



V&S FOCUS

THE PARTNERSHIP
FOR SUCCESS

VANDERPUMP & SYKES
SOLICITORS

Spring 2011. Volume 4, Issue 2

INSIDE THIS ISSUE

- 2** Relocating Abroad With Children
- 2** New Rights to Paternity Leave
- 3** Exclusion Clauses Fail to Protect IT Consultants
- 3** Man Who Disguised Home as Barn Loses Court Battle
- 4 & 5** Buy-to-Let Market: Getting the Best From Your Investment, Court Rules in Favour of Adult Daughter Excluded from Late Mother's Will, Collaborative Law – A New Approach
- 6** New £1 Million Threshold for Residential Property
- 6** Right to Buy: Can Tenants buy Their Commercial Property?
- 7** Spotlight

All Change



Keith Thompson is a partner in the commercial department and can be contacted on: 020 8370 2896

As the season changes, so does the Vanderpump & Sykes Solicitors status. In common with other accountancy and legal firms, on the 1st May we converted to limited liability partnership (LLP).

So what does this mean for our clients? Fortunately, a continuation of the same quality service (as confirmed by our Client Satisfaction Surveys). Only our name will change to 'Vanderpump & Sykes LLP'. Our new LLP status will retain the trading name of 'Vanderpump & Sykes' and any reference to Vanderpump & Sykes Solicitors or V&S will still mean Vanderpump & Sykes LLP.

Our Spring edition of V&S Focus covers a range of commercial and private client features which we hope you find informative. If you would prefer to receive V&S Focus via email please notify: 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!

Vanderpump & Sykes Welcomes Collaborative Law

We are pleased to let our readers know that the family department now offers Collaborative Law as an alternative solution to costly and sometimes acrimonious court proceedings

The service enables each person to appoint their own collaborative family lawyer to assist with managing their divorce or separation. The couple and their respective collaborative lawyers all take part in meetings to work things out face-to-face.

Says Caroline Ford, Collaborative Family Lawyer at Vanderpump & Sykes "the benefits of taking this approach are that couples retain control over issues relating to children and finances. They avoid litigated court proceedings and maintain a working relationship in the future. The process is confidential and private, offering a non-aggressive and dignified way of resolving matters".

In addition to resolving divorce and separation issues, Collaborative Law will also be available at Vanderpump & Sykes Solicitors for pre-nuptial, pre-civil partnership, cohabitation, post nuptial and post civil agreements.

See page 5 for further details regarding collaborative law.



Relocating Abroad with Children

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.



Karen Chapman

Karen Chapman is a solicitor in the family department and can be contacted on: 020 8370 2877 or karenchapman@vanderpumps.co.uk.

New Rights to Paternity Leave

The Government has recently introduced new measures allowing mothers and fathers more flexibility to share time off after a baby's birth. The reason for introducing these rules was because of the difficulty that parents had dividing their parenting responsibilities equally. It was felt that mothers wanted to return to work earlier without having to send their child to nursery and fathers wanted to spend more time with their child in the early stages of life.

The new regulations state that, for any children due on or after 03 April 2011, if a mother returns to work without using all of her maternity leave, the father will be able to take the remaining time off. This will be up to a maximum of six months leave.

Some commentators have criticised the new legislation. An Employment Barrister has said that the system "will create tremendous difficulties for all but the largest employers...". The reason given is the potential difficulty in engaging cover during

these extended periods of absence. He feels that this may lead to employers becoming more wary of recruiting anyone in their 20s or 30s who are likely to have children.

Others have pointed out the increased red tape and practical difficulties of implementation. In order for the system to work, it needs to be established that the child's mother has used up her maternity leave and has gone back to work. It is felt by some that this will be difficult to police.

The aim of the new system which gives both parents the opportunity to spend time with their young children is admirable. However, the question remains whether it will cause too many problems for smaller businesses to implement.

Employers need to be aware of these changes and ensure that they are ready to handle requests for paternity leave. They are therefore advised to update their paternity policy as soon as possible.



Richard Stephens

Richard Stephens, a Partner in the firm's employment department, is happy to advise on this matter and draft the necessary documentation. Contact Richard on: 020 8370 2875 or richardstephens@vanderpumps.co.uk.

Exclusion Clauses Fail to Protect IT Consultants

Clauses limiting liability under contracts have always been contentious, so a recent decision is to be welcomed because it sets out clearly the limitations which apply to exclusion clauses.



