



# V&S FOCUS

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FOR SUCCESS

VANDERPUMP & SYKES  
SOLICITORS

New Year 2012. Volume 4, Issue 4

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## New for 2012



We march into the New Year with new blood in the office which will extend our expertise in the rapidly changing legal market.

As Karen Chapman goes on maternity leave, Donna Gibbons and Liz Orman join an expanding family department which will give us the energy and expertise to serve a growing client base in the coming months.

Gary Beecham joins the Litigation Department and will help to broaden the range of advice that department can offer. Happily we have a tradition of holding on to staff but it is nice to have new blood in the office and I hope they will be with us for many years to come.

As always, our New Year edition of V&S Focus brings you topical items to help you or your business through what can be a legal minefield.

In addition to the 'new kids on the block', we are introducing tax advisory services and launch of our mobile website. We hope that you find it informative reading.

For legal advice on any personal or business matter, call us on **FREEPHONE 0800 731 6124**.

If you would prefer to receive our V&S Focus newsletter via email please notify us at: [market@vanderpumps.co.uk](mailto:market@vanderpumps.co.uk).

Your email address will be entered into a prize draw where one winner can choose from: a digital camera (up to the value of £100); £100 worth of Marks & Spencers vouchers or £100 discount on Vanderpump & Sykes LLP legal services.

Please help us to help the environment!

## Lotto Win Not Part of Family Assets



A court ruling that a wife's lottery winnings were not 'matrimonial property', so were not subject to the usual rule of equal division between the parties when the marriage broke up received much publicity recently.

The normal rule on divorce is that matrimonial property (assets built up during the marriage) is to be divided equally. Non-matrimonial property (normally assets brought into the marriage or inherited by one party during the marriage) is not subject to the equality principle.

Although this case has been seized upon by some commentators to mean that if you win the lotto you can part from your spouse or civil partner and be sure of retaining your winnings, the reality is not so clear-cut.

The case was decided by Mr Justice Mostyn. Neither party was legally represented, neither spoke English and the precedent case law stemmed from Australia.

In 1999, the wife and a friend won £1 million in a lottery and this they divided equally. She apparently did not tell her husband about her good fortune, but did use the money to buy them a house.

The couple's marriage appears to have been in difficulty for some years before divorce proceedings were commenced, and they were divorced in 2006.

The court hearing was to determine the financial settlement between them. Both have low-paying jobs and the husband is nearing retirement. On the basis of needs, the judge ordered the wife to pay her ex-husband £85,000.

The facts in this case were highly unusual and it may well be that a different conclusion would be reached in different circumstances.



**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](mailto:mljones@vanderpumps.co.uk).

## Government to Outlaw Squatting in Residential Premises

The Ministry of Justice (MoJ) has now published its response to the recent consultation on proposals to criminalise squatting.

The consultation paper, entitled 'Options for dealing with squatting', received over 2,000 responses. As a first step, the Government is proposing to make squatting in residential properties a criminal offence.

The offence would be committed where a person:

- was in the building as a trespasser having entered as such;
- knew or ought to have known that he or she was a trespasser; and
- was living or intending to live in the building.

Section 7 of the Criminal Law Act 1977 already makes it a criminal offence for a trespasser to fail to leave residential premises when required to do so by or on behalf of a 'displaced residential occupier'

or a 'protected intending occupier'. While this allows those who are effectively made homeless by squatters to take action, it does not protect landlords or owners of second homes.

At present, the Government is not planning to criminalise squatting in commercial premises. Part of the reason for this is to prevent the occupation of buildings during protest activities from being caught by the new legislation. Crispin Blunt, Parliamentary Under-Secretary of State for Justice, said, "Stopping short of criminalising squatting in non-residential buildings represents a balanced compromise. Squatters who occupy genuinely abandoned or dilapidated non-residential buildings will not be committing the new offence, although their actions will rightly continue to be treated as a civil

wrong and they can still be prosecuted for offences such as criminal damage or burglary. Neither will students who occupy academic buildings or workers who stage sit-ins to protest against an employer be caught by the offence."

