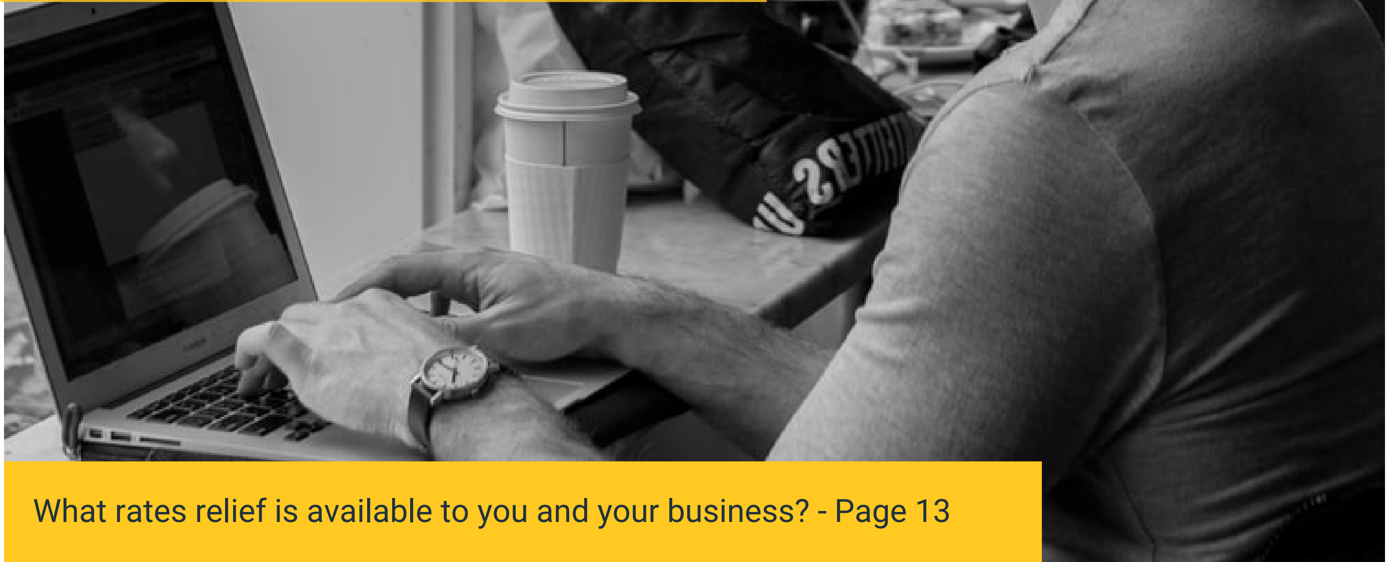
NASH BUSINESS

JULY 2022

Contents

Personal Guarantees
The Government's plans for marketing
What rates relief is available to you and your business?
How to… make and withdraw a job offer
The pitfalls of homemade Wills
Strikes!
Unmarried couples and property - what are your rights?



What rates relief is available to you and your business? - Page 13

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

Nash&Co Solicitors

Welcome to Nash Business

2022 is certainly a strange and pretty trying year. From war in Ukraine, to the Government imploding, cost of living crisis and economy struggling, it's a year that I'm sure everyone will be looking forward to seeing the back of. I really hope that you, your businesses and colleagues and your families are all well and weathering the storm ok and that everyone is well.

If you're a frequent visitor to Beaumont Park - right next to our office - you'll recognise the scene above. These are the new rose trellises that we have been working on together with Veterans Outdoors and the Council. The previous ones were rotten, falling to pieces and becoming a health and safety hazard. The veterans have done a tremendous job replacing them. They look fantastic and the the park in general is beautiful - especially at this time of year.

We're excited for our Employment team to be running a Mock Employment Tribunal in October. This has sold out once already and we've had to add more tickets! You can find more information in this magazine.

As always, stay safe and if we can help you with anything at all, please don't hesitate to get in touch.

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!

We've recently been joined by **Amy Douch,** a Solicitor, and Kelly Sherfield, a legal assistant. Amy is working in our Private Client team dealing with Wills, Trusts and Probate work. And Kelly is working in our Residential Conveyancing team They've both settled in really well and we're delighted to have them with us!

We've been at it again! This time, it's selfie gingerbread women, created by the attendees of our **Empowering Women** event in June at Boringdon Hall Hotel in Plymouth. Don't they look good?! We obviously had some very creative people at the event!

Good news for attendees and for anyone who missed out on tickets this time. We're bringing it back in **January 2023**, and currently putting the event together - venue, date, speakers etc. Everyone who attends always gets to decide on what the topics will be next time, and we already have some really great speakers who have agreed to take part!

We're looking to recruit an Employment lawyer and a Commercial Dispute Resolution Lawyer.

If you're interested in finding out more, click the links below for the job description, and some more information about the work you'd be the team and the team you'd be in.

