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Welcome to the Summer edition of V&S Focus, incorporating legal developments which may affect you or your business and legal services designed to help you through life.

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Mr B. P. of Enfield

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Justifying Retirement

The Equality Act 2010 outlaws age discrimination in the workplace unless the act complained of is objectively justified. The justification must be "a proportionate means of achieving a legitimate aim".

The original rules allowed employers to retire employees at a default retirement age of 65 or over. However, this provision was repealed in April 2011. Therefore, compulsory retirement of an employee at any age now amounts to direct age discrimination unless it is objectively justified.

An important case on this issue has recently been reported. It relates to Mr Seldon, a Partner in a firm of Solicitors, who was compulsorily retired in accordance with the Partnership Deed, aged 65. (The default retirement age never applied to Partners).

He issued Employment Tribunal Proceedings arguing that he had been directly discriminated against on grounds of age.

The Tribunal held that compulsory retirement in these circumstances was a proportionate means of achieving the following legitimate aims:

- Retaining Associates;
- Facilitating workforce planning; and
- Contributing to a congenial and supportive workplace culture.

It was, therefore, objectively justified.

Mr Seldon appealed all the way to the Supreme Court. One of the Judges stated that the legitimate aims identified must be objectives with an element of public interest consistent with the social policy aims of the State.



She identified two different kinds of legitimate objective:

- Inter-generational fairness; and
- Dignity

Consequently, Clarkson, Wright and Jake's aims behind its compulsory retirement age were legitimate. However, the Judges referred the matter back to the Employment Tribunal to decide whether a retirement age of 65 was appropriate and necessary in these circumstances.

Although this decision appears to allow companies to re-introduce compulsory retirement ages, it does not clarify whether a particular age would be acceptable in any given circumstance. It is also quite possible that no retirement age will be acceptable if the employer cannot identify a legitimate aim.

Consequently, employers will have to be extremely careful before taking any steps to retire older workers and no decision should be made without obtaining specialist legal advice.



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.

Husband Who Failed to Disclose Assets Faces Further Payments

When the marriage between a wealthy property developer and his wife ended acrimoniously, their battle over the financial settlement lasted more than a decade.

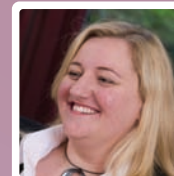
As part of their divorce settlement following their separation in 2000, the husband was ordered to pay his wife £176,000 in 'full and final settlement' of her financial claims against him.

However, she continued to be surprised at her ex-husband's 'apparent wealth' and this led her to question whether he had in fact made a full and frank disclosure of his assets at the time of their divorce.

It was subsequently ascertained that a house owned by the property developer, which is now worth more than £1.3 million, had not been disclosed. He claimed that it was owned by him in trust for one of the couple's children.

The court was unimpressed and, in 2010, ordered him to pay an additional £384,000 to his ex-wife. He was also ordered to pay her legal costs.

His appeal against that decision, in which he claimed that his assets had been 'grossly overvalued' by the judge who ordered the settlement, was heard recently. After a five-day hearing, it was dismissed by the Court of Appeal. The man was criticised by the Court for the lack of credibility of his evidence and for his failure to produce reliable documentary evidence. In the circumstances, the judge's findings, which were findings of fact, could not be displaced.



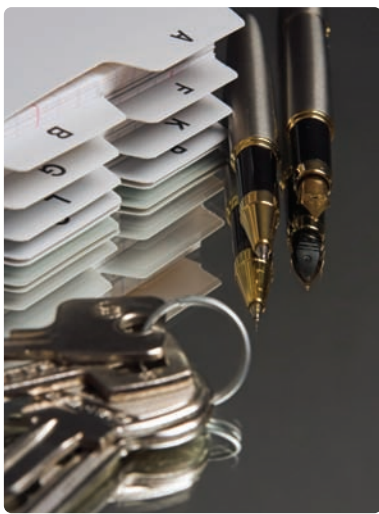
Meryll Llewellyn-Jones

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

'A' owned two adjoining terraced properties, number 123 and number 125. 125 comprised ground and first floors and was let to 'R'. The first floor room included a storeroom that physically extended over part of the ground floor of the adjoining property, number 123. In 1992, 'R' acquired the freehold title to 125 from 'A', but that part of the storeroom above 123 was not referred to in the transfer. 'A' then sold 123 to 'B'.

