NASH BUSINESS

APRIL 2022

Contents

Intellectual Property Rights
Fixed Recoverable Costs in litigation
The future of work
MEES are changing for commercial property
Agency workers' rights
Legal questions & answers - COVID
Inheritance tax & Capital Gains Tax

What's the situation with self isolating and work now? - Page 24

Nash & Co Solicitors
www.nash.co.uk
01752 664444

Nash&Co
Solicitors

Welcome to Nash Business

Well 2022 certainly is flying past… we're in April already. Blink, and it'll be Christmas again!

As you can see from the photo above, we've been very lucky to recruit some fantastic new lawyers over the last year - 14 lawyers in total and a couple of support staff too. And they're all playing a very important part in the future of Nash & Co Solicitors. There's a bit more information on the next page about some of the more recent arrivals. We're delighted to have them all with us, as we look to continue building on a period of very strong growth for the firm.

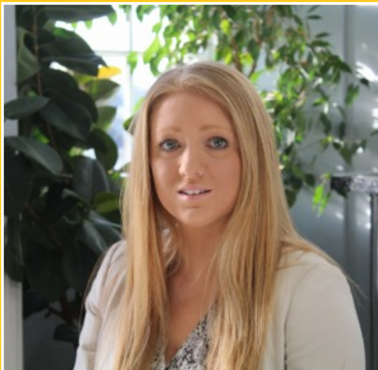
As we continue to emerge from COVID restrictions, we're now excited to start running some of our well known events for our local business community. Watch our social media for announcements over the next month or so. We look forward to hopefully welcoming you to one or two of them!

Thank you for all your support, if there's anything that we can do to help you, please just shout.
Jon

Jon Loney
Managing Partner
Tel 01752 827080
Email jloney@nash.co.uk

News from Nash

We're delighted to announce 4 new lawyers who have all joined us in the last couple of months, and we're still on the lookout for more!



The New Year saw two Solicitors join us from another local firm. **Chloe Hamblin** joins our Commercial Property team and **Kearney Coffin** joins the Wills, Trusts and Probate team.

They've both settled in really well and we're delighted to have them with us!

More recently, we've also been joined by **Amy Paterson** and **Rebekah Putnam**.

Amy's a Solicitor and has joined the Residential Conveyancing team and Rebekah (a Trainee Chartered Legal Executive)has linked up with Chloe and Nick Winslet in the Commercial Property team.

We're now the proud owners of 3 more electric vehicle chargers. In February of this year, we had our 6th charger installed in our grounds for the use of our staff. These have been funded by both Nash & Co and by Plymouth City Council's **Workplace Travel Grant Scheme**. The scheme will be up and running again in the new financial year, and we'd definitely encourage others to apply. You can recover up to 75% of the total project cost of providing sustainable transport for your staff!

Whale and Dolphin Conservation

About Whale and Dolphin Conservation
Whale and Dolphin Conservation (WDC), is the leading global charity dedicated to the conservation and protection of whales and dolphins. Our vision is a world where every whale and dolphin is safe and free.

Our work focuses on four key areas:

- stopping whaling
- ending captivity
- creating healthy seas
- preventing deaths in nets

We work globally with offices based in the UK, US, Germany, Australia and New Zealand. We defend these remarkable creatures against the many threats they face through campaigns, lobbying, advising governments, conservation projects, field research and rescue.

What makes whales and dolphins so special?
Like us, whales and dolphins are intelligent beings capable of experiencing pleasure and suffering pain. And like us they have culture and societies all of their own.

Many live in complex social groups, communicate in different dialects, pass on culture through generations, engage in play and even grieve the loss of family and friends.

Understanding and appreciating this social complexity is essential to ensure that whale and dolphin populations not only survive, but thrive. WDC believes whales and dolphins should have special recognition, and deserve the kind of protection that only comes with legal rights.

What are the links between whales and the climate crisis?
Whales play an amazing role in an ecosystem that keeps every creature on Earth alive, including you!

Humans have done enormous damage to the planet including killing millions of whales and wiping out up to 90% of some populations. Yet few people, let alone governments, are aware that recovering whale populations can help fight the damage we cause.

Whales re-distribute nutrients across the seas; essential to the marine eco-system, and the production of phytoplankton. This is known as the "Whale Pump". So, the more whales there are, the more phytoplankton there is, and the more carbon is taken out of the atmosphere.

Even in death, whales sustain life. When whales die they sink to the ocean floor, where they become mini-ecosystems sustaining all manner of marine life. They also take huge amounts of carbon with them to the sea-bed. Researchers estimate that because of whaling, large whales now store approximately nine million tonnes less carbon than before large-scale whaling.

Planet Earth needs a healthy ocean. And a healthy ocean needs whales. It isn't enough to conserve species, populations and individuals. We need to restore their ocean environment and allow populations to recover to levels that existed before industrial scale whaling and fishing devastated the oceans.

How can your business help?
The Climate Giant Project is an incredibly exciting initiative from Whale and Dolphin Conservation that allows businesses to support the work they're doing around the vital role that whales play in combatting climate change. It's the ocean's alternative to planting trees.