The case involved GB Gas Holdings (Centrica) and Accenture, which had a contract to implement an IT-based billing system for the gas supplier.

In the event, there were many problems with the system and GB sought restitution for its consequential losses. Accenture resisted paying compensation, on the basis of a limitation clause in the contract.

This sought to exclude:

- loss of profits or of contracts arising directly or indirectly;
- loss of business or of revenues arising directly or indirectly; and
- any losses, damages, costs or expenses whatsoever to the extent that these are indirect or consequential or punitive.

Losses for which restitution was sought (amounts claimed in brackets) included:

- loss of gas distribution charges resulting from the unreliable transmission of usage data (more than £18 million);
- compensation paid to customers, which included ex-gratia payments to preserve goodwill (£8 million);
- additional borrowing charges (£2 million);
- costs of chasing debts not correctly due (just under £400,000); and
- other costs (more than £100,000).

The court ruled that none of the above losses (including the ex-gratia payments) was excluded by the limitation clause.



Patrick McGrath

Patrick McGrath is a partner in the commercial department and can be contacted on: 020 8370 2855 or patrickmcgrath@vanderpumps.co.uk.



Man Who Disguised House as Barn Loses Court Battle

A man who built a house which appeared from the outside to be a barn has lost his battle to obtain a certificate of lawful use for the property.

The man originally obtained planning permission to build a barn. He then constructed a fully-equipped three-bedroom house, the exterior of which resembled a barn, and lived there with his wife. Four years after the building was constructed, he applied for a certificate of lawful use in respect of the use of the building as a dwelling, on the grounds that the council had not taken any action regarding the breach of planning permission within the statutory four-year time limit for doing so. The council, which had been unaware of the breach of planning permission, refused the application.

After a number of appeals, the case ended up in the Supreme Court, which ruled that despite the apparently clear wording of the relevant legislation, the dishonesty exhibited by the couple was so far out of the contemplation of the framers of the legislation that the council was entitled not only to prevent the continued occupation of the property as a dwelling but also to require its demolition.

This decision indicates that using deception in an effort to get around planning decisions is a highly dangerous strategy.



Ruth Muthoni

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



Buy-to-Let Market: Getting the Best from Your Investment

Whilst would-be first time buyers and home-owners wait anxiously for the latest reports and predictions about the housing and mortgage markets, people who purchased buy-to-let properties during the not too distant property boom years are likely to be benefitting from the increased demand for rental properties created by ongoing economic uncertainty.

Many people saving to buy property are likely to be in rented accommodation for a good while, with mortgage lenders requiring a minimum of between 10%- 25% of the purchase price as a deposit from all but the most credit-worthy applicants.

Others who are in a position to buy might be biding their time before they commit to a purchase amid the uncertainty of the market.

But, as unemployment continues to rise at least in the 16-24 year old sector, it's worth bearing in mind that rent isn't necessarily the most reliable source of income for property owners.

With inflation and the rise in the day to day cost of living taking their toll, most people are feeling less flush. If you've got a tenant whose rent has been paying your buy to let mortgage, Landlords need to make sure that rent arrears don't build up to the point they

become unmanageable – and unpayable.

Try to keep an open line of communication with tenants. If they're otherwise good tenants going through a difficult patch, offer some flexibility initially. Some rent coming in is better than the cost of evicting a tenant and re-letting your property.

It's also worth considering some of the insurances available against loss of rental income.

If the worst comes to the worst, ensure that notice to terminate the tenancy is given as early as possible. If your tenant is going to qualify to be re-housed by the local authority then you will need to issue possession proceedings to get the property back, and that can mean a wait of a few months to get from serving notice to a possession order.

The sooner you take action, the better able you will be to limit your loss.



Jenny Howe

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



Court Rules of Adult Daughter Excluded from Late Mother's Estate

The Court of Appeal recently upheld the appeal of Mrs Illott, aged 50 and an only child, against the decision of the High Court that her estranged mother's Will could reasonably make no financial provision for her, instead leaving the entire £486,000 estate to three charities.

In the first instance, Mrs Illott received a lump sum of £50,000 on her claim but the Court of Appeal directed that her appeal against this should be sent to the High Court.

In reaching its decision the Court of Appeal examined in detail the approach to be taken under the Inheritance (Provision for Family & Dependents) Act 1975 where an adult child claims that the Will of a deceased parent has failed to make reasonable financial provision for him or her.

This case does not highlight any "new" legal development, but is a helpful guide on how the Court should approach cases involving the claims of adult children.