Landowners Take Care With Property Boundaries

A recent case has indicated the risks of relying solely upon Land Registry plans and title documents when dealing with property.



Later 'B' created a doorway into the first floor storeroom whilst in the process of redeveloping 123 and bricked up the door that led to the storeroom from 125 despite objections raised by 'R' at the time. Years later 'R' sued for possession.

The court held that the storeroom was owned by 'R' as it formed part of his restaurant premises, even though it did not appear on the title document.

The court decided to award damages to 'R' instead of restoring ownership of the storeroom to him, because restoration would be difficult given the changed structure of the building and because of the time that had passed since the work was done. It awarded exemplary damages to 'R', because it considered the actions of 'B' to be unconscionable. Exemplary damages go beyond the usual principle of compensating the person who has suffered loss and are intended to act as a deterrent. Damages of nearly £450,000.00 (including exemplary damages of £60,000.00) were awarded to 'R'.

Although these sums were later reduced on appeal, the decision is interesting as it demonstrates the court's willingness to apply a harsh remedy when the wrongdoer's actions are considered particularly blameworthy in order to dissuade the wrongdoer from behaving that way again.

Landowners should take care to ensure that the actual property boundaries reflect those shown on the documents of title. In particular a good line of communication between owner and its professionals (e.g. surveyor, solicitor and architect) needs to be established early on in any development to ensure that any discrepancies are identified.



James Porter

James Porter, a partner in the commercial property department, can be contacted on: 020 8370 2865, or email jamesporter@vanderpumps.co.uk

COHABITATION AGREEMENTS

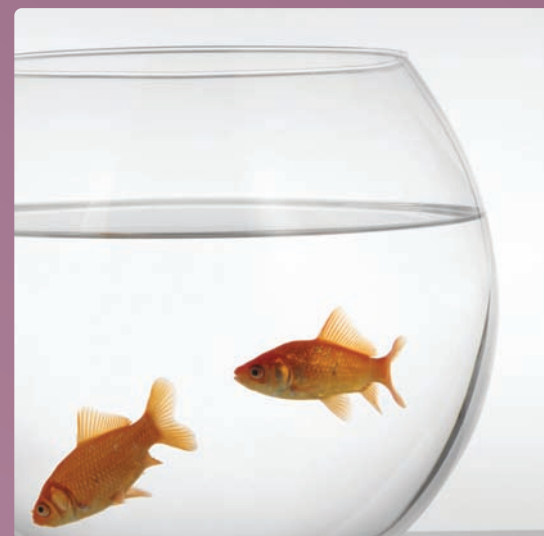
One of the most common myths in English Law is that there is such a thing as "common law marriage". The truth is, that it simply doesn't exist. Currently, cohabitees have few rights.

When a marriage/civil partnership breaks up or one partner dies, the rights of the respective partners are relatively clear. This is not the case with a cohabiting couple. When their relationship breaks up or one of them dies, the difference between a legally recognised partnership and an informal one becomes all too obvious.

On the death of an unmarried partner, the intestacy laws make no provision for the surviving partner to inherit from the estate of their partner, nor does the surviving partner benefit from the exemption from Inheritance tax which would apply if the deceased's estate passed to a spouse/civil partner. To receive anything at all the surviving partner may well have to go to Court to show they co-owned assets. They may also have to show that they qualify for

financial provision to be made out of the estate under the Inheritance (Provision for Family Dependents) Act 1975.

One easy and inexpensive solution to prevent such problems arising is to enter into a Cohabitation Agreement with your partner. This is a contract between two people who live together which sets out their agreement on the division of their combined assets. The agreement should state who it is between, how long it is intended to last and that it is intended to be legally binding. If there are assets (such as a house) which are to be dealt with in a particular manner, these should be specifically mentioned and details provided as to how they should be dealt with on death or break up. Details of the ownership of all significant assets – bank accounts, insurances and shares should also be provided for if possible.