By choosing to become a Climate Giant Project partner, WDC can offer:
- The allocation of support to a **named project** that WDC is working on to help protect whales
- The development and delivery of a **bespoke, mutually-beneficial partnership** to help deliver your environmental objectives and goals
- The promotion of your role as part of this **global network** of businesses and scientists committed to driving international policy change to protect whales

Businesses can now join the Climate Giant Project and become part of something incredibly exciting and innovative. Not only can you directly support research and conservation projects that help to protect and save more whales but you will have access to a package of benefits that align with your business objectives.

We're inviting more like-minded businesses who see the value of protecting our environment, the ocean and these climate giants, **to join us.**

If you're interested in finding out more, please email **Sophie.Loveday@whales.org**

Soucolor

COMMERCIAL

Intellectual Property Rights in commercial transactions

Intellectual Property Rights (IPR) are rights granted usually to the creators, or their employer, of works comprising non-physical property.

Typically these work require some element of human creativity or skill or effort in its creation, though some computer developed works can enjoy some IPR. IPR includes:

- Trademarks which distinguish goods and services;
- Patents for new inventions;
- Copyright for creative works such as books, paintings and
- music;
- Trade Secrets which are valuable to the company in understanding how they operate.

The nature of modern society, with it's reliance on technology, software, security, and branding, means that it's increasingly important to know your rights around intellectual property.

IPR usually gives the owner an exclusive right over the use of their creation for a defined period of time. This is critical to fostering innovation and investment in new products, brands and ideas.

In a modern society that is heavily reliant on branding and the use of software and other technologies, it is increasingly important to understanding what constitutes intellectual property and what rights the owner has.

Software as a service, rather than human advice or physical labour, is part of many of our daily lives with software licences regularly being entered into for the use of services (often badged as 'apps') in both our personal and our business dealings. Typically these will be licenses to use the supplier's software or internet-based service within defined parameters.

Part and parcel of this will be provisions to assert and protect the supplier's brand or trademark, which can sometimes be as important a part of the product as the system itself. Often the underlying concept of the system is not capable of protection, resulting in there being many providers of very similar systems, legitimately adopting the same or similar ideas. Getting up and running first and establishing a name and reputation can be vital to draw in customers more than other providers.

In commercial sales and acquisitions, IPR can have whole sections of the agreements dedicated to them. The seller needs to be aware of what they use and own and whether it has been properly licensed and protected. The buyer will want carefully drafted assurances that its use of the IPR post-sale won't invite claims from third parties alleging infringement or challenges to the legitimacy of the seller's IPR. This can apply both to the use of third party IPR by the seller, which may underpin the whole business system, as well as its own developed IPR.

For software developers, there can be extra layers of consideration as to what its customers can and cannot use and who owns developments of the system during the customer relationship. If the customer is providing materials to the developer to include in the system, or the developer and the customer are collaborating on evolving the system, who owns the contributed materials or the evolved or brand new elements? Contracts may carve up the IPR in the system into 'background', 'foreground', 'bespoke', 'sideground', 'postground' IPR and other terms seeking to categorise elements to be owned or licensed as appropriate.

A developer will usually want to retain ownership of their existing software to licence to new customers again and again, but may have to recognise that a key customer paying for a unique or bespoke version will want to prevent other customers enjoying the benefit of those. Here background and foreground IPR take front stage. If the developer adds new features without customer request over time, it may want to make these available to some customers or only to premium customers and may identify this as sideground IPR to which different rules apply. And after a customer has ceased dealing with the developer, what happens to new developments that might spring from their previous joint working. Postground IPR rules may need to be settled on.

When drafting a contract, particularly for software products, it may not enough simply to identify the relevant types of IP and a more detailed breakdown of the proposed relationship may be required.

If you need any help or advice around IP Rights, please don't hesitate to get in touch and I'll do what I can.

Austin Blackburn
Partner
Tel: 01752 827125
E: ablackburn@nash.co.uk

Austin runs the Commercial team at Nash & Co. He has a wide breadth of knowledge and experience in contracts, commercial & partnership agreements, property, company formations and corporate restructuring.

https://www.nash.co.uk/business/commercial/

COMMERCIAL DISPUTE RESOLUTION

Fixed recoverable costs in litigation

The Government has announced plans to introduce fixed costs for civil litigation costs for claims valued up to £100,000. They are expected to be effective from October 2022, only 6 months from now.

The purpose of the new regime is to give more clarity on the costs of proceedings.

What does this mean?

The purpose of the new regime is to give more clarity on the costs of proceedings.

Once the fixed costs are in place, a successful party in litigation, whether bringing or defending a claim, will only stand to recover a fixed amount, regardless of their actual legal costs.

These fixed amounts will be set by the government, and will depend on the stage at which the claim is concluded. These stages cover the period before court proceedings commence, up to and including a trial, if one takes place and will be scaled accordingly.

The fixed costs will not be dependent on the seniority of your legal representative, or how much you pay them. The fixed rates have yet to be determined. However, by way of example, it may be that you have a very senior lawyer, whose hourly rate is £250 plus VAT, and the first stage may take them 10 hours to complete, at £2,500 plus VAT. However, you may only be able to recover, for example, £1,500 plus VAT. It is very likely that you will need to make up for the shortfall yourself.

Equally of course, a party may be entitled to recover more if their actual costs come in at less than provided for under the new regime – this may be the case if costs settle very early on in a particular 'stage'.