In the past it was thought by many practitioners that adult children who were not financially dependent on their parents and had not given up a benefit to their own detriment to care for their parent, would be unsuccessful in making a claim against the estate of a deceased parent.

However, the above case emphasises the need to take into account all the factors set out in Section 3. of the Inheritance Act



Clare Wills

Clare Wills is Head of the litigation department and can be contacted on: 020 8370 2874 or clarewills@vanderpumps.co.uk.



in Favour
of the adult
child's Will

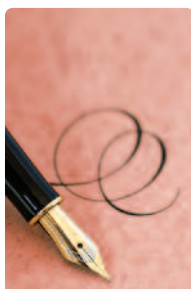
1975 in deciding whether the financial provision for any claimant is unreasonable.

The above decision reinforces the proposition that an adult child is in the same position as any other applicant who has to prove his case under the Act and that Parliament clearly intended that an adult child should be able to bring a claim, even if he can live without claiming on the estate.

Practitioners and clients alike need to be aware of the above case. Practitioners should explain to their clients that disregarding an adult child under their Will, will be treated the same as them disregarding a young dependent child. Clients need to make sure they are aware of this fact when deciding whom to leave their estate to. It will no longer be sufficient to assume that just because their children are adults and able to financially fend for themselves, that any claim by them against the estate post death will be unsuccessful.

It remains to be seen whether the above case will be referred to the House of Lords on appeal by the charities.

of the Wills & Probate
can be contacted on:
or
vanderpumps.co.uk



Collaborative Law – A New Approach

A fairly new approach dealing with disputes in the area of family law is collaborative law. What does this mean? It means that instead of dealing with divorce, the financial aspect of the marriage and disputes regarding the children, the parties and their respective lawyers commit to resolving matters without resorting to court proceedings, (the 'no court commitment'). However, the court will, and does so fairly quickly, incorporate agreements made using the collaborative process into a binding court order.

The purpose of the collaborative approach is to work together to resolve issues. It allows the parties to set their own timetable and agendas, giving control to the parties concerned - in some cases making the process quicker than court proceedings.

The collaborative process is suitable for parties willing and able to work together to find a solution. If the collaborative process breaks down and/or court proceedings are issued, then both parties will need to instruct different lawyers. The documentation that has been used within the collaborative process is not wasted, as it can be utilised within the court process.

Research by Resolution shows that the collaborative process has an 85% success rate. The benefits are that hostility is avoided; both parties views and concerns are aired; it helps the parties see the others point of view and from the children's perspective. Negotiations are transparent and open, which aims to promote trust and improve communications between the parties, especially where children are concerned.

The process proceeds at a pace suitable for the parties. The timetable is flexible.

Other collaborative experts can be instructed to assist such as Counsellors - whether for the parties and/or the children - Mediators, Accountants Valuers, IFAs, Actuaries.

The collaborative process in a nutshell.

Both parties instruct their own collaboratively trained lawyer. The parties and their lawyers enter into a Participation Agreement to confirm that all will negotiate in good faith, the way negotiations will take place and what happens if the process breaks down.

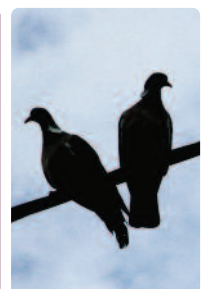
Both parties prepare and exchange Anchor Statements. These set out the individual's hopes and aspirations for the outcome of the collaborative process. These help to focus on the main goals.

There will be a series of round-the-table four-way meetings at which discussions will progress and ultimately lead to an agreement being reached regarding the children and the financial aspect of the marriage.



Caroline Ford

Caroline Ford practices collaborative law and is an experienced family lawyer at Vanderpump & Sykes Solicitors. For further advice on the above or any family matter please contact Caroline on: 020 8370 2870 or caroline@vanderpumps.co.uk.



New £1 Million Threshold for Residential Property

From 6th April 2011, stamp duty land tax (SDLT) on residential property over £1 million is now charged at 5%. Non-residential and mixed use properties will not be affected.

The new higher rate will apply to residential purchases where completion date is on or after 6th April 2011. At present the highest SDLT rate of 4% applies to purchases which exceed £500,000. Legislation in the Finance Bill 2010 will introduce a new rate of 5% for residential property transactions which exceed £1 million.



Joanna Peters

Joanna Peters is a solicitor in the residential conveyancing department and can be contacted on: 020 8370 2897 or joannapeters@vanderpumps.co.uk.