The legislation will not apply in situations where the property has previously been occupied legitimately, such as where tenants fall behind with their rent payments.



## Vacant Possession Means What It Says?

**When does a commercial property become vacant under a lease agreement? This was the question considered in a recent hearing in the Court of Appeal.**

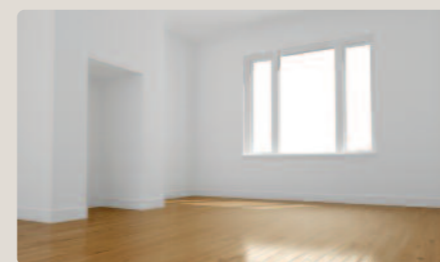
The appeal was brought by haulage and storage firm NYK Logistics (UK) Ltd., a former tenant of Netherlands property owner Ibrend Estates BV. On 3 April 2008, NYK had signed a two-year continuation of an existing lease with Ibrend, on a warehouse property with offices and secure yard space, at a yearly rent of £278,000 for some 80,000 square feet in total. The schedule to the lease included a tenant break clause, allowing NYK to terminate the lease on 3 April 2009, provided six months' notice was given, all rent was paid up to that date and NYK delivered vacant possession on that date. The dispute arose as to whether or not vacant possession had been given on the date specified under the lease agreement.

It was agreed that on 26 September 2008 NYK had given valid notice to end the term of the lease on 3 April 2009. In January 2009, surveyors for Ibrend were instructed to prepare a schedule of dilapidations on the premises. The resulting schedule was not passed to NYK until 11 March. NYK proceeded with repairs and requested a site

meeting to review the progress of the works. The meeting did not take place until 1 April 2009, two days before the lease was due to end.

At the meeting, it was agreed that most of the repairs had been completed, but there were still outstanding defects. The County Court found that it was clear that the outstanding matters could not have been completed by 3 April but could have been completed shortly thereafter.

Following the meeting, NYK proposed that it should extend security at the premises for a further week and continue with the repairs but without further payment of rent. Despite various attempts to obtain a response from Ibrend's representatives, no agreement was reached regarding NYK's briefly extended presence on the site. On 9 April, the work having been completed and attempts made to return the keys to the premises, a solicitor's letter from Ibrend notified NYK that it had breached the vacant possession clause in the lease agreement.



The Court of Appeal held, however, that in order to satisfy the vacant possession condition in the break option, NYK had to give such possession to Ibrend by midnight on 3 April and not a minute later. At the moment that vacant possession is required to be given, the property must be empty of people and the rightful occupier must be able to assume and enjoy immediate and exclusive possession, occupation and control of it. In so stating, the Court of Appeal dismissed the appeal. NYK must therefore pay rent for the period of rental from 3 April until the next available termination date of 25 December 2009.

**Stephen Quay**  
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## Raising monies from Shareholders

In a climate of low interest rates and unwilling bank lenders, owner managers and joint venturers may find themselves subsidising their business, and looking to their shareholders to contribute pro rata.



The nature of limited liabilities companies is such that shareholders are not required as a matter of law to contribute towards the running costs of a company. The liability of shareholders is typically limited to the nominal amounts due on their shares on subscription. These nominal amounts are usually £1 for ordinary shares.

Amendments to a company's articles of association which increase a shareholder's liability to pay monies to a company or to subscribe for additional shares will not bind a shareholder unless he agrees in writing. Furthermore, any provisions in a limited company's articles of association which purport to give power to forfeit fully paid shares for non payment of debts to a company (or in any other circumstances) is void.

Owner managers who subsidise their business should therefore consider entering into a secured loan agreement with their company, either on commercial terms or on an interest free basis. Whilst company law and tax law have long contained onerous restrictions on loans by a company to directors or shareholders, loans to a company by directors or shareholders can be a flexible and practical way of providing the company with that much needed level of working capital.