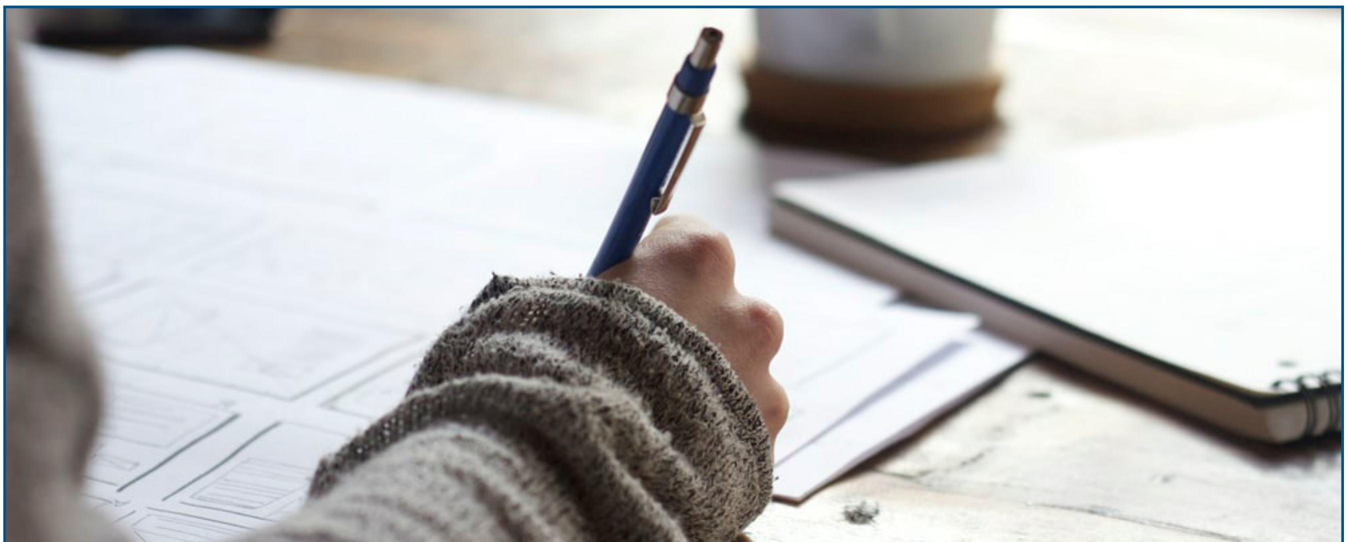
Is this good?

The new regime is certainly likely to be of benefit to many parties to litigation, as it will give immediate clarity about each parties cost exposure in proceedings. In litigation, the successful party usually recovers their costs from their opponent. Once the costs are fixed, you will know exactly how much is at stake by way of legal costs for each stage.

The new fixed costs are likely to encourage early settlement of claims as the parties try and keep their costs liabilities to a minimum.

For certain claims, given the increasing scaling which will be applied to each fixed 'stage' costs, it may be to the advantage of parties to force the matter into the next 'stage' before settlement is achieved, so that the costs recovered are also higher. Such an approach is unlikely to be without risk – if the claim is lost, the losing party will be penalised by having to pay those increased costs, even though they may have been hoping to recover a higher sum themselves. Litigation is risky by its very own nature, and no one can guarantee the outcome.

The fixed costs regime will retain the current advantages in making an offer which, if not accepted, is "matched" by the court on Judgement. If an offer is made, which is not accepted, and then the claim is decided by a judge who awards the same, or a better sum than set out in the offer, the party which made the unsuccessful offer will receive the benefit of a 35% uplift on their recoverable fixed costs.



There will be a need for a fine balancing act; from choosing your representative at the appropriate level and offering competitive fees, to how far you are prepared to take a matter, and the strategies to be followed. However, the government's hope is that the clarity & finality in determining the costs will help both parties in setting the appropriate budgets for making and defending claims, without the parties spending thousands of pounds in costs only.

Will there be any alternative funding options?

Personal injury claims worth up to £25,000 have been subject to fixed costs for a long time, but such claims are usually run under no-win no-fee agreements, with clients paying up to 25% of their compensation to their lawyers as the success fee.

It is not yet clear what approach general litigation lawyers will take and whether such agreements will be more commonplace once the fixed fees are in place. I expect that a lot of claims will continue fall under £100,000 and, as such, will be captured by the fixed fee scheme.

A lot of firms offer fixed fees for certain types of litigation, and these may be extended to other types, to address clients' changing needs. However, with no indication at the moment as to what the fixed fees will actually be, we will all need to watch this space for now.

If you would like to further information on the likely costs of resolving a dispute, either through the court or otherwise or would like to discuss a potential claim, please contact our Commercial Dispute Resolution Team.

Ceren Fox
Solicitor
Tel: 01752 827120
E: cfox@nash.co.uk

Ceren joined us in September 2021, and advises on private and business disputes such as land disputes, breach of contract, company and shareholders' arrangements as well as debt recovery.