Right to Buy – Can Tenants Buy Their Commercial Property?

A recent decision of the House of Lords may have opened the door for thousands of tenants of offices and other properties originally designed to be used as homes to be given the right to buy their properties.

The Leasehold Reform Act 1967 gives a long leaseholder of a house the legal right to purchase the freehold according to a set procedure.

The Act does not apply to commercial premises – but the House of Lords' decision suggests that in some circumstances commercial tenants may acquire the right to buy the property.

The question turned on whether the premises in question were a 'house'. The Act defines a house as premises which are designed or adapted to be lived in and which can reasonably be called a house.

In the case in point, the building was used for commercial purposes but had

originally been designed as a residential property. The Lords considered that the fact that the premises themselves were not habitable was not relevant. The strict construction of the law meant that since the premises were designed to be lived in, the right to buy applied. It is quite clear from the judgment of Lord Walker that the Lords consider that a property which is of 'mixed' use, having been adapted for residential occupancy, would also qualify as a house for this purpose.

The Land Registry publishes occasional practice guides on changes to the law relating to property and property rights.



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.



SPOTLIGHT ...

Getting to know the people behind Vanderpump & Sykes.



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.

How did you get into law? Via a very scenic route it appears! Armed with an undergraduate degree in History and aspirations to be a businessman extraordinaire, James decided to boost his credentials with a postgraduate diploma in law. James enjoyed law so much that he took a Legal Practical Course (LPC) to qualify as a solicitor.

Like father like son (in a roundabout way) James' first job was working in the legal department of Alstom, a multi-national engineering company (his father was an engineer), handling major (£100m) litigation projects. The experience gave him a good insight into business and the client's perceptions of lawyers!

So where does Vanderpump & Sykes fit in? Seeking a move away from litigation and experience in commercial property James joined Vanderpump & Sykes' commercial property department.

Outside of work James has a love of football, love/hate relationship with running half marathons, popping to Silverstone, furthering his professional development AND raising a growing family – his third child is on the way this Summer.

In the future James dreams of buying and restoring a classic car. This is once he has conquered the challenge of restoring his children's Lego works of art!



Ruth Muthoni

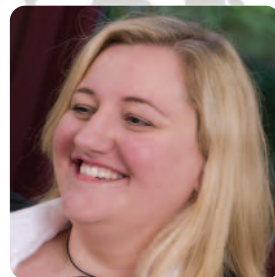
Ruth Muthoni qualified in March 2006 and joined the firm in July 2007. Ruth handles all aspects of residential conveyancing including buying and selling of freehold and leasehold properties, transfers of equity and re-mortgages. She also handles commercial freehold and leasehold property transactions and has experience in advising on acquisition and disposal of business assets and shares.

Why law? Ruth had always set her sights on the legal profession, leaving her homeland of Kenya to train in England. With a penchant for helping people and protecting their social rights, working for the UN was Ruth's initial goal. Her first steps were to take intern positions with Amnesty International UK and Interights followed by a role as an immigration lawyer.

Committed to people Ruth is a self confessed champion for human rights and co-founded the 'Opportunity and Grace' foundation, which supports the rights of the less privileged in developing countries. It is safe to say that Ruth is passionate about people, life and most importantly her Christian faith which she says is what fuels her passion for helping people.

Hobbies? Ruth relaxes by taking long haul walks accompanied by her intended. With an autumn 2011 wedding in the offing, planning her nuptials takes up what little time Ruth has left.

There is a method to Ruth's Madness. The experience Ruth gained drafting complex documents had stirred an interest. Wanting to develop this further, Ruth took a side-step into commercial (and residential) conveyancing. This may seem like a strange move, however, the combination of challenging legalities, safeguarding client transactions and the Opportunity and Grace foundation gives Ruth a perfect balance.



Meryll Llewellyn-Jones

Meryll is originally from Lowestoft in Suffolk, having previously worked as a Trainee Legal Executive in the Family & Civil Litigation Department in a local firm for several years. Meryll relocated to Enfield in 2007 and joined the Vanderpump & Sykes Family department. Meryll is an Associate of the Institute of Legal Executives and a member of Resolution. She has experience in all areas of family work including: divorce and associated financial claims, children matters and injunctions.

