



# V&S FOCUS

THE PARTNERSHIP FOR SUCCESS

VANDERPUMP & SYKES SOLICITORS

New Year 2011. Volume 4, Issue 1

## INSIDE THIS ISSUE

- 2 Capital Allowance for Plant and Machinery
- 2 No Break if Wrong Party Served
- 3 Joint Account Does Not Mean Joint Ownership
- 3 Family Pay Price for Executor Appointment
- 3 Accessing Your Land
- 4 The Basics of Divorce Equality
- 5 Act, Cohabitees and Death – Who Can Claim?
- 6 Buyer Beware! Unknown Liabilities Not Actionable
- 7 Spotlight



## Happy New Year

“It’s a big year for the legal profession with deregulation coming in Autumn 2011. This will allow legal practices to be owned by businesses outside the profession - ‘Tescolaw’ as the papers have dubbed it.”

“It is impossible to guess precisely what impact this will have on the profession. Our aim is to continue providing expertise and accessibility to our clients. We have been providing advice and assistance to the local community for well over 100 years and we expect to continue to do so for the next 100 and beyond!”

*All the best for 2011*

Mark Heselton is a partner in the family department and can be contacted on: 020 8370 2876

## Vanderpump & Sykes Launches New Website



Towards the end of 2010, we launched a new and improved website which was redesigned as a vital communication tool for the general public.

The Vanderpump & Sykes website offers a fresh new look which technically provides its online visitors with significantly easier navigation. The essential legal news, FAQs, full service and dynamic contact pages are still present but in a more user friendly layout.

We like to think that the content rich website enhances Vanderpump & Sykes' vision of being a client centred, high quality provider of legal services and information.

A website's visibility on the internet can be the pivotal difference between a successful and targeted web presence and being overlooked by search engines.

The launch of our new website marks a new era for us – one that will reinforce Vanderpump & Sykes position as a legal partnership for success.

The new Vanderpump & Sykes website can be viewed on: <http://www.vanderpumpandsykes.co.uk>

# No Break If Wrong Party Served

The case in 2010 involving Standard Life Investments Property Holdings Limited and W&J Linney Limited highlights the importance of making sure that procedural issues are dealt with correctly in the giving of formal notices.



When a tenant wished to terminate its lease, it served the relevant notice on the landlord. At least, that is what it thought it had done. The problem was that although the lease stipulated that the notice had to be served on the landlord, the property had been sold during the currency of the lease, so there was a new landlord.

The tenant considered that the notice had to be served on its original landlord as named in the lease. The new landlord considered that the notice was invalid because it had not been served on it. Judge Lewison agreed with the landlord. The previous landlord would have no interest in examining the notice, nor in communicating it to the new landlord.

The tenant had to give the notice to the current owner and the break notice was therefore invalid.



**James Porter**

Contact James Porter for advice on commercial property, landlord and tenant matters on : 020 8370 2865 [http://www.vanderpumpandsykes.co.uk/site/services/commercial\\_property\\_solicitors/](http://www.vanderpumpandsykes.co.uk/site/services/commercial_property_solicitors/)



# Capital Allowances for Plant and Machinery

I hope all of you business men are familiar with capital allowances for plant and machinery. These allowances are important because they govern the way in which you, as a tax payer, can write off expenditure on plant and machinery employed in your business. There are a number of capital allowances available but plant and machinery allowances are the most commonly claimed of the allowances. The legislation governing allowances is contained in the Capital Allowances 2001. It is complex but a general knowledge is of advantage.

To claim capital allowances you must carry out a qualifying activity and incur qualifying expenditure. This is not as technical as it sounds. A qualifying activity is most commonly trading and property investment. Qualifying expenditure is more complex. The requirements are:-

- the expenditure must be capital. In essence it is expenditure on assets for the enduring benefit of your trade. In practice, HMRC appear to accept a useful life of 2 years as sufficient.
- the expenditure must be on the provision of that plant and machinery (and would include transport and installation).
- the tax payer must own the plant and machinery as a result of incurring the expenditure.