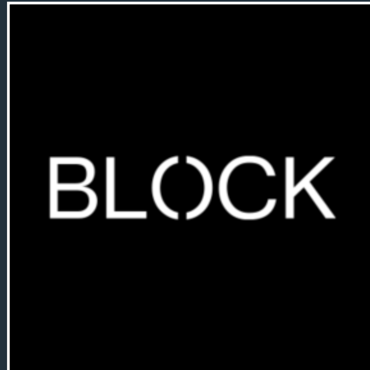
www.nash.co.uk/business/commercial/

Embracing the future of Hybrid working

‘Since 2020, the way we work, live and think has changed in a way that will never quite be the same again. Post- lockdown, we’ve stopped to assess what’s important in our work lives and many have made adjustments to fit this new era of business.’

We still want to be sociable and to have positive relationships with our colleagues. We want the morning chat while we make coffee and the opportunity to discuss ideas with each other during the day. Isolation has made at least having the option of social contact in the workplace all the more valuable and this is particularly prevalent with the younger generation of worker who perhaps hasn’t yet built their professional network.

What has changed however, and one of the very few positive results of the pandemic is that less people are working the outdated 9-5 in the office and instead, are opting for a more flexible, hybrid solution. The last few years have opened our eyes to the possibility of spending more valuable time with family, looking at our goals and focussing on our own health and wellbeing. The lengthy commute and 50+ hour weeks are quickly becoming a thing of the past for many UK workers and a change to a better work/ life balance is being embraced.

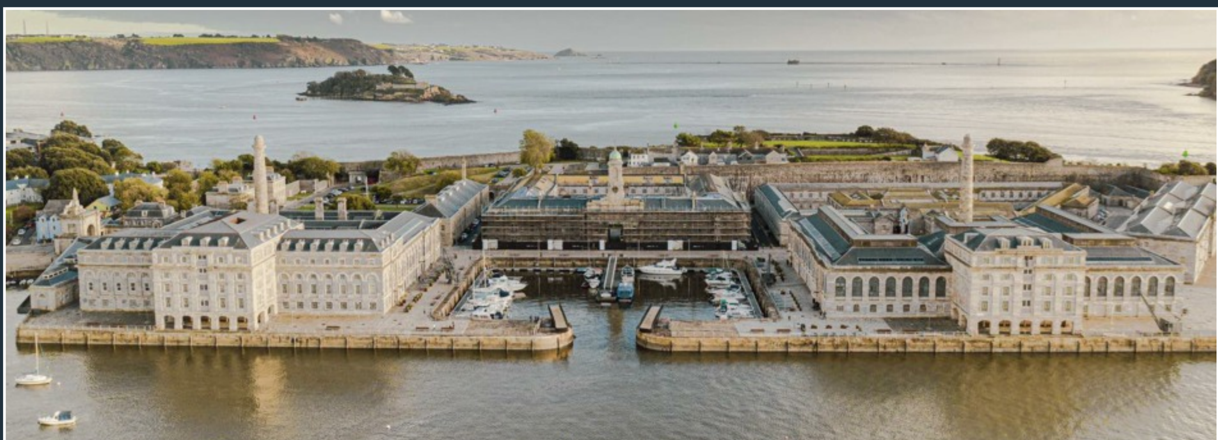


The number of co-working spaces worldwide has reached almost 20,000 in 2021 and estimates show that around 5 million people will be working from co-working spaces by 2024, an increase of 158% compared to 2020. The option of a co-working space that bridges the gap between working from home and the office is a solution many businesses are taking very seriously.

What's also important to take seriously is the significant impact working from home has had on mental in the workforce. In a 2020 report, Capita found that 77% of employees cited a lack of social contact as a factor that compromised their employee wellbeing. In the Financial Times, André Spicer, Professor of Organisational Behaviour at Cass Business School in London wrote "When you are not around your co-workers and your organisation due to virtual working, it can give space for paranoia to grow". Therefore, co-working spaces to relax, socialise and enjoy are so important to employee wellbeing and could even present possibilities such as positive collaboration and networking opportunities.

At **BLOCK**, enquiries for our new co-working space at Royal William Yard in Plymouth have come from a vast range of businesses and industries – from creatives to construction. The one common denomination however is the mindset of the owners and the culture within these businesses. They want better for their teams; they're moving forward and they're embracing the future.

www.blockplymouth.co.uk



COMMERCIAL PROPERTY

Minimum Energy Efficiency Standards (MEES) are changing for commercial property

Currently, to let a commercial property, the rating must be an EPC E or above. This has been the case since 1 April 2018 as the PRS Regulations 2015 made it unlawful for Landlords to grant a new tenancy of a property with an EPC below E in scope with the Minimum Energy Efficiency Standards (hereinafter called 'MEES'). That is, unless an exemption applied and has been validly registered.

The imminent Change:
This has been in place for almost 4 years now, but things are about to change again as the current rating of E or above applied to ***new*** lettings only from April 2018 but from next year - **1 April 2023** this minimum standard will apply to ***all*** privately rented non-domestic properties, regardless of whether there has been a change in tenancy or not.

Therefore, if you have a long-term tenant in your commercial building and haven't thought about checking your EPC certificate, then now really is the time to do so.

More Future Changes:
Furthermore, from **1st April 2027** the minimum rating in scope of MEES is set to change from **Energy Rating E** to **Energy Rating C**.

This is acting as a steppingstone for **1st April 2030** whereby all commercial properties will need to have a minimum **EPC B** to be tenanted and so it is important to start preparing sooner rather than later to make energy smart changes.

Currently, to let a commercial property, the rating must be an EPC E or above.

This is now changing from 1 April 2023.