Employment Lawyer

Commercial Disputes Lawyer

"Limited liability is a major factor for many in deciding to trade through a limited company or a limited liability partnership."

COMMERCIAL

Getting personal - considerations when providing a personal guarantee

Limited liability is a major factor for many in deciding to trade through a limited company or a limited liability partnership. Generally speaking, in such instances if the business fails the members/shareholders will (with a few exceptions) only risk losing the amount that they have contributed to the business.

However, when raising finance for the business an institutional lender will not only look at the value of the business (including its assets) for security for the repayment of the amounts borrowed but will often require further comfort by way of personal guarantees from some or all of the directors or members. Giving a personal guarantee generally removes the protection of limited liability in respect of that lender and allows the lender to recover from the personal assets of the guarantors.

In many companies, the directors and members are the same persons and may not be too concerned about giving guarantees for 'their' company. But there are two points particularly worth bearing in mind when deciding whether or not to provide a personal guarantee for a company.

Liable as principal

It could be assumed, incorrectly, that the lender would have to seek to recover from the company first before turning to the guarantor and the guarantor can wait until the company has been pursued and paid what it can, perhaps through a liquidation process. That might buy some time or mitigate the some of the loss or encourage a compromise by the lender for quicker recovery. But most personal guarantees specify that the guarantor is also 'liable as principal' with an additional indemnity to back up the payment obligations.

This means that the lender can seek to recover the debt and its costs and expenses from the guarantor directly without having to take any steps to recover from the company. Additionally, most guarantees of this nature will provide that this remains the case even if there is some other technical reason why the company cannot be sued (e.g. it did not execute the loan documentation correctly).

The guarantor may in turn have legal right to seek recovery from the company but if the company is insolvent then that is likely to be of little benefit and in any case may not come quickly enough to avoid the pain of sorting out matters with the lender.

Continuing liability

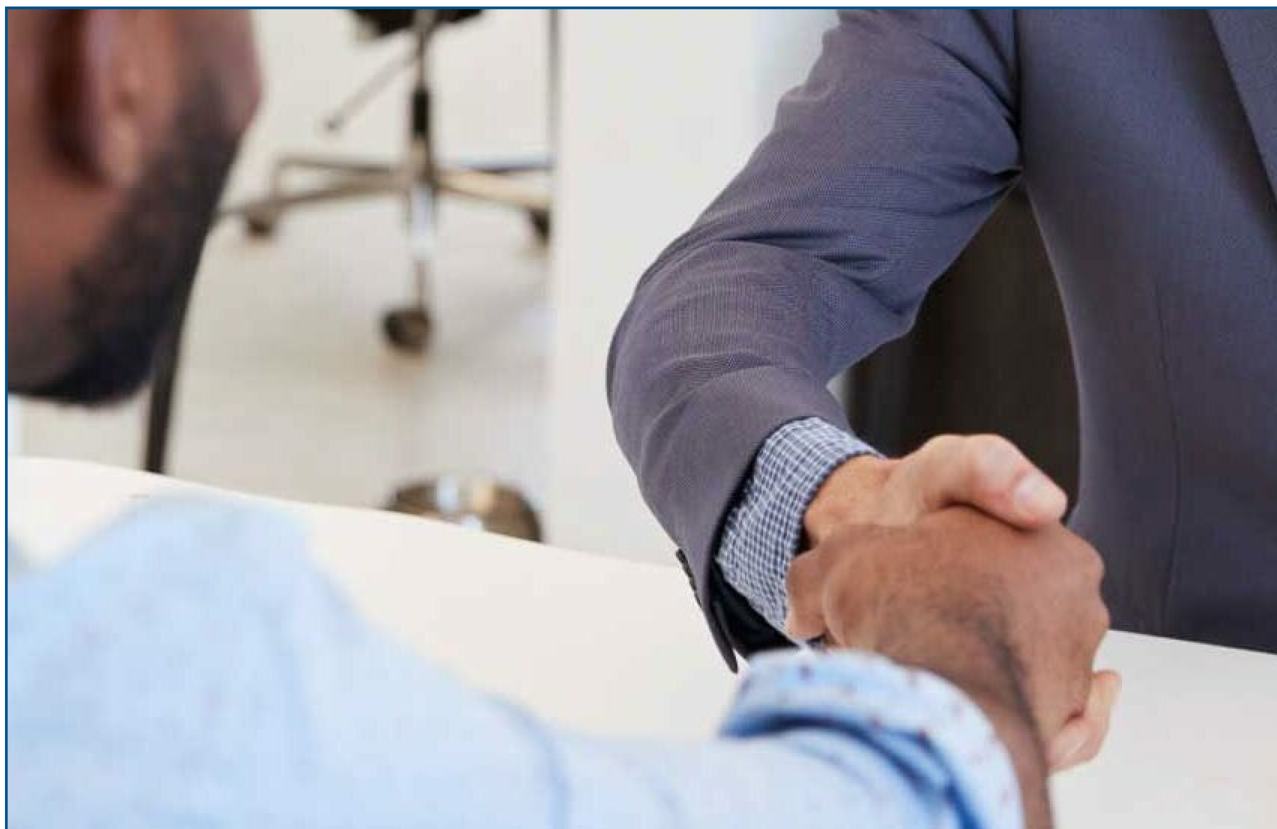
Guarantees to be given by directors or members are not usually dependant on that person remaining a director or member. That status may be why that individual was required to give a guarantee in the first place but the guarantee won't automatically end if that person cease to hold that position. A director may retire, resign due to ill health or otherwise or be removed. A shareholder may transfer their shares to a buyer or gift them to a family member, for example.