Liz Orman

Liz Orman is a solicitor in the family department and can be contacted on: 020 8370 2877 or lizorman@vanderpumps.co.uk

SHAREHOLDER REMEDIES FOR RESOLVING DEADLOCK

A company that has two or more directors, who are also the shareholders, becomes deadlocked when they are unable to agree on future conduct. A deadlocked company is unable to function and will be loss making.

An absence in the articles of association of provisions to break this deadlock, or of any written shareholders' agreement entered into between the parties, leads to difficulties on an exit as there is no principle of unilateral withdrawal under company law permitting one shareholder to require the other to buy his shares at fair value.

A shareholder in a deadlocked company has limited options to realise the value of his shareholding quickly. As a general rule, a shareholder is able to sell his shareholding to a third party of his choice. However, this will depend on a purchaser being found and the extent to which there is a market for shares in a deadlocked company which are not readily convertible assets may be an issue. In addition, it is not uncommon for a company's articles of association to contain restrictions on share transfers or even pre-emption rights on share transfers.

If a sale is not possible or not feasible, it is likely that legal proceedings will need to be instigated and a court order obtained either for the "buying out" of one shareholder by another or for the winding up of the company. The first, an "unfair prejudice petition", may be made against a shareholder who has acted in contravention of his fiduciary duties and company law. The second, an application to court for the compulsory winding up of the company, may be made if the court considers it is 'just or equitable to do so'. However, litigation is expensive, uncertain and protracted deadlock may lead to the collapse and ruin of a business.

Instructing lawyers at the outset of the business relationship before problems arise to draft suitable articles of association and a shareholders' agreement to provide a clearly defined exit route by reference to a price set by an accountant's valuation is recommended.



Jonathan Goldsmith

Jonathan Goldsmith, is a solicitor in the company commercial department and can be contacted on: 020 8370 2855, or via email on jonathangoldsmith@vanderpumps.co.uk.



Give to Charity and Reduce Your Inheritance Tax

Legislation has been introduced allowing a new regime to apply to deaths on or after 6th April 2012.

This provides for a reduction in the rate of Inheritance Tax from 40% to 36%, where 10% or more of a deceased person's net estate (after deducting IHT exemptions, relief and the Nil Rate Band) is left to charity.

This policy supports the Government's aim to encourage charitable giving, promote greater philanthropy and links into the Government's objective of fairness in the tax system.

For the purposes of the 10% test a deceased's estate is divided into three components:

1. Survivorship (the deceased's interest in assets owned as beneficial joint tenants),
2. Settled property (assets in which the deceased had a qualifying interest in possession),
3. General (all other assets within the deceased's IHT estate except for property treated as part of the estate because of the reservation of property rules).

If the legacies are at least 10% of the value of the component they come out of then the lower IHT rate applies to that component. If the legacies are more than 10% of the value of the component, an election can be made to merge that component with one or both of the others so as to extend the 36% rate to more of the estate if charitable legacies are 10% of the combined component.

HOW DO I LEAVE MONEY TO CHARITY IN MY WILL?

It is easy to include a charity in your Will but you should always consult your solicitor before you write or change your Will to be sure it reflects your exact intentions and that you understand its implications.

Before you instruct a solicitor, you need to take a few minutes to clear your thoughts and decide exactly what you want to do. Specifically you need to ask yourself the following:-

WHAT HAVE I GOT TO LEAVE?

If you own your home, how much is it worth? Have you any savings or investments? Valuables? Jewellery?

WHO DO I WANT TO HELP?

Of course you must make provision for your loved ones first. Make a list of their full names and addresses.

WHO ELSE HAS MADE A DIFFERENCE TO MY LIFE?

Has a charity helped you, or someone you love? Which causes have been important to you?

Which appeals have really moved you?

If you know them, make a note of their official charity name, address and registered number for your solicitor to take instructions, or alternatively, provide details of the charities that you wish to benefit and your solicitor will be able to obtain up to date address and registered charity numbers for them.



Inderjit Ahitan

Inderjit Ahitan is a solicitor in the wills and probate department and can be contacted on 020 8370 2899 or via email on inderjitahitan@vanderpumps.co.uk.

No Such Thing as Squatter's Rights

There are 15,000-17,000 estimated squatters in the UK, although there is no official figure and the actual number could be much higher. The figure has recently risen, indicating a worrying trend.