Unless the interest rate is above market rate, interest payments are unlikely to be characterised as and taxed as distributions. A loan which is secured by way of a fixed or floating charge over the company's assets will have to be registered at Companies House and this will constitute actual notice to third parties and other creditors. Any subsequent deed of waiver of a loan by an individual is unlikely to have any tax liabilities for the company.

Where shareholders are willing to contribute additional monies, drawing up a written shareholders' agreement is advisable.

**Jonathan Goldsmith**  
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## Father's Gifts to Daughter Challenged by Sister

When a Jersey multi-millionaire gave most of his assets away to one of his daughters in the months prior to his death, leaving an estate of less than £100,000 to be shared by all three of his children, it was perhaps inevitable that a legal challenge would result.

The man and his wife had previously made 'mutual wills', under which the surviving spouse undertook to divide their estate equally amongst their children. Had the man sought to alter his will to favour one of his children over the others, this would have been open to a challenge on the basis that the mutual will prevented him from changing the terms of his will after his wife had passed away.

A few months before his death at the age of 96, however, the man sold his £3.5 million house to one of his daughters for £1 and also gave most of his other assets to her. As such, the overwhelming majority of his assets were no longer part of his estate at the time of his death.

His other daughter is now challenging his decision to give away most of his assets, which was made after he had two strokes, arguing that this was procured by 'undue influence' on the part of her sister. A claim of undue influence commonly results when a testator changes his or her will, or gives away assets shortly before death, in a way which seems unfairly detrimental to some of the parties who might reasonably have expected to benefit substantially under the will. However, the burden of proof rests with the person claiming that undue influence has been exercised, so such claims are not easy to sustain.

In this case, the enormous difference in value between the gifts received by the daughter and the bequests to the other children, combined with the man's apparent attempt to sidestep the terms of the mutual will made when his wife was alive, are likely to result in a long-running legal dispute, with a particularly careful weighing-up of the available evidence.



**Inderjit Ahitan**  
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# New Employment Changes and What They Mean to Business

As business gets going in the new year, employers are being reminded to prepare themselves for changes set for introduction over the coming 12 months.

The Government is to put forward a raft of measures aimed at reforming employment law and whilst we wait to hear the detail, one change that is known for certain is the change in pension age.

The Pension Act received Royal Assent and became law in November 2011. It means that the pension age for women will rise to 65 in 2018; the age for both men and women will rise to 66 by October 2020 and to 67 at some time between 2026 and 2028. This follows on from the abolition of the default retirement age (DRA) in October 2011 and will mean that workers can choose to carry on working after the state pension age and choose when to start taking their state pension.

The scrapping of the retirement age has come at the same time as figures show a huge 32% increase in the number of age discrimination claims and for employers, the change means ensuring there are age-friendly attitudes and processes in place.

The Government has also announced some of the other measures that will be coming up for legislation in the near future, to include changes to unfair dismissal and consultation procedures.

The proposal to increase the qualifying period for bringing an unfair dismissal claim to two years has been widely reported. The effect will be that an employee who is dismissed within two years of starting work will not usually be allowed to bring an unfair dismissal claim, a doubling of the current qualifying period of one year.

Also set for change are 'compromise agreements'. When an employee is dismissed the employer and employee often enter into such an agreement, under which the employee receives some compensation and agrees not to bring a claim in the

Employment Tribunal. These are to be replaced by 'settlement agreements' which will be simpler and will have standard wording.

The Government also plans to introduce 'protected conversations' in which employer and employee will be able to discuss issues without fear of subsequent retribution or accusations. It is hoped that this will open discussion about performance, retirement plans and so forth. However, the employer will not be protected against claims of discrimination or harassment arising out of a protected conversation and so, in practice, their use may be limited.

A fundamental review of the procedural rules of employment tribunals will be held, and the procedures for bringing a claim for unfair dismissal will be reviewed. This includes, for example, plans for a one month conciliation period.