Given that the current guidelines are Energy Rating E, a jump in requirements to EPC B is quite significant and landlords therefore only have 5 years left to assess, finance, implement and improve the energy efficiency in their lettable properties which is likely going to have an impact on both Landlord and Tenant over the coming years.

If you are looking to let or sell your commercial property, then Property Agents will be talking about this requirement and advising that an EPC is provided at the outset. The government are also encouraging agents not to even accept the advertisement if the EPC is below that which is required (Currently E).

What should I do first?

1. The first step might be to check you current **energy rating** and consider getting a new EPC and Recommendation Report to assess how you can improve the energy efficiency of your building.
2. It is important to also check the terms of your current Lease to see whether you need to comply with any terms in accordance with obtaining an EPC and gaining access to the property.
3. If appropriate, consider whether your building is likely to be accepted for one of the exemptions. **Click here** for published guidance on Private Rented Sector Property ('PRS') exemptions and Exemptions Register evidence requirements for non-domestic private rented property.

What to look out for?

The MEES Consultations 2019 and 2021 which explored the issues around implementation, enforcement, and delivery of minimum efficiency standards for EPC B by 2030 closed on 9 June 2021 and a response is expected and due for both consultations shortly.

This will be followed by legislation, with amendments to the Energy PRS Regulations set to come into force on 1st April 2025. The 2020 **Energy White Paper** confirmed that the future trajectory for the non-domestic MEES will be EPC B by 2030.

If there's anything that I or my colleagues in the Commercial Property team can help you with, please don't hesitate to get in touch. We'd be delighted to help.

Chloe Hamblin
Solicitor
Tel: 01752 827040
E: chamblin@nash.co.uk

Ceren joined us in September 2021, and advises on private and business disputes such as land disputes, breach of contract, company and shareholders' arrangements as well as debt recovery.

www.nash.co.uk/business/commercial/

EMPLOYMENT

Agency workers' rights around job vacancies

Recently, the Court of Appeal considered the case of Kocur v Angard Staffing Solutions Limited and clarified certain rights under the Agency Workers Regulations 2010 (AWR 2010), primarily the right to be informed of vacancies (Regulation 13). Regulation 13 also outlines that agency workers have the right to be informed of internal vacancies with the end-user.

Facts of the case:
Vacancies for permanent positions at the Royal Mail mail centre were put on a notice board and offered first to direct employees of Royal Mail. Agency workers (like Mr Kocur) were not eligible to apply. If vacancies were advertised externally, agency workers were entitled to apply, in competition with other external applicants.

As a result, Mr Kocur protested to an Employment Tribunal that Regulation 13 had been breached as he was unable to apply for the internal vacancies notified on the notice board.

Employment Tribunal decision:
The express right to receive information in Regulation 13 extended to an implicit right to apply for relevant vacant posts.

Employment Appeal Tribunal decision:
The right under the AWR 2010 was only to be notified of the vacancies on the same basis and with the same level of information as directly recruited employees. In addition, there was no right to be considered for internal vacancies on the same terms as direct employees.

Regulation 13 also outlines that agency workers have the right to be informed of internal vacancies with the end-user.

And so, the AWR 2010 obligations were met as soon as agency workers were informed of the relevant vacancies via the notice board.

Court of Appeal decision:
Regulation 13 had only entitled Mr Kocur to have been notified of job vacancies on the same basis as directly recruited employees but had not given him the right to apply to, and be considered for, the notified jobs on the same terms.

Our thoughts:
This case has provided helpful clarification around the rights of agency workers, which will be welcomed by employers.

At its core, the relationship between hirers and agency workers must be flexible, this decision therefore distinguishes that relationship from the relationship between hirers and direct recruits.

If the Court of Appeal's decision was in favour of Mr Kocur submissions, it could have meant that direct employees, in a redeployment pool, who were perfectly competent to fill the vacant post, would have lost out to an agency worker.