One of the main reasons for the increase is that squatting is currently dealt with as a 'civil matter'. Only in limited circumstances will it constitute a criminal activity.

In order to evict a squatter, the home owner must serve notice, obtain a Possession Order through the Court and then finally enforce that Order when the squatter invariably refuses to leave.

This process can be time consuming, a realistic estimate is 3 months minimum from start to finish. In addition, the process is fraught with danger; attempts by those unaware of the proper process to pursue it can result in major delays through a failure to observe

the various technicalities.

It is always good practice to instruct a specialist Solicitor in such circumstances, given that the expertise provided will ensure that you obtain vacant possession at the earliest date possible.

However, change is imminent, with plans for new legislation aimed at 'getting tough' on the concept of 'squatter's rights'.

The new legislation will make squatting a criminal offence, removing the need for extensive civil process and giving the Police greater powers, namely immediately forcing entry and arresting any individual occupying a property. Additionally, anyone found guilty of squatting



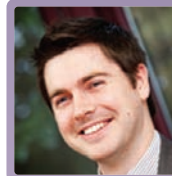
could face a prison sentence.

The proposals have received a mixed reception, personal agendas have coloured perception of what many simply feel is common sense.

It seems opposition would be in vain, as the changes are

set to go ahead. This would bring about the end of the Court process and introduce forcible removal as a remedy.

As 700,000 properties stand empty in the UK, this change will face immediate scrutiny.



Gary Beecham

Gary Beecham is a trainee solicitor in the litigation department and can be contacted on: 020 8370 2870 or via email on gsrybeecham@vanderpumps.co.uk.



Buying a House and Consumer Protection

With the appointment of an Ombudsman for Estate Agents (OEA), the laying down in statute of the duties of estate agents and the passing of the Consumers, Estate Agents and Redress Act 2007 (CEARA), a property purchaser might reasonably conclude that their interests are strongly protected under the law.

This view is likely to be bolstered by an awareness of the existence of the National Association of Estate Agents' (NAEA) own disciplinary and redress scheme. However, the assumption that a buyer's interests are well protected is not as well founded as you might think.

The estate agent's main duty is to the vendor of the property, so the regulations under which they operate relate mainly to their relationship with the vendor. They are bound not to discriminate against purchasers who do not wish to buy other services they offer and to declare a personal interest to any buyer. It is important to note that even when the sales particulars of a

property are inaccurate, the right of redress may be limited. Recently, the court ruled that an agent was not liable for providing false information to the effect that a property included a substantial area of land which was not in fact registered in the vendor's name. The estate agent had simply accepted without enquiry that the area of land was part of the property and included it in the

sale particulars. The court considered that any purchaser would have made sure that a proper search of the title was done and in any event the offer for sale was 'subject to contract' – placing the onus on the purchaser to make sure their enquiries were carried out carefully!

The Ombudsman service deals with claims against estate agents, but its powers are limited and the maximum award that can be made is £25,000. In practice, most awards are a small fraction of that amount. Members of the NAEA must belong to the OEA redress scheme.

In 2010, new protection was given to buyers who buy 'off plan', with the launch of the Consumer Code for Home Builders.



Ruth Muthoni

Ruth Muthoni is a solicitor in the conveyancing department and can be contacted on: 020 8370 2897 or email ruthmuthoni@vanderpumps.co.uk.

SHOULD I BUY TO LET?

With property values recovering and market returns for many investments quite modest, the buy to let market may seem an attractive proposition. Let's take a look at some of the more practical, but less often mentioned, aspects of buy to let which clients should consider.



INVESTMENT MANAGEMENT AND TRANSACTION COSTS

Letting can mean high investment management costs. The transaction costs are relatively high, particularly the Stamp Duty Land Tax payable on purchase and the agent's fee on sale. Preparation of leases for each set of tenants and other costs add up to make property a relatively expensive investment asset to hold in terms of management costs. Landlords also need to be licensed if they rent for multiple occupancy and such licences can be expensive. The cost implications of safety legislation can also be substantial.