Finally, the Government plans to introduce a drastically simplified dismissal procedure for micro employers with less than ten employees, with no-fault compensated dismissal being the norm.

The Government hopes that these reforms will bring down unemployment and stimulate investment and expansion by cutting red tape and the risks involved in taking on new staff. But the devil is always in the detail and we will have to wait and see what that holds.

In the meantime, the beginning of the year is a good time to review current practice. Employers need to make sure they have robust processes in place, particularly looking at how they are treating older workers. If we do see the promised increase in the unfair dismissal qualifying period, it's quite likely that other claims will increase, such as age discrimination.



**Richard Stephens**

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



# Why Do I Need a Family Solicitor?

There is a common misconception that the role of a family law is to deal with divorce. Perhaps that was the case many years ago.

Today, statistics show that marriage is not the institution it used to be. In 2007 40% of men and 38% of women had reached the age of 50 and had never been married<sup>1</sup>, and if trends continue the number of people getting married will continue to fall, and the number of divorces continue to rise.

Solicitors are able to advise on many aspects of family life. Divorce remains part of the services offered, but there are a whole range of other areas that a solicitor can advise you on both when entering into a new relationship and in the event of a relationship breakdown. Here are just a few examples that may be relevant to you.

**PRE-NUPTIAL AGREEMENTS:** There is an increasing awareness amongst couples intending to marry of the benefits of entering into a pre-nuptial agreement. Whilst this may be considered "unromantic", the statistics show that 33% of those married in 1995 are now divorced<sup>2</sup>. It seems sensible for couples who are entering marriage with their own assets to make their intentions clear from the outset. Negotiations are likely to be much more amicable pre-married than during a separation.

**SECOND MARRIAGES:** If you have retained assets from a previous marriage and want to marry again, you may need to think carefully about protecting your financial position particularly if you have children from

your first marriage who you would wish to provide for later in life.

**PROPERTY WHEN CO-HABITING:** When living in a property as a family home, particularly as a co-habiting couple, it is essential from the outset that the intention as to who owns what share of the property is made clear. If not, it can be difficult to prove years later exactly what was intended and you may be left very disappointed and much worse off.

**CHILDREN:** There are many issues which can arise in respect of children, most obvious being where the children should live if there is a separation. But there are other issues. For example do you know what parental responsibility is? If you are a father, step-parent or non-parent carer you may not have parental responsibility. You may need advice about why parental responsibility is important and how you can obtain it.

It is clear that whilst a family solicitor can assist in relation to divorce, it is a diverse area of law and you may be surprised at how you can benefit from seeking legal advice now to better prepare for the future.



**Donna Gibbons**

Donna Gibbons is a solicitor in the family department and can be contacted on: 020 8370 2870 or email donnagibbons@vanderpumps.co.uk.

<sup>1</sup> Office for National Statistics, 'Marriage, Divorce and Adoption Statistics, England and Wales'  
<sup>2</sup> Office for National Statistics, 'Divorces in England and Wales 2010'

# Why It Makes Sense to Get Your Tax Advice from a Chartered Tax Advisor

With the complex nature of tax and finances today, professional and practical advice on current legislation can help ensure that you or your business get the best out of your circumstances.

As well as providing advice on a wide range of corporate and commercial law, our company commercial department, Vanderpump & Sykes Solicitors also provide personal and corporate tax advice.

We can help you: optimise your tax position, look at your situation within the larger picture and where possible identify potential tax savings.