What is machinery is generally obvious however; plant is more difficult. There is no comprehensive definition of plant in the legislation. Certain assets are

designated as plant by the legislation e.g. thermal insulation of buildings, integral features, computer software. The fabric of a building and structures are expressly excluded from being plant. The main tests for defining plant arise from case law. Essentially it is any asset used in the business which is kept for permanent employment in the business but not if that asset forms part of the premises in which the business is housed.

Once it is established that an asset is plant for which Capital Allowances are available then the asset can be written down and set against taxable income at various rates. Conventionally there is a 40% first year allowance followed by 20% per annum but this is one of a number of rates.

This article can only hope to be a very brief look at a very complex area. When capital expenditure is proposed advice should be taken as to the availability of allowances. Don't miss a trick.



**Keith Thompson**

Keith Thompson is a partner in the commercial department and can be contacted on: 020 8370 2896 or via [http://www.vanderpumpandsykes.co.uk/site/services/commercial\\_property\\_solicitors/](http://www.vanderpumpandsykes.co.uk/site/services/commercial_property_solicitors/)



# Joint Account Does Not Mean Joint Ownership

Having money in an account held in two or more names does not mean that the account is held jointly by all those named and that entitlement to the total balance automatically passes to the last survivor.



A recent case dealt with a bank account that was held in two names. A mother, aged 78, opened the account and the funds were held in her name and in the name of one of her sons. She paid in all the money.

The woman died shortly thereafter and her executors called on her son to account to his late mother's estate for the sums he had withdrawn from the account and the balance on the account when she died.

He argued that he had inherited the balance by survivorship and was entitled to retain the sums he had withdrawn.

The court ruled that the balance in the account when she died was an estate

asset. The son was entitled to retain any withdrawals he had made under her authority, but any other withdrawals had to be refunded to the estate.



**Jenny Howe**

Jenny Howe is a solicitor in the litigation department and can be contacted on: 020 8370 2890 or via: [http://www.vanderpumpandsykes.co.uk/site/services/litigation\\_dispute\\_resolution/](http://www.vanderpumpandsykes.co.uk/site/services/litigation_dispute_resolution/)

# Family Pay Price for Executor Appointment

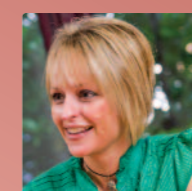
When appointing an executor, it is vital that you make sure you choose someone who is trustworthy. Where co-executors are appointed, it is important that they will all oversee the estate administration. The wisdom of an assiduous approach when deciding who to appoint is illustrated by a recent criminal case in which an executor, who had a previous conviction for fraud, was convicted of the theft of thousands of pounds from the estate of his late uncle.

During the administration of the estate, the man pretended that there was a substantial tax bill to be settled and used that as an excuse to pocket more than £25,000.

He also stole sums totalling more than £4,000, taking out credit cards in the names of his parents.

The executor had previously been jailed for two years for defrauding customers of the bank for which he worked out of more than £150,000.

The later fraud was discovered when one of the co-executors realised that his signature had been forged on a cheque drawn on the estate bank account.



**Clare Wills**

Clare Wills is Head of the wills & probate department and a member of Solicitors For the Elderly (SFE). Clare can be contacted on: 020 8370 2899.

# Accessing Your Own Land

Prior to the introduction of revised procedures (set out in regulations under section 68 of the Countryside and Rights of Way Act 2000, which came into effect in July 2002), people who had to cross common land in order to reach their homes were sometimes denied the right of access to their own property, due to an anomaly in the law. In order to gain access, it was necessary for them to obtain an "easement" from the owner of the common land. This could be very expensive for the person needing the right of access.