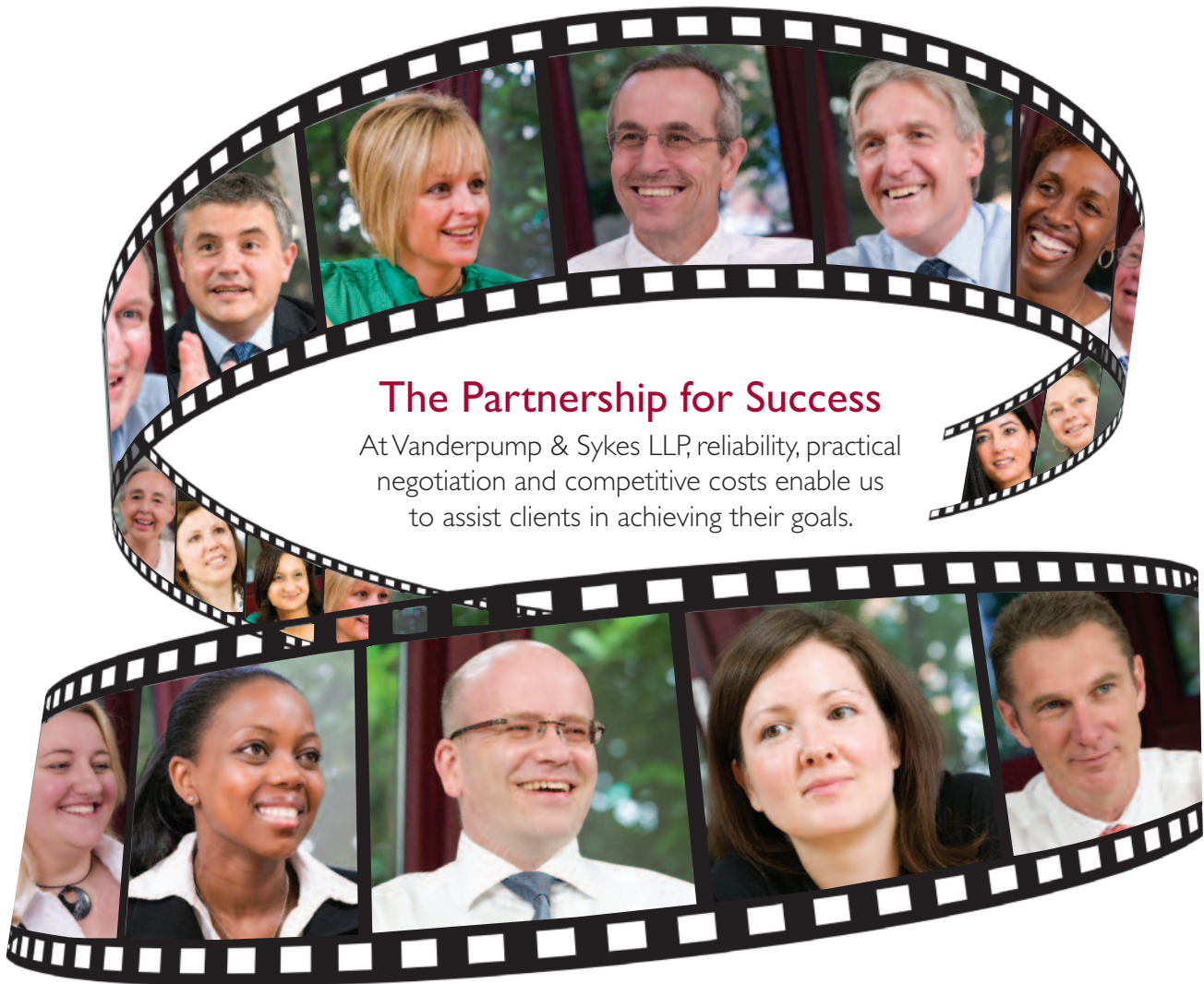
Having initial aspirations to work in the film industry, Meryll's career path was directed (pardon the pun) by chance into law. Whilst working for the civil service and in need of a challenge, an application to a local job advertisement saw Meryll begin her foray into the legal industry.

A steep learning curve ensued at her Lowestoft firm. On Meryll's first day, she was thrown into drafting proceedings! Several years later and a brief hiatus from studying law, Meryll relocated, resumed her studies and joined Vanderpump & Sykes.

All work and no play leaves Meryll little time to pursue her interests in the cinema, theatre and music. However, these are expected to be fully resurrected once her studies have finished in 2011.



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:

Company Commercial, Commercial & Residential Property:

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

Family & Matrimonial:

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

Wills & Probate:

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