In such cases the guarantor will remain personally liable for the company's obligations to the lender even though the person has little or no control over the company.

If the owners decide to sell the company to a third party, but do not deal with personal guarantees they have given at that time, they will inadvertently be guaranteeing a company that is then being run by the new owners. Worse still, most such guarantees relate not just to the current existing liabilities (which the selling owners may have reduced down first) but later liabilities of the company to the same lender. If the new owners continue the facility with the lender and incur new borrowings or other liabilities then the old owners may still be guaranteeing those.

What can be done to mitigate these risks?

The first option is to seek to negotiate a cap on the personal liability, allowing the guarantor to know the maximum potential extent of the risk. In practice only some lenders will accept this and only where the company is relatively strong.



Secondly, ensure that there is a valid shareholders' agreement in place covering off key decision-making areas so that a guaranteeing shareholder still has some influence even if they are not or are no longer a director. This may also include an express obligations on other shareholders to secure the release of the guarantor if the guarantor is exiting the business.

Thirdly, identify any personal guarantees early on in a proposed business sale so that discussions can be had with the lender at the earliest opportunity as to what needs to be done to secure a full release of those guarantees and then to ensure that this is factored into the arrangements for the sale. Where a release cannot be obtained, consider indemnities from the buyers though that is only a secondary defence allowing contractual claims after the lender has pursued the guarantor.

Conclusion

The principle behind giving a personal guarantee is a simple one, and not uncommon for owners wishing to secure funding for their business. But the risks can be considerable and the implications of ceasing to be involved in the business, for whatever reason, need to be considered and must not be forgotten on a sale of the business.

The commercial team at Nash & Co Solicitors have extensive experience in advising on business related personal guarantees as well as all aspects of corporate acquisitions and disposals. If you would like to find out more, please feel free to contact Austin Blackburn (ablackburn@nash.co.uk) or David Jones (djones@nash.co.uk) directly.

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/

I saw someone recently say “It’s like a sketch from The Thick of It, where you can imagine some minister who’s never even touched a real business shouts, “I know, let’s cut marketing!”

MARKETING

Can the Government's plan to reduce marketing & advertising spend actually work?

Apparently, the Government are about to ask brands to cut marketing and advertising spend, so that they can pass this saving onto shoppers, keeping the price down and helping with the cost of living crisis.

They're actually planning for this to be a proper campaign. It will be used to praise those companies who are following suit and inadvertently shaming those who's logos don't appear on the campaign website. This is going to be funded by the tax payer, and I just find it amusingly ironic that they want a marketing campaign, paid for by our taxes, to tell businesses to cut their marketing spend. And those businesses introducing these measures will be given the opportunity to add the campaign name and logo to their branding and marketing efforts (even more ironic).

The magazine, Marketing Week, took a look at this, and even if brands did what the Government want them to do, it would have very minimal effect on retail prices. Studies have concluded that advertising and marketing's share of the consumer price equates to around 3 or 4 pence in every pound spent.

I get it. With costs spiraling, businesses have to try and make savings wherever they can. But this isn't going to work. Aside from the negligible impact that it would have on the retail price, what happens if one company follows the Government's urging, but it's competitors don't? Is the Government going to compensate that one company for doing what they want them to do? No, of course they won't. So, all that will happen is that by spending less on marketing and advertising, their competitors get a larger share of the brand voice and those businesses following the Government's wishes will ultimately begin to fail.

It's been very well documented that brands which continue to invest in marketing during a recession or tough times, will emerge in a stronger position. Not everyone is in the position of being able to increase their spend, but try and keep it level if you can. Don't cut it, because history tells us that if you were to stop advertising or pull back your marketing spend, you're going to lose market share, and you'll end up having to spend a lot more to catch up when better times return.

There was some research done into this by Binet and Field – a couple of widely acclaimed researchers who write a book together on balancing short term and long term marketing strategies – who suggest that if you were to halve your marketing spend, it will take approximately 3 years to catch up again. Stop it altogether and you're not going to recover for 5 years. If you're still in business.

McGraw Hill also did some research and point out that B2B companies that kept up their advertising saw an incredible 256% sales increase over companies that cut their spend.