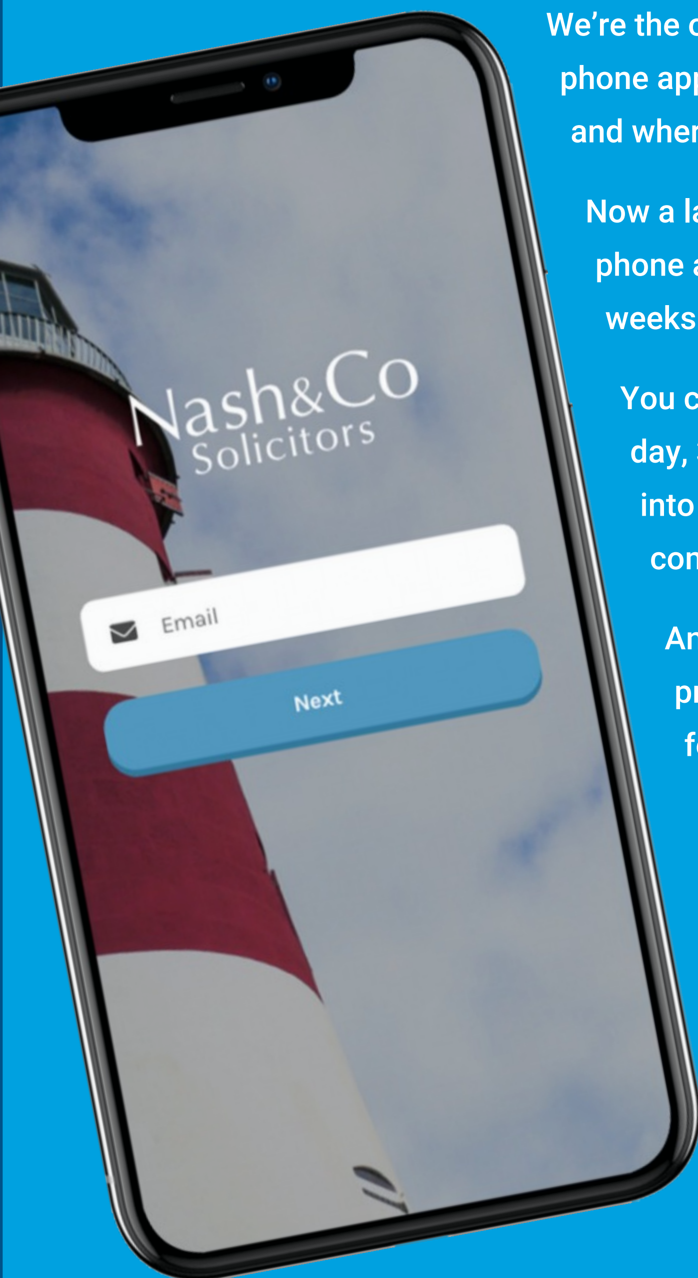
Mark Northey
Paralegal
Tel: 01752 827083
E: mnorthey@nash.co.uk

Mark has worked in our Employment team for over 5 years now, following from graduation from the University of Plymouth. He has experience in dealing with a range of day-to-day HR matters as well as defending Employment Tribunal claims on behalf of businesses.

https://www.nash.co.uk/business/employment

Are you moving house?

Then find out how our mobile phone app for conveyancing clients can help you. We don't charge you a penny for using it. And it will help to really speed things along.



We're the only law firm in Devon and Cornwall with a mobile phone app that helps speed up your property purchase or sale and where you can sign forms and paperwork electronically.

Now a large number of our clients are using the mobile phone app, we are able to complete on average 2 or 3 weeks quicker than we did before.

You can check the progress of the transaction 24 hours a day, 365 days a year, and with a handy "To Do" list built into the app, you know exactly where you are and what's coming up next.

And just as we don't believe in hidden charges for printing and photocopying, we don't charge any extra fees for using the app either!

If you are interested or want more information, don't hesitate to give our **Residential Property team** a call on **01752 664444**

Nash&Co
Solicitors

LEGAL QUESTIONS & ANSWERS

On 24 February 2022, the self-isolation rules in England changed – it is now no longer a legal requirement to self-isolate if you test positive for COVID-19.

The government have said, however, that if you test positive you should '*stay home if you can and avoid contact with other people*'. Government guidance online also recommends that the previous rules on self-isolation are adhered to – a rapid lateral flow test on day 5 and then a return to your normal routine, provided you have received negative rapid lateral flow tests on two consecutive days. ACAS have also recommended self-isolating for 5 days if you test positive.

The contrast between the law and government/ACAS guidance has left employers in somewhat of a predicament – to help, we've answered some commonly asked questions.

Q – I have a staff member who has tested positive, is unwell and therefore hasn't come into work, what should I pay them?

A - They will be entitled to Statutory Sick Pay ('SSP') from the fourth day of absence (SSP is no longer payable from the first day of absence) or Company Sick Pay, depending on your rules.

Please note, however, that some employers are paying full sick pay (even if staff are normally entitled to SSP) to encourage staff to be transparent about testing positive for COVID-19, as they will not face a loss of pay.

Q – What about staff who test positive – is it safe to ask them, or let them (if they want to), come into work?

A - Firstly, employers have a duty to ensure, as far as reasonably practicable, that staff are protected from workplace risks (The Health and Safety at Work Act 1974). As such, whether its 'safe' for the staff member to come into work really depends on the nature of the workplace.

To avoid any arguments to the contrary, if a staff member can work from home, we would suggest that this is facilitated whilst the staff member is testing positive.

But what about staff who can't work from home? This requires a careful analysis of your workplace, with a strong focus on what COVID-19 safety measures you have in place to minimise other staff contracting the virus and, in particular, to protect vulnerable staff.

In our view, in the absence of stringent COVID-19 safety measures, most employers are likely to take the view that a staff member, who has tested positive for COVID-19, should stay at home to reduce friction in the workplace as well as ensuring that the virus doesn't spread through the remaining workforce, leading to increased levels of absenteeism.

Q – I have an employee who has tested positive but can't work from home and wants to come to work, and I don't want them to come in as I'm concerned about the virus being passed onto other staff. What should I pay them?

A - As staff are, in accordance with the legal test, 'willing and able' to work, they should be paid full pay. Some businesses are putting a cap on permitted absence, and thus full pay of 5 days, therefore mirroring ACAS/government guidance. The 5-day period is also reflective of the current data, showing that the likelihood of a person still being contagious with the virus after 5 days, is significantly reduced.

Q – Now that Track and Trace has gone, what can I rely on as proof that someone has COVID-19?

A - It appears that isolation notes are still available from NHS online and the NHS app. As such, we would suggest that employers continue to rely on this as proof (if required).