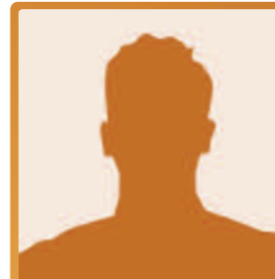
Our range of personal tax advice services include:

- Tax planning to mitigate capital gains tax liabilities
- Inheritance tax and Estate planning
- Family home tax planning
- Tax Investigations and Disputes
- Tax Debts
- Disclosure and undeclared income
- PAYE coding queries and obtaining rebates and refunds from HMRC
- Advice on completing self-assessment returns
- Forensic accounting work
- Non-domiciled and expatriate tax issues
- Using trusts as tax planning tools
- Retirement strategies
- Savings and Investment international tax planning
- Ownership strategies for investment properties
- Stamp duty land tax planning



We also advise on a wide range of corporate tax areas such as:

- Corporate transactions tax - buying and selling companies and businesses
- Investment funds tax - advising managers and investors
- Real Estate tax - buying, selling and leasing land
- International tax - double tax agreements and UK holdco structures
- Tax-based financing including EIS & VCT investment
- Remuneration planning and employee share incentive schemes
- Tax efficient structuring of Joint Ventures
- Company groups tax planning
- Maximising capital allowances
- VAT advisory planning and transfer of a going concern
- Reconstructions and demergers and business re-organisations



**Jonathan Goldsmith**

Jonathan Goldsmith is a solicitor, Chartered Tax Advisor (CTA) and member of the Chartered Institute of taxation. Jonathan can be contacted on: 020 8370 2855 or via email on jonathangoldsmith@vanderpumps.co.uk.



# Read the Fine Print

When you are looking into selling your property or business, everyone wants to get things moving as soon as possible. However, it is important to read the fine print of your agent's contract to avoid possible financial penalties further down the line.



It is an established principle that in order to claim payment of fees at the conclusion of a transaction, any Agent must show they are an 'effective cause' of the sale. In other words the agent must be able to demonstrate that they introduced the buyer to the seller, or in some other way substantially contributed to the sale going through.

There is case law that confirms that where 'effective cause' cannot be shown, the agent will not be paid, which only seems logical.

However, it is possible for an agent's contract to contain clauses that will allow them to charge for their fees regardless of whether they are an 'effective cause' of a transaction, even in some cases where there is no transaction at all.

In the case of Brodie Marshall & Co (Hotel Division) v Sharer it was held that an Agent was entitled to commission even where a purchaser had been found entirely without the agent's involvement.

Such circumstances can arise where a contract contains a clause which renders it to be a Sole Selling Agreement. Such a clause can be specifically aimed at overriding the need for an agent to prove 'effective cause' prior to fees being payable. Further clauses in respect of cancellation and the requirements of the parties can likewise incur unexpected fees.

To further complicate matters, there are different forms of 'sole selling clause' and the wording of each individual contract could be construed in a different way if it was challenged at a later date.

It is therefore wise to have any contract reviewed prior to signing. We can advise on all manner of contracts so that you can be sure what fees will be payable and in what circumstances they will arise.



## Gary Beecham

Gary Beecham is a trainee solicitor in the litigation department and can be contacted on: 020 8370 2872 or email [garybeecham@vanderpumps.co.uk](mailto:garybeecham@vanderpumps.co.uk)



# Declaration of Trust

We live in an era where the way in which people purchase property together is not traditionally as husband and wife.

Unmarried cohabiting couples, business partners, a group of friends or relatives often pool their money together to purchase property jointly. It is often the case that different proportions are contributed by each party to such an arrangement. The property is commonly owned as tenants in common so that on the death of a joint owner, that person's share does not pass automatically to the surviving joint owners but forms part of his/her estate.

Where the property is owned as tenants in common, it is important that a Declaration of Trust is drawn up. This is also known as Trust Deed and it defines the trust relationship and sets out how much property is owned by whom. It should also clearly state the contributions made by each person at the time of the purchase of the property, how the proceeds of sale are to be split on sale and contain details of how the property expenses such as insurance, repairs and maintenance will be paid.

As a general guide you should consider having a Declaration of Trust drawn up in the following circumstances:

1. Where a party who is not a legal owner is contributing to the purchase of the property, this is common where parents help their children get on the property ladder by contributing to the deposit.
2. Where unmarried cohabiting couples are contributing different proportions to the purchase price, mortgage or disbursements such as legal fees, stamp duty land tax
3. Where a mechanism for buying out a joint owner's share is required. This is called a right of pre-emption. The arrangement would be that if one party wished to sell the property they would first give notice of this intention to the other parties who would have the right to buy that persons share at market value.