Martin McTague, National chair of the Federation of Small Businesses (FSB), highlighted the irony of this new taxpayer funded campaign well: "It's a slap in the face for government to spend the extra tax it is raising from businesses on state-run marketing campaigns - doubtless focused on big businesses with corporate offers that can now be rebranded as helping the cost-of-living crisis, and so boost their sales."

Aside from the investment situation though, there is a more pressing compliance issue.

Product selling prices are determined by the retailer. Not the producer. What happens when the producer reduces its marketing spend as the Government suggests, but the retailer decides not to follow suit and instead, makes a bigger profit margin. Will producers be asked by the Government to enter some sort of price collusion with retailers?

Now, consider the situation where one producer reduces their marketing spend, but their competitors don't. Will producers be asked to enter some sort of collusion agreement with each other to ensure they all work on a level playing field? What happens if you're a smaller producer or bigger producer – how is the level playing field meant to work?

And think about how marketing and advertising impacts on so many other parts of normal life. Less spend by the bigger producers means less money for TV advertising. Less also for radio and magazine

and newspaper advertising. What happens then to those industries with less money coming in? Unemployment and a significantly reduced budget for doing what they normally do. What happens to marketing teams when their budget is cut? The same thing. Unemployment. The Government then has to pay more in benefits. As well as paying for the campaign to encourage companies to spend less… and you can see a cycle emerging.

When you look at some of the appalling examples of advertising by public sector organisations over the years (budgets being spent on anything, because if it isn't, the department's budget will fall next year), it's a little ironic that the Government now expect businesses to join a race to the bottom.

I saw someone recently say "It's like a sketch from The Thick of It, where you can imagine some minister who's never even touched a real business shouts, "I know, let's cut marketing! They're just the colouring in department anyway."

I've also heard some people refer to a marketing team as "the colouring in department". But without marketing, where's your company profile? Where's the new business coming in from? Who's going to manage your website and social media? Who's going to put you in the best positions to get more work or sell more products?

So, the Government's campaign is really only going to work if everyone does it together, producers, retailers etc. But that's collusion, and it's illegal. So how on earth do the Government expect businesses to make this work?

Dave Briggs
Marketing Manager
Tel: 01752 827011
E: dbriggs@nash.co.uk

Dave runs the Marketing team at Nash & Co Solicitors. He joined in 2017 and has helped to significantly increase the firm's profile, web & social media presence, events reputation and the firm's Environmental, Corporate and Social Responsibility plans.

COMMERCIAL PROPERTY

What rates relief is available to you and your business?

Business rates are payable not only for occupied commercial properties but also vacant commercial properties. Your business rates will be calculated based on the amount of annual rent reasonably obtainable for the property ("rateable value") multiplied by the relevant multiplier, which is set by the Department of Levelling Up, Housing and Communities.

In this ever-changing economy you may be wondering if there is any relief available to you from these business rates.

Is your property empty?
Although the default position is that you pay business rates regardless of whether you are in occupation or not, in 2008 the government provided a list of properties which would be exempt from rates if they became vacant. This is called **empty rates relief.** There are different criteria dependent on your type of property as to when you will be eligible to claim empty rates relief.

For example, retail property such as shops and offices and industrial and warehouse property will be eligible if they are vacant for 3 whereas, a listed building will be eligible until they are re occupied. For more information on whether your property would be eligible **click here**.

Has your property been revalued?
As mentioned above your rateable value is based upon the amount of annual rent reasonably obtainable. What if your property is revalued and your business rates liability significantly increases? Would you be liable to pay the increased business rates?

Transitional rates relief limits how much your bill can change year as a result of these revaluations. **Click here** to see the limit on how much your bill can increase in each year.

Do you run a small business?
If your property's rateable value is less than £15,000 and your business only uses one property you could be eligible for **small business rate relief.**

You will not pay business rates on a property with a rateable value of £12,000 or less. For the any values between £12,001 and £15,000 you rate of relief will gradually go down from 100% to 0%.

Example:
If the rateable value is £13,500, you'll get 50% off your bill.

If the rateable value is £14,000, you'll get 33% off your bill.

Where you have been in occupation of one property for your business and you acquire a second property you will be able to keep getting any existing relief, such as small business rate relief, on your main property for 12 months.

After the 12 months you will continue to get small business rate relief if none of your other properties have a rateable value above £2,899 **and** the total rateable value of all your properties is less than £20,000 (£28,000 in London).

What if no relief is available to me and my business?
If you are in the position where no relief is available to your business it is worth bearing in mind that your current rateable value of your property will be updated on 1 April 2023 as part of a nationwide revaluation of rateable properties. Your current rateable value will cease to have effect on 31 March 2023.

You are able to appeal against your current rateable value but only if you have followed the step-by-step check and challenge process. More information **can be found here.**

You will have until 1 April 2023 to appeal against your current rateable value.