TENANTS

Good tenants, of course, make being a landlord easier, but the other kind exist, too. They may fail to take care of, or even damage, your property, necessitating significant expenditure before it is fit to be let again. They may stop paying their rent, or refuse to vacate the property. Dealing with problem tenants can be expensive and can cause gaps in the flow of rental income. Having a well thought out lease agreement is an essential protection.

AGENTS

The quality and effectiveness of letting agents varies enormously. Make enquiries of other landlords before

making your choice. Recently, a scheme called The National Approved Letting Scheme was set up in order to improve the service to landlords and tenants. To belong to the scheme, members must meet certain minimum quality benchmarks which include a clear charging structure and professional indemnity insurance.

TAX

Profits from rental income are taxable in the normal way, but do not attract National Insurance Contributions – a significant saving compared with earned income. You can deduct repairs, letting agent's fees, interest on a loan applied to buy the property and so on. The tax position varies, depending on whether you let the property furnished or unfurnished, so take advice about which is the better choice. If you live abroad and rent out a house owned in the UK, you will find that tax is deducted by your letting agent. Lastly, when a property is sold, there is the possibility that any gain may be subject to Capital Gains Tax.



Jenny Howe

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

Options and Pre-Emption Rights

Prospective purchasers and vendors of land frequently wish to 'lock in' the other party to the deal. The means by which this is done will normally involve the prospective vendor either giving the prospective purchaser an option to purchase the land, or granting the right of pre-emption over its acquisition.

The two sorts of arrangement might seem at first glance to be the same, but there are significant differences between them.

Under an option to purchase agreement, the prospective purchaser is given the right to buy the land, possibly subject to the occurrence of a certain event or events, for a limited period of time. If the specified event occurs, the right to purchase is absolute.

A pre-emption agreement, however, gives the prospective purchaser the right to be 'first in the queue' should the landowner decide to sell the land within the pre-emption period.

Accordingly, an immediate right over the land is created under an option. An option will also bind a future owner of the land in question. A pre-emption agreement, however, does not create an immediate interest in the land. If the owner of the land decides not to fulfil the conditions which 'trigger' the pre-emption agreement, the holder of the pre-emption rights will never see

them come into effect. However, pre-emption rights in regard to registered land take effect at the time of their creation and can therefore be binding on subsequent owners.

There are two other important differences between options and pre-emption agreements. To be binding, an option must be made in writing. This is because an option is a conditional contract for the sale of land and, under English law, contracts for the sale of land must be in writing. A pre-emption agreement need not be made in writing, although it is sensible to do so. In the case of a pre-emption agreement, the contract for land only comes into effect when the trigger event occurs and the holder of the pre-emption right then makes the offer for purchase, which the landowner is bound to accept. At that stage the contract must be put in writing.

The use of options and pre-emption agreements also create somewhat different tax positions and any negotiation of an option or pre-emption agreement should be carried out with the benefit of professional advice.



Stephen Quay

Stephen Quay is a partner in commercial property and can be contacted on: 020 8370 2853 or stephenquay@vanderpumps.co.uk.