Under the revised rules, the right of easement is now statutory and, provided the relevant conditions are met and procedures complied with, the owners of the common land cannot object. In return they will be paid as follows:

- 0.25% of the value of the premises if these came into being before 1 January 1906;
- 0.5% of the value of the premises, if they came into being between 1 January 1906 and 1 December 1930; and
- 2% of the value of the premises if they came into being on or after 1 December 1930.

Once payment has been made, the right of access will continue in perpetuity.



**Ruth Muthoni**

Ruth Muthoni is a solicitor in the conveyancing department and can be contacted on: 020 8370 2897 or via: [http://www.vanderpumpandsykes.co.uk/site/services/residential\\_conveyancing/](http://www.vanderpumpandsykes.co.uk/site/services/residential_conveyancing/)



## The Basics of Divorce

All of us know someone who is divorced. No one ever gets married expecting to get divorced. Few people going into their first divorce have much idea about the process. This is a very brief guide.

To obtain a divorce in this country a couple must have been married for at least a year; the marriage must legally be recognised under UK law and must have broken down irretrievably. Irretrievable breakdown is then based on one of five 'grounds':

- adultery; unreasonable behaviour;
- desertion;
- two years' separation with consent;
- five years' separation (where no consent is required)

The above grounds may not cover the situation, they will either have to live separately and apart for two years and then start divorce proceedings or cite unreasonable behaviour. This leaves the Petitioner (the party to the marriage making the divorce application) in the tricky situation of including enough in the divorce petition to convince a judge there should be a divorce and trying not to include anything too upsetting for the Respondent.

Once divorce proceedings are issued the Court sends the Respondent the divorce

documentation (which will include an Acknowledgement of Service form (AOS)).

The Respondent should then complete and return the AOS to the Court within eight days and state whether or not they intend to defend the divorce. Defended divorces are rare.

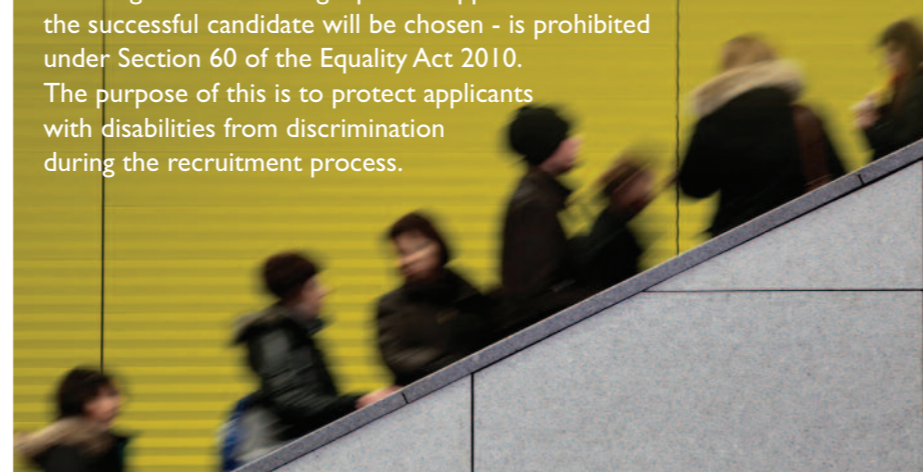
The Court sends a copy of the completed AOS to the Petitioner who then applies for the Decree Nisi. A District Judge then considers whether there should be a divorce and the date for pronouncement of the Decree Nisi.

The Court requires the Petitioner wait for six weeks from the date of Decree Nisi to apply for the Decree Absolute (which is the actual document which confirms you are divorced).

The process takes four to six months however; the Court prefers and it is strongly recommended that the parties determine the financial aspect of the marriage before the Decree Absolute is applied for, which may extend the time, as one or both parties may lose out on pension and/or inheritance rights.

## The Equality Act 2010 - Health Questionnaires

The use of questionnaires about job applicants' general health and similar issues before a job offer is made - including before selecting a pool of applicants from whom the successful candidate will be chosen - is prohibited under Section 60 of the Equality Act 2010. The purpose of this is to protect applicants with disabilities from discrimination during the recruitment process.