Rebekah Putnam
Trainee Chartered Legal Executive
Tel: 01752 827022
E: rputnam@nash.co.uk

Rebekah joined the Commercial Property team in January 2022, having previously worked for a large national firm for four years. She started as an apprentice paralegal in 2017 and has now joined Nash to progress her qualification as a Chartered Legal Executive.

She has experience working on Lease and Title Reporting, the drafting of Leases and Transfers as well as Stamp Duty Land Tax Assessment and Land Registrations.

Have you ever wondered what an Employment Tribunal is like?

We'll be looking at the case of Emily Taylor, an estate agent, who is bringing, amongst other complaints, claims of constructive unfair dismissal and sexual harassment against her employer – her colleagues say it was "banter"; Emily says it is harassment.

The twist - our Judge will be an actual part-time Employment Tribunal Judge and the advocates for each side - two employment law barristers.

Joseph England

The role of Judge

Sarah Clarke

The role of Advocate

Simon Tibbitts

The role of Advocate

This Mock Employment Tribunal is ideally for employers and HR professionals

Thursday 13th October 2022

09:00 - 12:30

Rolle Marquee, Plymouth University

Refreshments will be provided

Only £10 which will be donated to The Primrose Foundation

Click here to book tickets!

By Nash & Co Solicitors with special guests 3PB

Nash&Co Solicitors

3PB BARRISTERS

THE primrose FOUNDATION

HOW TO...

Make and withdraw a job offer

Welcome to another edition of our popular 'how to' series! We'll be publishing these on our internet site as a resource in the coming months. We're still looking at recruitment, and this week, we're covering how to make and withdraw a job offer.

Do you have any top tips for putting together a job offer?

- First and foremost, document it - whether it be in a letter or by email.
- Secondly, from a legal perspective, the offer must be clear and unequivocal.
- You'll likely address the following in a job offer:
  - Job title;
  - Salary;
  - Location;
  - Any conditions to which the offer is subject (more on this below!); and
  - The timescale for acceptance and how acceptance should be confirmed (i.e., by signing and returning the offer letter or the enclosed contract of employment).
- Remember to confirm that the offer letter supersedes any previous discussions (if there have been any).
- Given that certain terms of employment now need to be provided on the first day of employment, its a good idea to include a copy of the employment contract with the offer letter. If you do, make it clear that the offer is conditional upon the signing and acceptance of the employment contract.

How can we avoid problems arising from inconsistencies between an offer letter and contract of employment?
This can be a common problem and one that can be avoided by:

- Making it clear in the contract/offer letter that in the event of any inconsistency between the offer letter and contract, the contract terms will prevail; or
- Include an 'entire agreement' clause in the contract stating that the contract contains the entire agreement as to the terms and conditions of employment.

Can I make an offer subject to conditions?
Yes, however if doing so, make this clear in the offer letter.

Some common conditions include:

- Recept of references which are satisfactory to the employer;
- Confirmation that the employee is free to work in the UK, or has the appropriate immigration approval to work in the UK;
- Confirmation that the employee holds certain qualifications; and
- Receipt of background checks.

By Nash & Co Solicitors' Employment team

Can I withdraw a job offer?
An employer may want to withdraw a job offer for several reasons, for example its business requirements have changed, or it has received new information about the applicant which no longer makes them desirable to employ.

Applicants can be disappointed when job offers are withdrawn and may even allege discrimination. As such, it's a good idea to make an internal note of why the offer has been withdrawn (with documentary evidence to support this if possible).

Do I need to make any payments to the applicant if I withdraw the offer?
If the offer is withdrawn before it is accepted or conditions satisfied (provided you've made clear that the offer is subject to certain conditions being satisfied), then no.

However, if an employee accepts the offer, or satisfies the conditions and accepts the offer, or even starts work (despite not satisfying the conditions) an employment contract will be in existence. As a result, the only way to legally terminate the contract, will be to pay the notice which is due under the contract. Failure to do is a breach of contract which could result in a Tribunal or civil claim.

What if the employee changes their mind after accepting the offer?
Technically, like the situation described above but in reverse, a contract has been entered into, which to terminate, the employee needs to give the applicable notice. If not, again, there will be a breach of contract and the prospective employer will have a claim.

Whilst it's an inconvenience, a claim isn't something an employer is likely to pursue given the cost of doing so, and the need to show loss which may be hard to do.

Finally, let's talk about negligent misstatement and misrepresentation...
An applicant can bring a civil claim for either of these if they can show that an offer of employment was made, with the intention or prospect of terminating the contract after the employee had served notice to their current employer and prior to starting with the new employer.

Making an offer of employment, which in turn causes an applicant to leave their existing job is a serious matter – therefore, only make an offer of employment if you're satisfied that you have a genuine need for the role and, finally, if withdrawing an offer (bringing us back full circle to our point above), make sure you have genuine reasons for doing so, and document them! Its also a good idea, if there are conditions involved, to make it clear to the applicant that they shouldn't resign from their current job until they receive confirmation from you that the necessary conditions have been satisfied.

