' - the landlord will normally have to make it unequivocal by its conduct that the prior tenant's tenancy had ended and a new tenancy begun.



Stephen Quy

Stephen Quy is a partner in the commercial department and can be contacted for legal advice on any commercial property matter on: 020 8370 2853 or stephenquy@vanderpumps.co.uk.





Introducing ...

The new partners at Vanderpump & Sykes Solicitors -

Whose promotions reflect the firm's ongoing growth and development, recognising staff for their contributions.



James Porter

James qualified as a solicitor in January 2003, having trained with Mayer Brown Rowe & Maw and Cheyney Goulding, before joining Vanderpump & Sykes in July 2003. James specialises in commercial property transactions and his experience includes acquisitions and disposals of freehold and leasehold properties, the property aspects of corporate transactions, landlord and tenant matters and property finance.

James also deals with leasehold enfranchisement matters for investment landlords and residential tenants.



Clare Wills

Clare originally joined Vanderpump & Sykes in 2000 as a Trainee Legal Executive. She qualified as a member of ILEX in 2002. Clare left Vanderpump & Sykes in 2005 when she relocated to the North of England for three years. During her time away from the firm Clare qualified as a Fellow of ILEX. Clare's experience extends to covering: Wills, Administration of Estates, Administration of Trusts, Lasting Powers of Attorney, Receivership Orders and Deeds of Variation.

Clare is also a full professional member of Solicitors For the Elderly (SFE). SFE provides support to elderly people and their families and can advise on issues relating to residential/nursing care, social care and capacity.



Philip Lancaster

Philip is an Associate of the Chartered Institute of Bankers, a Member of the Chartered Management Institute and a qualified business coach. He joined the firm in 2004 after a successful career of over 30 years with a major High Street Bank, where he enjoyed several senior management positions.

Philip has overall responsibility for the Accounts and Administration Departments, including HR, IT and Marketing.



Karen Chapman

Karen qualified as a Legal Executive in June 1999, became a Fellow in 2001 and was admitted as a solicitor in 2004. Karen is a member of Resolution, the British Association of Adoption and Fostering, the Enfield Domestic Violence Forum and a trained family mediator.

Karen deals with family finance and property issues and children's matters. Karen was awarded the Joseph Jackson Memorial Prize for Matrimonial Practice in 1998 and has achieved the Resolution Specialist Accredited status in advanced financial provision, cohabitation and financial provision for children.

Family Mediation: an Overview

Family mediation is not a new process and has been around in the UK for more than 20 years. It is a process which can be used to help couples resolve any issue, whether in relation to finances, children or both upon separation.

You may currently be in a situation whereby they need to work out arrangements for a separation or a divorce which:

- avoids a lengthy and expensive court battle
- enables them to communicate with their ex-partner after separation or divorce
- retains control over the decisions and arrangements that are made
- takes account of their children's needs and feelings and reduce their stress