The measure, which came into force on 1 October 2010, does not prevent employers from asking job applicants any questions about their health but stipulates that they will only be allowed to do so for the purpose of:

- deciding whether they need to make any reasonable adjustments to enable an applicant to participate in the selection process;
- deciding whether a job applicant can carry out a function that is essential ('intrinsic') to the work concerned;
- monitoring diversity amongst those applying for jobs;
- taking positive action to assist disabled applicants; and
- establishing whether the applicant has a disability where this is a genuine requirement of the job.

It will be important to make clear why a particular question is being asked and how the information will be used.

Once a person has been offered a job, whether this is an unconditional or a

conditional offer, the employer is permitted to ask appropriate health-related questions and require a medical assessment where this is normal practice for all applicants.

If a candidate thinks a prospective employer has acted unlawfully by asking questions that are prohibited, he or she can make a complaint to the Equality and Human Rights Commission (EHRC). The EHRC will have the power to investigate and take enforcement action where necessary. A serious breach could result in a fine of up to £5,000.

If an employer uses a pre-employment health questionnaire, a disabled job applicant who is unsuccessful may bring a claim of disability discrimination, using the questionnaire as evidence in support of his or her claim. It will then be up to the employer to prove that there was a non-discriminatory reason for not offering that person the job.

ACAS has published a quick start guide for employers on changes introduced by the Equality Act 2010.



**Richard Stephens**

Richard Stephens is a partner in the employment department and can be contacted on: 020 8370 2875 or via [http://www.vanderpumpandsykes.co.uk/site/services/employment\\_solicitors\\_enfield/](http://www.vanderpumpandsykes.co.uk/site/services/employment_solicitors_enfield/)



## Cohabitees and Death - Who Can Claim?

When one member of a cohabiting couple dies, it can come as an unpleasant surprise to the bereaved partner to discover that not all of their late partner's estate will pass to them in the absence of a will. It is only when this happens that many people become aware that there is no such thing in law as a 'common law' spouse, so it is important that people living together give thought to protecting their position by the means currently available to them.

Where there are assets which are jointly held (as 'joint tenants' in legal terminology), these will pass by survivorship to the other partner. Property held jointly and joint bank accounts are normally held in this way. Also, if there is a life assurance policy or there are pension benefits payable to a nominated person, then the surviving partner will receive these if they are the named beneficiary.

Once such assets have been dealt with, however, the rules of intestacy apply if there is no will. An intestate estate passes (with a rather complex formula regarding its division depending on the size of the estate) to the relatives of the deceased. This will normally leave the deceased's partner with nothing.

However, the law does allow a claim for provision to be made from the estate of the deceased (under the Inheritance (Provision for Family and Dependents) Act 1975) by dependants if they are persons for whom the intestate person might reasonably have been expected to make provision.

A surviving cohabitee can make a claim if the deceased died intestate or failed to provide for them in the will if:

- they were maintained by the deceased in whole or in part immediately before the death of the deceased; or
- for two years prior to the death of the deceased they lived in the same household as the deceased as if they were the husband, wife or civil partner of the deceased.



In such cases the court may be requested to make 'reasonable provision' for the applicant. There are a series of guidelines which have been set to ensure that the provision made is fair bearing in mind the size of the estate and the circumstances of those with an interest in it.

The court's powers to divide the estate are considerable and can include making orders for periodical payments or lump sums or the transfer of specific property to the claimant. However, it should be remembered that transfers on death to a cohabitee do not qualify for the 'spouse' exemption from Inheritance Tax which applies to transfers to a spouse or civil partner.