“If the validity of the Will is questioned, this could lead to lengthy and expensive legal disputes.”

PRIVATE CLIENT

The pitfalls of a homemade Will

The main purpose of a Will is so you can choose who should inherit from your estate.

Dealing with the affairs of a loved one who has died can be an incredibly difficult time and therefore to make this job as easy and as stress free as possible for those left behind, the best thing you can do is to ensure you have a Will in place.

You are of course free to write your Will yourself, and it would be seen as legal as long as certain requirements have been met. To be honest, the moment I fear the most as a Private Client Solicitor is being given a home-made Will of a person who has passed away. In some cases, the Will prepared would be absolutely fine. However, in most cases the Will may have some issues for example:

1. it may not deal with all of the assets of the person that has died
2. it may have been signed incorrectly or there are mistakes contained within the document
3. the language used may be unclear

If any of these issues are found, then this can then lead to the Will being invalid or ineffective.

If the validity of the Will is questioned, this could lead to lengthy and expensive legal disputes. Not only this, but this could also be the cause of fallings out between family members which is something I am sure most people would want to avoid at all costs.

If invalid all together, your estate would be dealt with in accordance with the last Will you had in place. This may lead to people inheriting from your estate that you do not want to. If you have not made a previous Will, the rules of intestacy would apply. These rules outline who is entitled not only to administer your estate but also who can inherit as well. These rules mean that certain people such as partners and stepchildren are not recognised under these rules whatsoever and would not receive anything at all.

Whenever I sit down with a client to take instructions for their Will, my job is to ask all sorts of questions so that I can get a clear picture of not only their assets, but also about their family. It is surprising what information is revealed by simply having a conversation.

For example, a client could have a child who has disabilities and is in receipt of means tested benefits. By telling me this I can then advise on the potential use of a trust in their Will so that their entitlement is not affected in the event they would inherit from their parents' estate. If the Will had been prepared by the client themselves, they may not have thought about this and simply left everything to their child outright which may not have been in the best interests of their child.

I have lost count of the number of times a client has said to me "I hadn't thought of that"!

The fee you pay for your Will is not only for the production of the Will itself but also for the bespoke advice you receive based on your individual circumstances.

The advice we provide you with may also be beneficial from a tax point of a view.

When a person is looking to prepare their own Will, it is unlikely that their tax position is at the forefront of their mind. Tax may not be a concern for some but for others it might be important to try and mitigate this as far as possible. This point is especially important when dealing with more

complex estates that are of a higher value and include business assets. My job is to ensure that the Will is drafted in a way to try and maximise all tax reliefs where possible.

The cost of a Will in comparison to the size of your estate is small and careful consideration should be given before attempting to draft your own Will. I have seen first-hand instances where the person may have saved a few hundred pounds in the preparation of their Will. However, in orer to rectify the mistakes they made when writing it themselves, the costs have been thousands, effectively reducing the inheritance their beneficiaries are due to receive.

I would say the cost of a Will professionally drafted is a small price to pay for your peace of mind.

Amy Douch
Solicitor
Tel: 01752 827065
E: adouch@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://www.nash.co.uk/personal/wills-trust-and-probate/

Read our article:

10 Reasons why all parents should really have a will.

No one likes to think about it, but unfortunately, death is a fact of life. It's going to happen to us all at some point. However, if you're a parent and you don't have a Will in place, then you're at risk of leaving your family horribly exposed, particularly if you have a partner and you're unmarried.

Are you one of the 70% of people in Britain who either don't have a Will, or have one that's out of date.

Find out more and read our article by clicking here >

"Finding agency workers to carry out skilled roles is not as easy as walking down a supermarket isle and picking which worker you want. "

EMPLOYMENT

Strike!

It's been a bit of a slow news month for Employment Tribunal cases so, instead of a legal decision, we're going all political and looking at the recent rail strikes and the government's controversial plans to allow agency workers to replace striking staff. It's kind of employment law, right?

If you don't already know, (where have you been?) this month 40,000 union members at Network Rail and 13 other train operating companies walked out and joined the picket line. After talks about pay and working conditions between the RMT (National Union of Rail, Maritime, and Transport Workers – it just rolls off the tongue) and rail bosses failed, a three-day strike on 21, 23, and 25 June 2022 went ahead.

Without getting into the middle of the debate over who is *'in the right'*, the RMT are arguing over their workers' pay and conditions. They say that Network Rail is threating to cut safety critical jobs and would like a pay rise of around 7% to mitigate the soaring rate of inflation (which is currently hurtling towards 11%). Network Rail say that the jobs that would potentially be cut are part of Network Rail's modernisation programme which they say is essential to keep the railways moving. And finally, the government say that the railways were subsidised to the cost of around £16bn during the Covid-19 pandemic and that with commuter habits changing and annual running costs increasing, the RMT's demands are just not feasible.

