NASH BUSINESS

MARCH 2023

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

Nash&Co Solicitors

Welcome to Nash Business

It certainly feels like it's been a long winter. And with the cost of living crisis and the current state of the economy, we're all in need of some good news, and some good weather too. Hopefully as Spring begins, we're in store for both.

The environmental footprint of businesses and the collective action that we all take to counter it, is rightly becoming more and more important and high profile. As a consequence, we're making this one of our biggest goals for 2023 and beyond. Here at Nash & Co Solicitors, we've been putting a lot of effort into our environmental action plan, and doing what we can to reduce our impact on the environment. Along with building and extending our partnerships with Whale & Dolphin Conservation and the Ocean Conservation Trust, we're also hard at work establishing the Friends of Beaumont Park, and our wildlife reserve area in the park.

We've also been running some super new events and are working on a new one that I think you're all going to really enjoy. Our Empowering Women in Business events really seem to have taken off, with bookings in excess of 100 each meeting so far this year.

I hope you enjoy this quarter's edition of Nash Business, and as ever, we're here to help if you ever need legal advice or guidance. Please don't hesitate to get in touch.

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News from Nash

We're increasing our support for environmental organisations and charities to enable them to continue doing the fantastic work that they're so good at, helping to combat climate change and supporting wildlife.

ocean conservation trust

We've agreed to help support the Ocean Conservation Trust and as part of this, we'll be sponsoring the restoration of a seagrass meadow just off the coast of Jennycliff here in Plymouth.

Rather than putting money into carbon capture through trees, which are often planted on the other side of the world, we wanted to support a project more locally, and with Plymouth known as Britain's Ocean City, and with the hugely positive impact on the environment of seagrass, it was an absolute no-brainer in terms of offering them our support.

We're also hoping to get involved in the planting of the seagrass meadow and will be taking part in some of the OCT's beach cleans this summer too!

FRIENDS OF BEAUMONT PARK
PLYMOUTH

Next time you visit us here at Beaumont House, take a walk into Beaumont Park - right next door. We've started making some very positive impacts in the park in terms of helping wildlife to thrive, including a wildlife pond, some pretty majestic looking bug houses (more like palaces than houses!), we've put up lots of different bird boxes and bat boxes, planted loads of wild flower seeds, and we're about to start building some hedgehog houses too!

This is all part of our commitment to helping wildlife and making the park a nicer place to be, and together, is just the very start to our work as the founders of the new Friends of Beaumont Park! We're very excited to get started.

We're looking to recruit a Commercial 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.

Commercial Lawyer

Commercial Disputes Lawyer

If you are a director and/or controlling shareholder of a company, it is important to understand who can enter into contracts and other legal obligations on its behalf.

COMMERCIAL

Who can sign on behalf of my company?

If you are a director and/or controlling shareholder of a company, it is important to understand who can enter into contracts and other legal obligations on its behalf. The company's profitability and even solvency can depend on it.

It would be wrong to assume that only the directors can do so. Yes, each registered director of the company is deemed to have full authority of the company to enter into contracts under the Companies Act. A third party can usually rely on this statutory authority when dealing with a director of a company and does not need to enquire into any internal policies or lines of authority of the company.

But other persons can also bind a company in certain circumstances.

A legal contract requires (a) an intention to enter into a legally binding relationship (b) mutual agreement on the key terms of that relationship (c) legal consideration (e.g. a price payable in exchange for goods/services) and (d) that each party had legal authority to do so.

For (d), one has to consider the authority of the company and the person dealing on its behalf. In most cases, the authority of the company can also be assumed due to another provision in the Companies Act. Authority of a person dealing on behalf of a company can be deemed (such as that of the directors under the Companies Act) or express (such as under a resolution of the board of directors), but can also be implied or apparent. Therefore a contract entered into by a non-director can still be binding on the company, regardless of whether the person actually had authority as far as the company or its board of directors was concerned.

If the company acts in a certain manner, such as putting an individual forward to agree the terms, or referring to them in emails or other communications as being the person to conclude the discussions or sign off on the deal, or fulfilling the obligations on it under the supposed contract, then this may give rise to express or implied authority rendering the contract enforceable against it.