**Inderjit Ahitan**

Inderjit Ahitan is a solicitor in the wills & probate department and can be contacted on: 020 8370 2873 or via [http://www.vanderpumpandsykes.co.uk/site/services/wills\\_probate\\_tax\\_planning/](http://www.vanderpumpandsykes.co.uk/site/services/wills_probate_tax_planning/)



# Buyer Beware! Unknown Liabilities Not Actionable

One of the key objectives of the due diligence process carried out by the prospective buyer of a business is to ensure that there are no skeletons in the cupboard of the business being bought. Typically, the Seller gives warranties and indemnities about the business or company which relate to its financial trading position, property, employees etc. If these warranties are breached, the buyer may be entitled to sue the seller for damages.

Typically, the seller of the business will supply accounts for it and will warrant that these show a 'true and fair view' of its position. In a recent case, a buyer of a business relied on audited accounts and more recent management accounts, which were provided on this basis. Subsequently, however, an undisclosed liability of more than £2 million was discovered.

The buyer sought to rely on the warranty that the accounts showed a true and fair view and claimed damages from the seller. However, the seller claimed that it had been completely unaware of the potential liability, the omission of which was due to a third-party error. The accounts did, therefore, show a true and fair view as far as the seller understood the situation to be at the time these were signed off and also when they were disclosed to the buyer.

The Court of Appeal firstly considered whether the accounts had been properly audited in accordance with accepted auditing standards. It concluded that they had. It then went on to find that because the accounts had been properly audited and the seller was completely unaware of the liability at the date the accounts were signed off and on the date of sale, the accounts did show a true and fair view and there was no breach of the warranty.

The case will give comfort to sellers if the accounts are prepared on the basis that they show a true and fair view and include known liabilities. However buyers will become more cautious and may seek to increase the scope of the warranties to protect themselves.



## Patrick McGrath

Patrick McGrath is a partner within the commercial department and can be contacted on: 020 8370 2855 or via [http://www.vanderpumpandsykes.co.uk/site/services/commercial\\_solicitors\\_enfield/](http://www.vanderpumpandsykes.co.uk/site/services/commercial_solicitors_enfield/)

# SPOTLIGHT ...

Getting to know the people behind Vanderpump & Sykes.



## 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. She 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.

Karen's legal career began by chance after studying leisure and tourism. She joined a North London firm as a junior clerk where her keenness saw an assigned task of taking notes at court lead to Karen diligently noting all the days hearings by mistake! Suffice to say, Karen was encouraged to study law and the rest is history.

Travelling the globe i.e. across to South London then Stevenage to expand her expertise, Karen eventually settled at Vanderpump & Sykes Solicitors. Where, in addition to expanding her client base, she has enjoyed the delights of motherhood with her 16 month old son.

**Why family law?** Karen says: "the draw for me is that family law is very people orientated which suits my personality. There is the opportunity to build relationships along the way enabling me to understand how best to represent my client. It is a very interesting area of law with all sorts of stories – I am no longer easily shocked."

**Highlights?** "acting on a Child Abduction case in the High Court which set a legal precedent"

**What you don't know** is that Karen is a black belt in karate. She has also been a tutor for Institute of Legal Executives (ILEX) distance learning courses, Family Law and Practice and Legal Practice.



## Richard Stephens

Richard was admitted as a solicitor in 1992. After 4 years in practice in North West London, he joined Vanderpump & Sykes in December 1996 in the Litigation department before progressing to Associate level. Richard then became a Partner and head of Litigation specialising in Employment law. He also acts for corporate clients in Commercial disputes. Richard is a member of the Employment Lawyer's Association.

**It's in his genes.** Richard comes from a family where law has permeated the gene pool. His father and wife practise law as do several other members of the Stephens clan.

Aside from his legal 'heritage' why did Richard become a lawyer?

"I like a good debate and have always been keen to argue a point. I pride myself on being good with detail but I'm also able to see the wood for the trees. Employment law has a very human element, more so than some other areas of law. It's a fascinating subject covering all aspects of life and the emotions that go with it. Being able to give talks about my work at seminars and events adds to the enjoyment."