It's all got rather bitter over the last month with a fair bit of mudslinging between union officials and government ministers. Some from the government are pointing to fact that a train driver's median salary is £59,000 whilst union officials are explaining that it takes more than just drivers to keep the railways moving and that a train drivers' salary is not representative of the workforce. The RMT General Secretary, Mike Lynch, also had his input saying that it was unacceptable for rail workers to either lose their jobs or face another year of a pay freeze.

Following a second day of strike action in June though, the government put out a press release regarding their plans to 'help reduce disruption from strike action by removing the restrictions on employment businesses supplying temporary

workers to cover striking staff'. In effect, they want to remove the regulation that prevents a business from supplying workers to cover the duties that are normally being performed by a worker who is taking part in an official strike. Checkmate? Well, not quite...

Although there has been little news on this since their press release, the government does seem to be pushing ahead with their plan. The plans have obviously been condemned by unions and recruiters with some saying that it will poison relations and endanger safety. In respect of the rail strikes, Network Rail have said that most of the roles which affected services during the strike (signalling) could not be filled by agency staff anyway, as they are skilled roles.

In our view, whilst these plans are at a very early stage, it does seem that the government is doing all it can to make workers and unions think twice before taking industrial action. It's not hard to see why either. The largest teaching union is planning to ballot their members later this year unless the government agrees to an 'inflation-plus' pay increase. Likewise, 114 Post Offices will be affected because of strike action in July, Royal Mail workers are voting on whether to go on strike later this year, and British Airways workers at Heathrow Airport have voted for strike action over their wages.

Whether the government will push through with their plans is still to be seen; however, even if they do, this is surely not going to solve the problem. Finding agency workers to carry out skilled roles is not as easy as walking down a supermarket isle and picking which worker you want. Although, like your weekly food shop, the cost of agency workers will also increase as they too face the effects of increased inflation and a cost-of-living crisis.

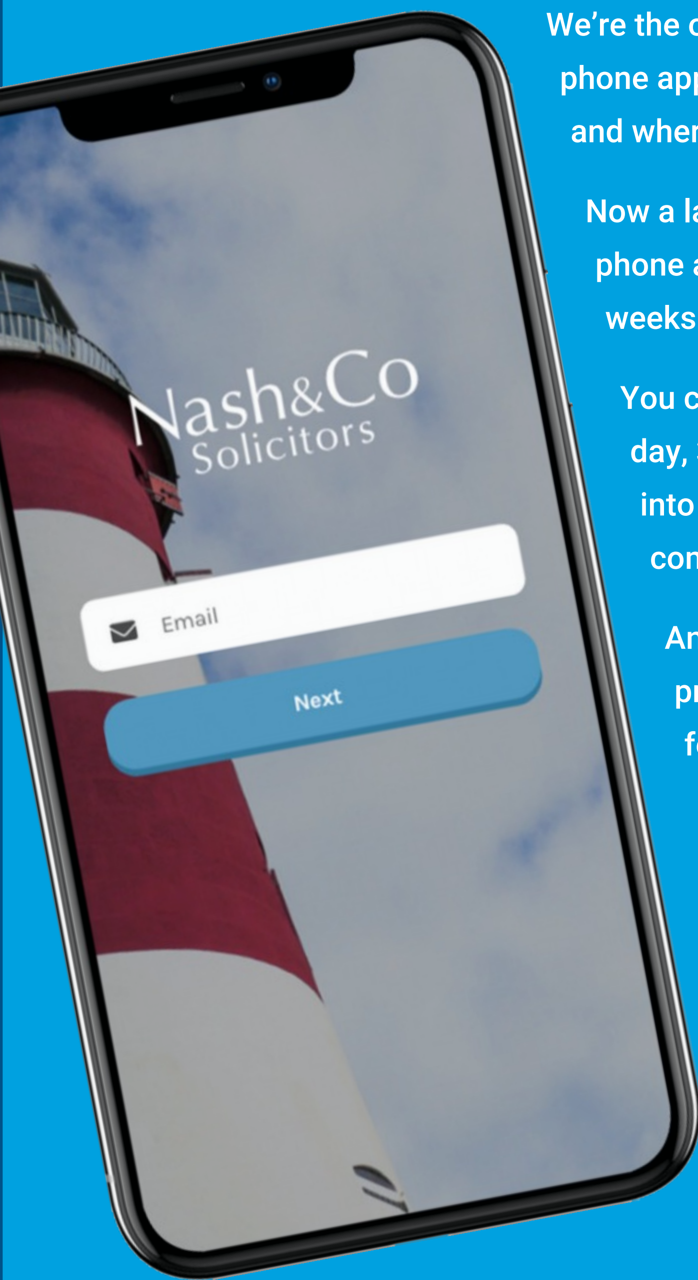
Mark Northey
Paralegal
Tel: 01752 827083
E: mnorthey@nash.co.uk

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

"Court proceedings are always a last resort as they are costly, stressful and time consuming and so the importance of engaging in negotiations and/or mediation cannot be stressed strongly enough."