Finally, it is also relevant to note that free lateral flow tests won't be available from the government after 1 April (except for limited persons). Boots have already said that an individual lateral flow test will cost £5.99. Therefore, employers may wish to supply, or contribute towards, staff's lateral flow tests - again, to ensure that the spread of COVID-19 is minimised as far as possible in the workplace.

Do you have any specific legal questions that you want answers to?

Maybe you've got a burning question that you want an answer to and you don't know where to go for answers? Well now, you can Ask Nash!

We often feature Questions of the Month in Nash Knowledge (our Employment Law magazine). We take the best question each month and provide a full answer.

Well for Nash Business, we're happy to take questions on any legal subject, and again, we'll select a couple each time we publish, and let you have full answers in the next edition.

Just email your question to **marketing@nash.co.uk** and we'll pick the best couple that we've been sent.

#AskNash #AskUsAQuestion

Nash&Co
Solicitors

DEVON & PLYMOUTH CHAMBER

Celebrating Devon's first-ever '30 Under 30' young business stars

Devon & Plymouth Chamber of Commerce held a glittering awards ceremony at beautiful Buckfast Abbey this March to honour the region's rising young business stars.

The '30 Under 30' campaign - inspired by Forbes' long-running feature - recognises and celebrates young talent across Devon.

Throughout the nominations process, the Chamber was seeking individuals under 30 in the county who have made a significant impact in the working world.

The judging day was held in the Chamber boardroom at Derriford Business Park and attended by Debbie Joce, Gareth Kenward and David Tytherleigh from Babcock International Group; Andy Stuart, Jenny Bishop and Sarah Carroll from Real Ideas, and Alison Jenkins and Colin Jolliffe from SW Business Support Solutions Ltd, with Emily Davies from SETsquared Exeter Student Startups linking up via Zoom.

Entries were judged using the following criteria:

- The speed in which the candidate has progressed in the working world
- Does the candidate have any outstanding accomplishments?
- What is the candidate's contribution to the sustainability of our planet?
- Do they have exceptional abilities as an entrepreneur?
- What are they doing to benefit the local community?
- How do they influence other members of the team?
- Potential to become a future leader

The expert panel certainly had their work cut out as they ran through more than 60 nominations, before selecting the final 30 worthy winners.

Stuart Elford, Chamber CEO, said: “It was really exciting to be able to tell our first-ever ‘30 Under 30’ that they had been chosen for this truly talented list, and were thrilled they were able to join us at Schiller Hall, together with special guests and sponsors, for a truly unforgettable evening.

“The theme for our spring event was ‘Blooming Careers’, which offered the perfect opportunity to reward Devon’s best and brightest young business stars at this unique venue.

“Huge thanks to our lead partner Babcock International Group, our transport sponsor Go South West, and fellow sponsors Real Ideas, SW Business Support Solutions Ltd and SETsquaredExeter Student Startups, without whom this wonderful event would not have been possible.”

The ‘30 Under 30’ were each awarded a certificate and recognised for their outstanding achievements in front of the perfect Buckfast Abbey backdrop.

They were also joined on the night by Amber Leach, business and strategy coach and owner of Audacious Lives, who talked guests through her journey as an entrepreneur, creative, photographer, speaker, mentor, wife and mother.

Find out more about the 30 Under 30 on the **Chamber website here.**

PRIVATE CLIENT

Timing is everything: how to minimise Inheritance Tax and Capital Gains Tax

When it comes to inheritance tax (IHT) and capital gains tax (CGT) people mostly accept – albeit reluctantly - that by owning anything more than a modest amount of assets they (or their family) will have to pay these taxes. To get round them, some people make lifetime gifts and then hope that they survive for 7 years. While this can be effective, as the title of this piece suggests timing is everything. The structure of these gifts can have significant implications in the future.

When it comes to inheritance tax (IHT) and capital gains tax (CGT) people mostly accept – albeit reluctantly - that by owning anything more than a modest amount of assets they (or their family) will have to pay these taxes.

Issue 1 – 'Locking In' of Gifts to Trusts

The problem

As mentioned, for many they opt to make lifetime gifts and hope to survive for 7 years. If they succeed, then usually no IHT is payable. There may be CGT which becomes due, but we will return to that! However, if they time the lifetime gifts incorrectly the period can actually become up to 14 years. Let me explain:

- Tom dies on 30 January 2022
- Tom had given £100,000 to his daughter Amy on 31 January 2015
- Tom had given £325,000 to a discretionary trust for Amy's benefit on 1 February 2008

On face value, by applying the 7-year rule Tom will not have survived long enough (dying one day early) for the 2015 gift to be exempt from IHT. However, he does have his £325,000 tax allowance meaning that no tax would be due on the 2015 gift – or so you would think.

Unfortunately, the gift into the trust of £325,000 is known as a 'chargeable lifetime transfer'. As this was made within 7 years of the 2015 gift, it would mean that his £325,000 tax allowance was not available to offset the gift . This would mean that IHT is payable by Amy on the 2015 gift. Admittedly, the amount of tax owed would be reduced to take into account that Tom survived 6 years.

This is a worst case scenario. However, it does show that a gift made nearly 14 years ago can resurface and increase the amount of inheritance tax payable.