**The man behind employment.** Richard is blessed with a 'lovely' family – three 'wonderful' sons (most of the time – he says!) who often accompany him to rugby and cricket matches. Richard plays tennis and has done a parachute jump but mainly keeps fit through cycling. This year will see Richard and one of his sons cycle to Brighton for charity. He loves the theatre and good restaurants but has aspirations to take on bungee jumping 'for the thrill' so watch this space!



## Joanna Peters

Joanna was admitted as a solicitor in November 2007 and joined the firm in August 2009. Joanna deals with residential conveyancing transactions in both freehold and leasehold sales and purchases, buy-to-lets, re-mortgages and transfers of equity. Joanna also handles commercial property freehold and leasehold transactions as well as estate sales.

**Noble profession** is what Joanna thinks of law. She says "it may sound weird but it (law) really gives you a chance to make a difference. At grammar school we were encouraged to choose a noble profession such as being a doctor or lawyer. In the 6th form I became interested in case law and had an enjoyable time studying at law school."

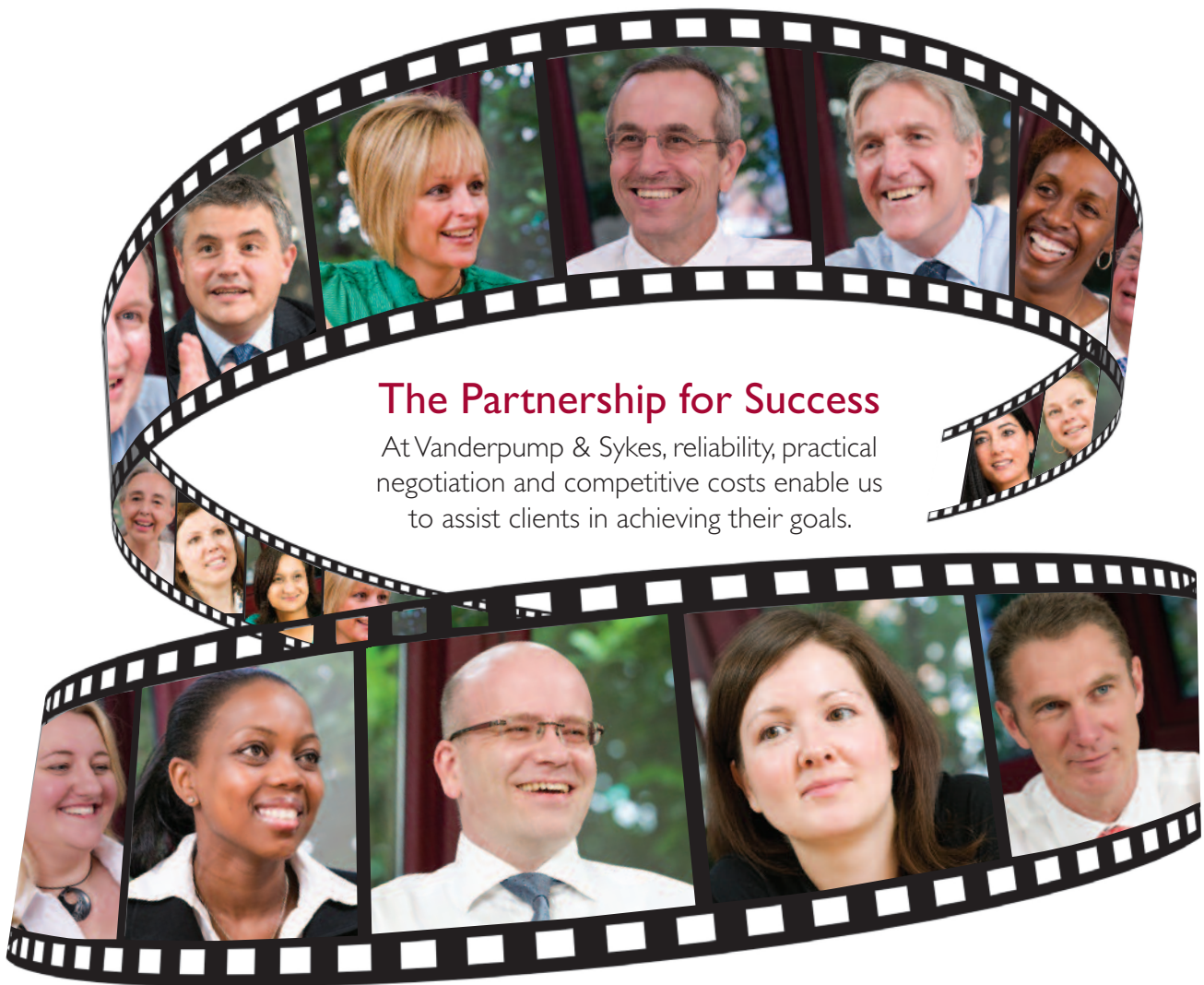
**Why conveyancing?** Joanna continues "it plays to my strengths of having an eye for detail and sharp negotiation skills. Conveyancing is very much a hands on process where I am involved with banks, clients, estate agents and a multitude of other personnel.