COMMERCIAL DISPUTE RESOLUTION

Unmarried couples and property - what are your rights?

It can be rather harrowing to deal with a breakdown of your relationship, when you will have lots on your mind, and changes to adjust to. Unmarried couples who lived in their family home will often have to tackle specific questions about ownership or entitlements to interests and it can be very complicated to understand what the relative rights are. This guide looks at those rights and how they may be applied in different situations.

There can be several scenarios where there could be the added worry of not having your name on the deeds. Perhaps you moved in with your partner and contributed directly to the mortgage but without applying to have your name added to the mortgage. Perhaps you were not able to raise a mortgage, so your property was purchased in your partner's name only but you contributed to the deposit. Perhaps you moved into their property. In each case, do you have any legal rights over the property, or is the fact that your name is not on the deeds an end of it?

Your rights are defined under the Trusts of Land and Appointment of Trustees Act 1996. The law protects your position as long as certain circumstances are met:

There must be a common intention between the parties that they will both own the property.

This may be in equal shares or not, which can be based on a formal or an informal agreement, but the intention must be that the parties will own the property together. This means that it is important to look at the circumstances as they were when you first moved into the Property. Was the understanding that this would be your home together? Did you sell your own property in order to move in with your partner and or had you agreed to share in other running costs – both of which may indicate an intention to treat the property as your joint home. Is there any written evidence to demonstrate this common intention?

There must be a detriment on the part of the claiming party.

The detriment can be contributing to the purchase price/deposit, and/or to the deposit, or carrying out significant improvements to the property, where the work done is more than just decoration (painting, etc). It can also mean the decision to sell your previous home and put your money into the new property. Again, it is important to consider how all of this can be proven.

If a person is able to demonstrate both the above elements, they are likely to be able to show that they have what the law refers to as a beneficial interest in the property. This means that you are held to own an interest in the property, despite not being the legal owner. The value of this interest may be calculated as a percentage of the Property's value or it may be calculated as the value of your investment where, for example, you have contributed to the cost of improvement works,

As with any claim, you need evidence in support to prove the above requirements.

The common intention requirement can be evidenced by various things such as messages/emails between the parties discussing the intention that the property will belong to both parties, and may include remarks confirming this.

However, there may not always be any evidence in writing, as significant subjects like this are usually discussed face to face. In any event, you can provide your witness evidence, setting out why you have a beneficial interest in the property, and the circumstances under which the beneficial interest has arisen.

As for the detriment element, proving this may be easier as the evidence will mostly consist of documents such as bank statements especially if you made a contribution to the deposit for the purchase of the property, or made regular payments for the mortgage.

If you did not contribute financially, but used your time and labour instead to add value to the property, it could be evidenced by before and after photographs of the work done and receipts/bank statements for the purchase of materials/tools.

As stated previously, mere decoration jobs cannot give rise to a claim over the property. What can lead to an interest in the property would fall under more extensive works such as renovations, replacing the electrics or building an extension, where the work done would result in a significant increase of the value of the property.

If you meet these conditions, the next step is to talk to your former partner about dividing your assets. Unmarried partners have fewer rights so there is no automatic entitlement to a property purchased after the parties got together, whereas this would likely be the case if the parties were married. This means that, if no agreement is reached with your former partner, it may be necessary to pursue a claim to recover the value of your interest in the property.

If they are not willing to negotiate, or do not respond, a formal letter of claim will need to be sent to formally set out the basis of your claim, and request payment of your interest. Your former partner will have a reasonable amount of time to consider the claim against them and to come to an agreement. This could mean them buying out your beneficial interest, or if they are unable to raise these funds, selling the property for the sale proceeds to be shared.

In the absence of an agreement, it is likely to be in the interests of both parties to consider a formal alternative form of dispute resolution, such as mediation. Mediation is where an independent qualified third-party listens to each party separately (the parties do not need to see each other) and attempts to help the parties find a middle ground. A successful mediation can negate the need for court proceedings, which can be expensive and protracted.

All else failing, the way forward would be issuing court proceedings. This starts by putting forward the legal basis of your claim and the details of what exactly you are claiming. Documents in support of your claim and your witness statement is then presented to the court and if there is still no agreement, the judge dealing with the case listens to both parties and/or their representatives and makes a decision.

Court proceedings are always a last resort as they are costly, stressful and time consuming and so the importance of engaging in negotiations and/or mediation cannot be stressed strongly enough. Proceedings, if fully contested, can take more than a year to conclude.

Whichever issue you are facing, we at Nash & Co Solicitors can assist you navigate it and provide you with robust advice.

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/

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