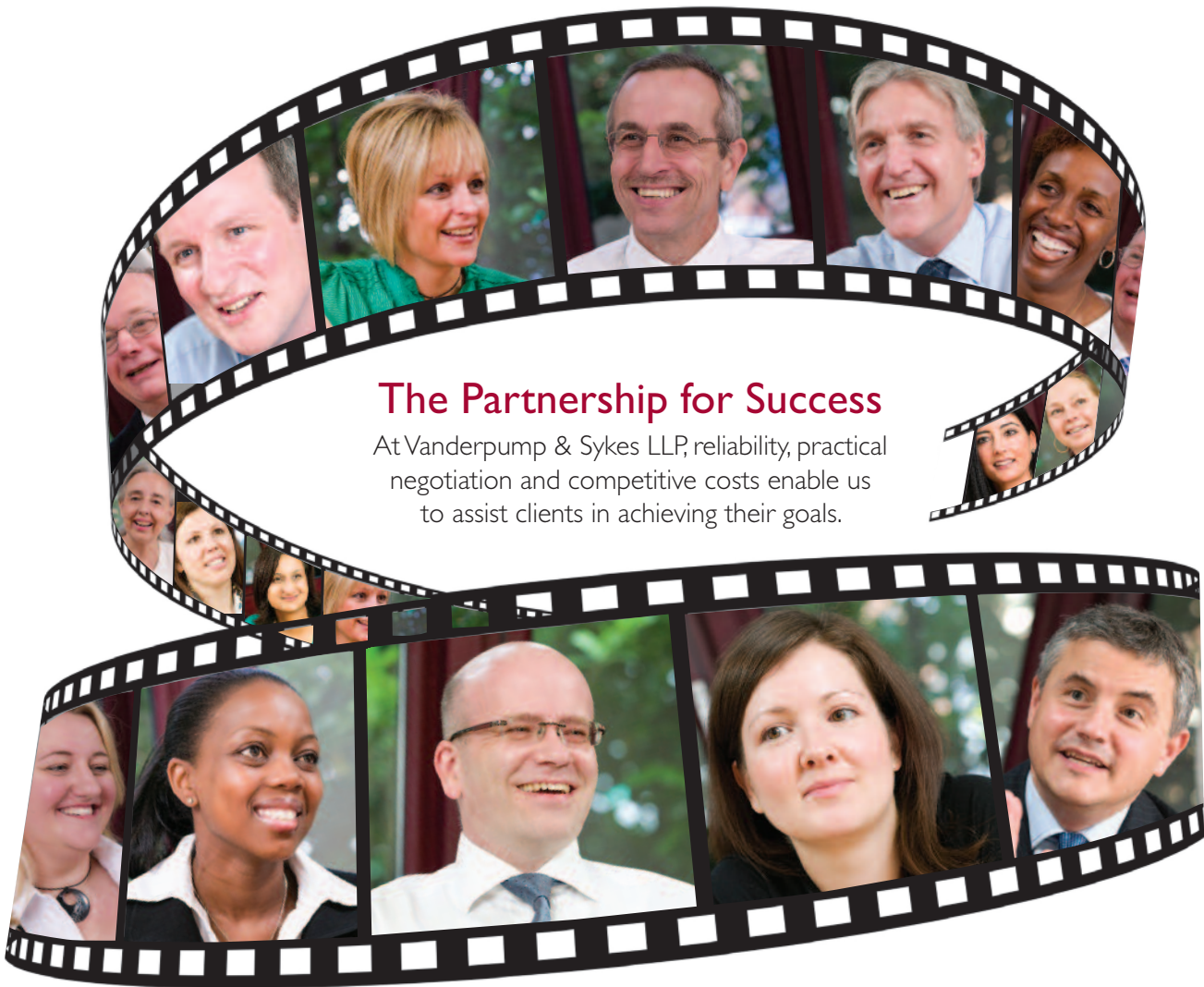
At Vanderpump & Sykes Solicitors, we offer a **free** initial telephone consultation or face-to-face meeting for the purposes of enabling couples to explore the process of mediation in more detail and find out how it works, consider its potential benefits and likely costs and decide whether it is right for them and their family.



For further information, please contact Karen Chapman on: 020 8370 2877.



Find out about other members of the Vanderpump & Sykes team on: <http://www.vanderpumpandsykes.co.uk/site/people/>



The Partnership for Success

At Vanderpump & Sykes LLP, reliability, practical negotiation and competitive costs enable us to assist clients in achieving their goals.

Established since 1899, Vanderpump & Sykes LLP is a well respected North London partnership offering a wide range of services to business and private clients. A friendly, dynamic firm, we employ people who fit within our traditions of integrity, excellence and commitment to clients. Our aim is to keep our clients for life, by delivering a high level of customer service and technical expertise.

FOR HELP AND ADVICE ON ANY OF THESE ISSUES CONTACT US NOW:

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