It is a pressurised, fast paced environment where you, as the solicitor, are pulled to and fro. My personality certainly suits the madness which often arises!"

**Outside of work** life continues at a frenetic pace for Joanna with everything done to an extreme! Describing herself as an 'adrenalin junkie' Joanna is a fitness fanatic, socialite and charity philanthropist. Fundraising treks up Ben Nevis and the like, she is currently preparing for Kilimanjaro later this year. Makes one tired just to read it – what a girl!



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, reliability, practical negotiation and competitive costs enable us to assist clients in achieving their goals.

Established since 1899, Vanderpump & Sykes 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:

Keith Thompson: [keiththompson@vanderpumps.co.uk](mailto:keiththompson@vanderpumps.co.uk)  
Stephen Quy: [stephenquy@vanderpumps.co.uk](mailto:stephenquy@vanderpumps.co.uk)  
Patrick McGrath: [patrickmcgrath@vanderpumps.co.uk](mailto:patrickmcgrath@vanderpumps.co.uk)  
James Porter: [jamesporter@vanderpumps.co.uk](mailto:jamesporter@vanderpumps.co.uk)  
Ruth Muthoni: [ruthmuthoni@vanderpumps.co.uk](mailto:ruthmuthoni@vanderpumps.co.uk)  
Joanna Peters: [joannapeters@vanderpumps.co.uk](mailto:joannapeters@vanderpumps.co.uk)

### Employment/Litigation And Debt Recovery:

Richard Stephens: [richardstephens@vanderpumps.co.uk](mailto:richardstephens@vanderpumps.co.uk)  
Jenny Howe: [jennyhowe@vanderpumps.co.uk](mailto:jennyhowe@vanderpumps.co.uk)  
Vivien Richardson: [vivienrichardson@vanderpumps.co.uk](mailto:vivienrichardson@vanderpumps.co.uk)

### Family & Matrimonial:

Mark Heselton: [markheselton@vanderpumps.co.uk](mailto:markheselton@vanderpumps.co.uk)  
Karen Chapman: [karenchapman@vanderpumps.co.uk](mailto:karenchapman@vanderpumps.co.uk)  
Caroline Ford: [carolineford@vanderpumps.co.uk](mailto:carolineford@vanderpumps.co.uk)  
Meryll Llewellyn-Jones: [mljones@vanderpumps.co.uk](mailto:mljones@vanderpumps.co.uk)

### Wills & Probate:

Clare Wills: [clarewills@vanderpumps.co.uk](mailto:clarewills@vanderpumps.co.uk)  
June Addy: [juneaddy@vanderpumps.co.uk](mailto:juneaddy@vanderpumps.co.uk)  
Inderjit Ahitan: [inderjitahitan@vanderpumps.co.uk](mailto:inderjitahitan@vanderpumps.co.uk)