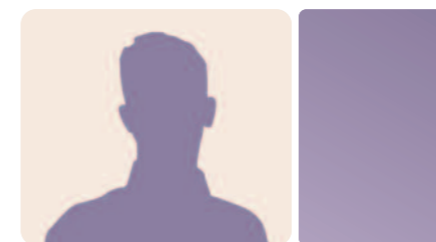


## Ruth Muthoni

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# Introducing ...

New to Vanderpump & Sykes Solicitors are three solicitors in our private client departments and services to enhance your experience with us..



## Gary Beecham

Gary joined Vanderpump & Sykes as a trainee solicitor in 2012, after having worked as a litigation paralegal for a Lincolnshire-based firm. He is currently undertaking contentious landlord and tenant cases as well as a variety of civil litigation matters including contract disputes, consumer advice, neighbour disputes and dispute resolution.



## Donna Gibbons

Donna was admitted as a solicitor in 2009 having undertaken her training at a large East London firm, specialising in all aspects of family law. Donna undertakes a broad range of family law cases including divorce, children disputes and domestic violence and has advocacy experience representing clients at court.



## Liz Orman

Liz was admitted as a solicitor in 1998 having undertaken her training contract at a large provincial firm. Liz gained further experience at 2 firms in Buckinghamshire before joining Vanderpump & Sykes in January 2012. Liz is a member of Resolution and has achieved the Resolution Accredited Specialist status in Private Children Law and Domestic Violence. Liz has experience in a broad range of family work including children disputes, domestic violence, divorce, dissolution of civil partnerships and financial matters

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

# Announcing ... A Quality Conveyancing Service



Vanderpump & Sykes Solicitors are delighted to have secured Conveyancing Quality Status (CQS) in recognition of the high standards provided to residential property clients.

The Law Society introduced CQS to promote high standards in the home buying process. The scheme is designed to improve efficiency with common, consistent standards and service levels and enable consumers to recognise practices that provide a quality residential conveyancing service.

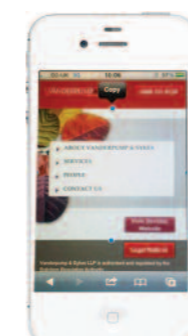
Firms such as ours are required to undergo a strict assessment, compulsory training, self reporting, random audits and annual reviews in order to maintain CQS status. It is open only to members

of the Law Society who meet the demanding standards set by the scheme and has the support of the Council of Mortgage Lenders, the Building Societies Association, Legal Ombudsman and the Association of British Insurers.

Keith Thompson, partner in the commercial and residential conveyancing department says "It is a signal to future home buyers of the excellent service level that we provide, at what is often a stressful time for many people.

Buying a home is one of the largest purchases anyone will make in their lifetime, so it is essential that it is done to the highest standard by a solicitor. There are many different conveyancing service providers out there, making it difficult for home buyers to identify those which can ensure a safe and efficient level of service."

"The overall beneficiaries will be clients who use our firm when buying a home. They will receive a reliable, efficient service as recognised by the CQS standard."



# Launching ... The V&S Mobile Website

As mobile usage of the internet grows, statistics show that an increasing number of page views for the Vanderpump & Sykes website are now originating from Smartphones.

The Vanderpump & Sykes' website has now been enhanced for viewing via mobile phones, providing a number of benefits for the Smartphone user including: ease of use, large buttons, less text and simplified navigation.

For access, simply enter the URL address below:

<http://m.vanderpumpandsykes.co.uk/>

Tell us what you think about the mobile website or any aspect of our service at [market@vanderpumps.co.uk](mailto:market@vanderpumps.co.uk).



## 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:

### Company Commercial, Commercial & Residential Property:

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