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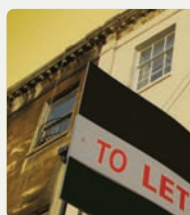
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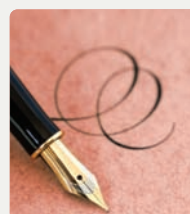
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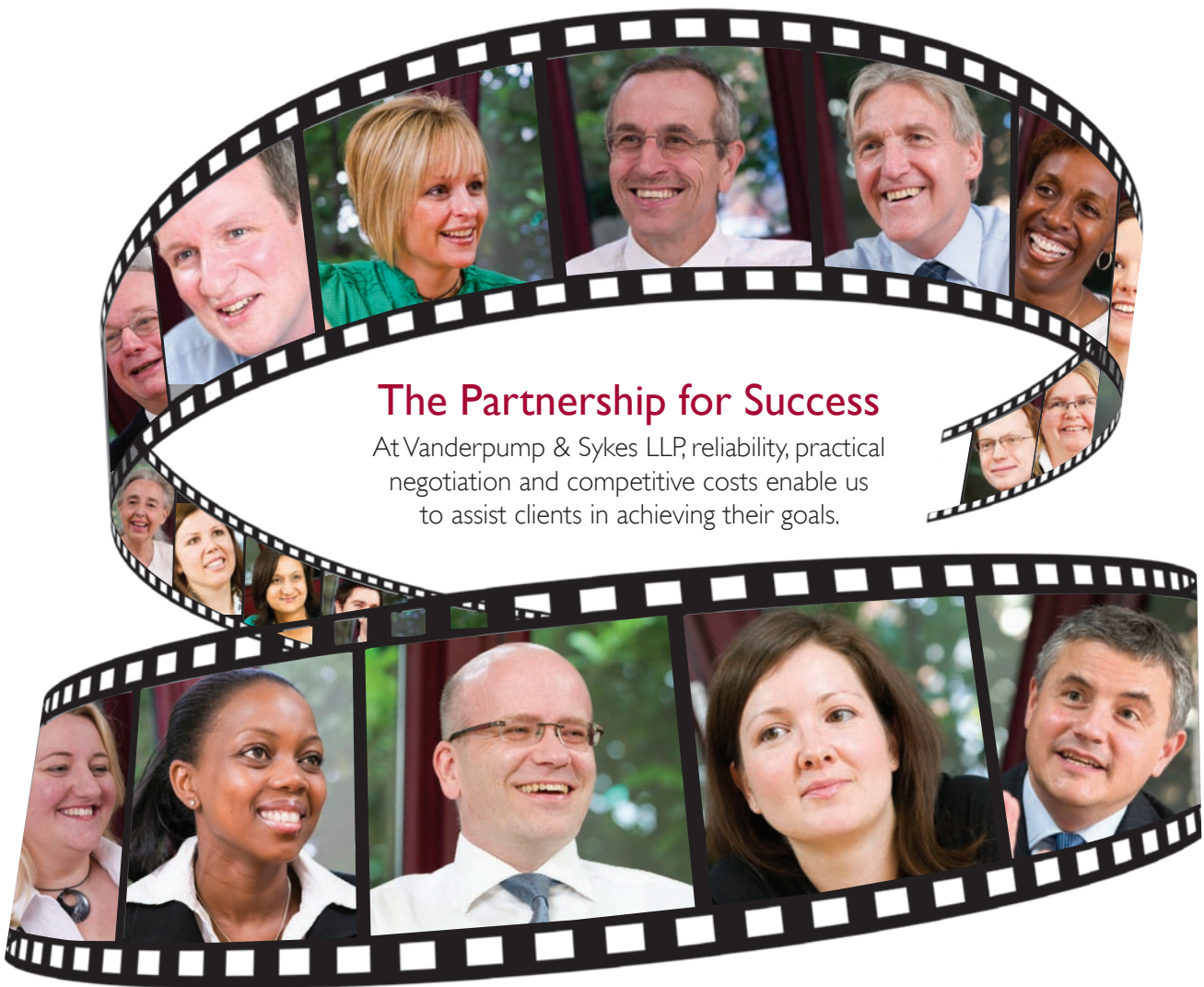
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FOR HELP AND ADVICE ON ANY OF THESE ISSUES CONTACT US NOW:

Company Commercial, Commercial & Residential Property:

Keith Thompson: keiththompson@vanderpumps.co.uk
Stephen Quy: stephenquy@vanderpumps.co.uk
James Porter: jamesporter@vanderpumps.co.uk
Jonathan Goldsmith: jonathangoldsmith@vanderpumps.co.uk
Ruth Muthoni: ruthmuthoni@vanderpumps.co.uk

Employment/Litigation And Debt Recovery:

Richard Stephens: richardstephens@vanderpumps.co.uk
Jenny Howe: jennyhowe@vanderpumps.co.uk
Vivien Richardson: vivienrichardson@vanderpumps.co.uk
Gary Beecham: garybeechem@vanderpumps.co.uk

Family & Matrimonial:

Mark Heselton: markheselton@vanderpumps.co.uk
Meryll Llewellyn-Jones: mljones@vanderpumps.co.uk
Liz Orman: lizorman@vanderpumps.co.uk

Wills & Probate:

Clare Wills: clarewills@vanderpumps.co.uk
Inderjit Ahitan: inderjitahitan@vanderpumps.co.uk