Potential solutions

When considering making a gift to a trust as well as other gifts, you should think the timing of the gifts, and also conder any gifts you have made in the last 7 years.

Additionally, you can could take advantage of the annual gifting allowance of £3,000 per year which is IHT free to provide Amy with funds, as well as the small gift allowance of £250. There is also an allowance for regular gifts out of excess income.

Issue 2 – Capital Gains Tax

The problem
In Tom's example, if the gift of £100,000 which he was making to Amy was a investment property the chances are that he will have to pay capital gains tax on this. Tom bought the property for £50,000 but when he gifts it is worth £100,000. We need to remember that CGT also applies on gifts, not just when an asset is sold, and it is assed on the market value at the date of the gift.

Tom has an annual allowance of £12,300, which we can set against the gain. This means that he has a total gain of £37,700. If Tom is an ordinary rate taxpayer this gain will be taxed at 18% or if he is a higher or additional rate tax payer then 28%. This means that the capital gains tax due on the gift could potentially be between £6,786 to £10,360.

Potential Solutions
If Tom is married or in a civil partnership, he could prior to the gift transfer the property into his and his spouse/ partner's joint names. As transfers between spouses/ partners do not trigger a CGT charge, this would mean he would then have his spouse's annual allowance to use as well. This would then bring the gain down to £25,400. The tax could be potentially reduced to between £4,572 to £7,112 depending on whether either of the where basic or higher rate tax payers.

Where it can get interesting is if one partner is an ordinary rate taxpayer and the other is a higher/additional rate tax payer. We would then look at gifting from one spouse to the other in the most efficient way. This is to ensure that their respective annual allowances are utilised fully. A larger specified share in the property will be given to the ordinary rate spouse – meaning that more of the gain is taxed at the lower rate. This will minimise the potential tax which is due.

There is also the potential to gift a share of the property over a number of years. This would mean that instead of having the whole gain of £75,000 in one year, it could be spread over several years to utilise fully the annual allowance and to eliminate any CGT.

Issue 3 – Appreciating Assets

The Problem
The classic example here is land which currently sits outside of a town's development boundary, but which may in a few years become a prime spot for development. Once that land can be developed, its value is going to increase enormously.

Potential Solution
You should consider gifting assets which could potentially increase in value. When making a gift, it is the value of the asset at the date of the gift which matters for IHT and not the value at the date of death.

For instance:

- Tom gifts land worth £20,000 to Amy on 1st January 2018
- That same land is worth £500,000 on his death - due to it becoming suitable for planning in that period.

The IHT due will be based on the £20,000 and not the £500,000.

Issue 4 – Companies and Company Shares

Problem – Loss of Business Property Relief

Many people who own limited companies are aware that on death or lifetime gifts, that there is a 100% IHT relief known as Business Property Relief (BPR) on qualifying company shares.
This allows for people to gift their shares in their business during their lifetime without the worry of IHT becoming due on their death. There would also need to be elections made in relation to any capital gains on the gifting of the shares.

However, consider the following example:

- Tom gifts all his shares in his limited company worth £1 million to Amy on 1 January 2018
- Amy decides on 1 January 2020 that she wishes to sell the business
- Tom dies on 1st February 2022

In this scenario, because Tom dies within 7 years of the gift of shares, Amy will lose the benefit of the BPR on the shares – this is unless she reinvests the sale proceeds in an asset which qualify for business property relief. This means that the gift of shares is effectively treated as a gift of £1 million and tax will be due on the value of the gift.

Potential Solution

Instead of gifting the shares directly to Amy, it is possible to set up a holding company which can acquire the shares in the trading company. The shares in the holding company are then given to Amy. This means that Amy can sell the shares in the trading company and provided she keeps the shares in the holding company.

Death Bed Gifting

Finally, if one spouse owns assets in their sole name and it is known that their spouse will shortly pass away – for instance due to illness – it can be worth gifting the assets to the deceased spouse. As mentioned above, gifts between spouses are exempt for IHT and CGT. By gifting the assets to the ill spouse who can then leave the assets to the surviving spouse in their will, any increase in value for capital gains purposes will be wiped out. For instance:

- Tom finds out that he is terminally ill
- Tom's wife Jessica bought the investment property for £250,000 which is now worth £325,000 (£75,000 gain).
- Jessica gifts the investment property to Tom
- Tom leaves the investment property to Jessica in his will
- The gain of £75,000 is wiped out and Jessica is treated as having acquired the property for £325,000.
- This allows Jessica to gift the property to Amy with no CGT charge, and if she lives 7 years from the date of the gift no IHT either.

Conclusions

There are several relatively simple things which when combined with a well-considered tax structure, that can significantly decrease both IHT and CGT liability. As much as time is everything, so is planning. Sometimes it can be best to give things away in one go but in other situations it can be best to structure this over a longer period.

If you would like to find out more about tax planning and reducing your liabilities, then please contact the private client team here at Nash & Co and we will be happy to help you.

David Jones
Trainee Solicitor
Tel: 01752 827012
E: djones@nash.co.uk

David is a Trainee Solicitor with the Private Client team. The opportunity to join a growing team and to acquire the necessary experience to progress his legal career is one that he jumped at. David fits well with the firm's ethos of providing exceptional client service at all times.

https://nash.co.uk/business/commercial-property-solicitors/