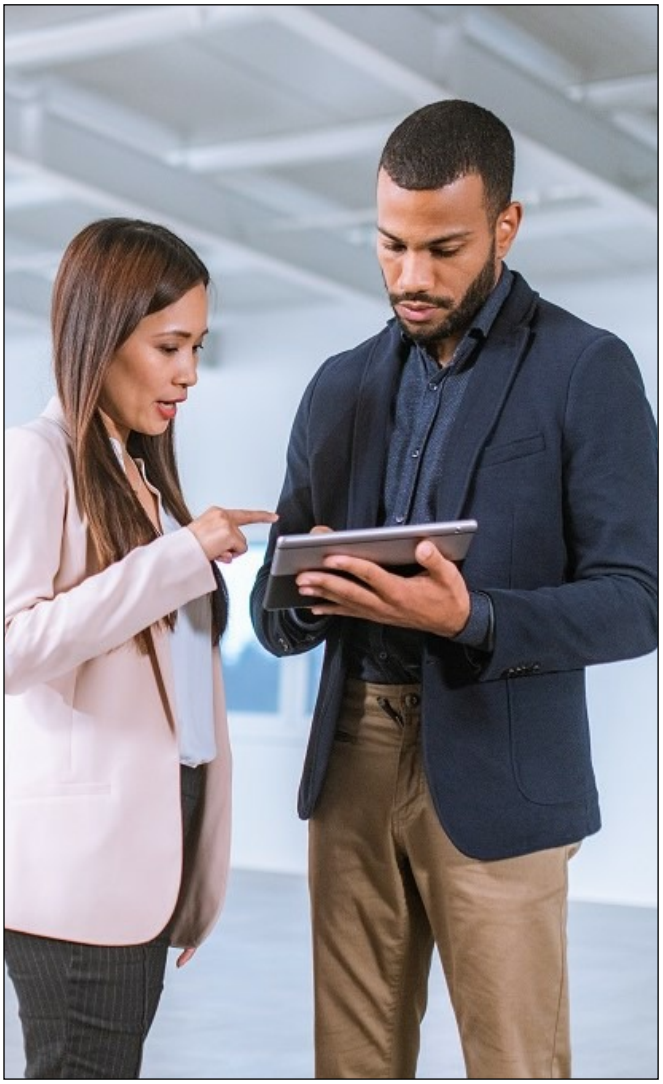
Even a job title, such as referring to a person as chief executive or finance director or operations director when they are not a member of the board of directors, or not contradicting statements or

representatives by the individual can give rise to implied or apparent authority that the third party can rely on.

One has to consider what natural construction of the words used or action taken or representations given would be, and what might reasonably be assumed from those circumstances.

Assumed authority is harder to establish and the burden of showing this will be on the third party trying to rely on it, and will require some conduct or positioning by the company that can be argued to be holding out that the non-director was authorised; this could be inadvertent on the part of the company.

Each company should ensure that internally it has clear processes and guidelines for who can enter into legal relations on its behalf and in what circumstances, but also ensure that it does no do or say things or act in a manner that may undermine its own lines of authority, and should avoid giving staff and contractors imposing titles if the person does not have the authority that may be assumed to go with it.



Austin Blackburn
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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/

Nash&Co
Solicitors

Our promises to you

1. We are always transparent about costs.

We want you to understand exactly what you're paying for, and how much you'll be paying for it.

2. We'll keep things simple and easy to understand.

Part of our job is to take the stress out of situations for you and give you the very best advice.

The last thing in the world that you need to deal with is legal jargon, together with long, complicated explanations. We will always do our very best to give you simple and easy to understand advice and solutions to problems.

3. We'll always be straight with you and keep you informed.

You're paying us to do a job for you, often in fairly stressful situations.

We'll stay in touch with you regularly. We'll keep you updated with progress and any changes or issues along the way. You should never have to chase us.

4. You'll get a fast, efficient and reliable service.

We always have your best interests at heart. So, we'll get things done as quickly and as efficiently as we can.

As a client of Nash & Co Solicitors, you will always be our number one priority.

If you need legal advice or support, please give us a call on **01752 664444** or email us at **law@nash.co.uk**

Inside Headway Plymouth

For those who are perhaps less familiar with brain injury or the work undertaken by Headway Plymouth, acquired brain injury (ABI) refers to damage to the brain. This damage can be caused by a fall, a blow to the head, having been involved in a road accident, or from experiencing illness, such as tumours, brain haemorrhages, seizures etc. The results can be devastating for the survivor and their families and carers. Lives are changed forever, and often the victim may not be the person they were before. This can be extremely hard for all parties to accept and deal with.

Immediately following a brain injury, acute care at hospital can be excellent. However, following discharge, it's very difficult to predict the long-term effects of the injury and there is a lack of long-term rehabilitation that is so often needed. Those with brain injury are often unable to work, suffer social isolation, family breakdown and struggle to access statutory services. Yet with proper support and appropriate rehabilitation so much can be done to pick up the pieces and go on to live as independent a life as possible, and to enjoy fulfilling and productive lives.

This is where Headway Plymouth comes in – after 33 years since its creation it's still the only service provider of its type in Plymouth and surrounding areas. There is no direct link from the Hospital to them, so it's down to social services to refer their clients, or for people to find out about Headway and what they do themselves.

THE IMPORTANT WORK OF HEADWAY PLYMOUTH

Headway Plymouth is currently working with brain injury survivors providing help and support through social and therapeutic activities at our centre in Devonport:

- progress towards independent living
- improved functional ability through cognitive rehabilitation therapy, coping techniques and brain training exercises
- significantly improve their mental health through enhanced confidence and self esteem
- receive information and advice specific to their individual needs
- access community facilities and initiate new interests
- help people back into employment or volunteering

Their work also means that families will be better able to cope with the effects on family life and living with a person with brain injury.

As the new Business Manager of Headway Plymouth, one of Sarah Conway's objectives is to ensure that the charity is a financially viable and sustainable organisation, is fit for purpose and best positioned to meet the challenges that lie ahead. In addition and above all, that Headway Plymouth continually delivers a service that best meets the needs of our clients.

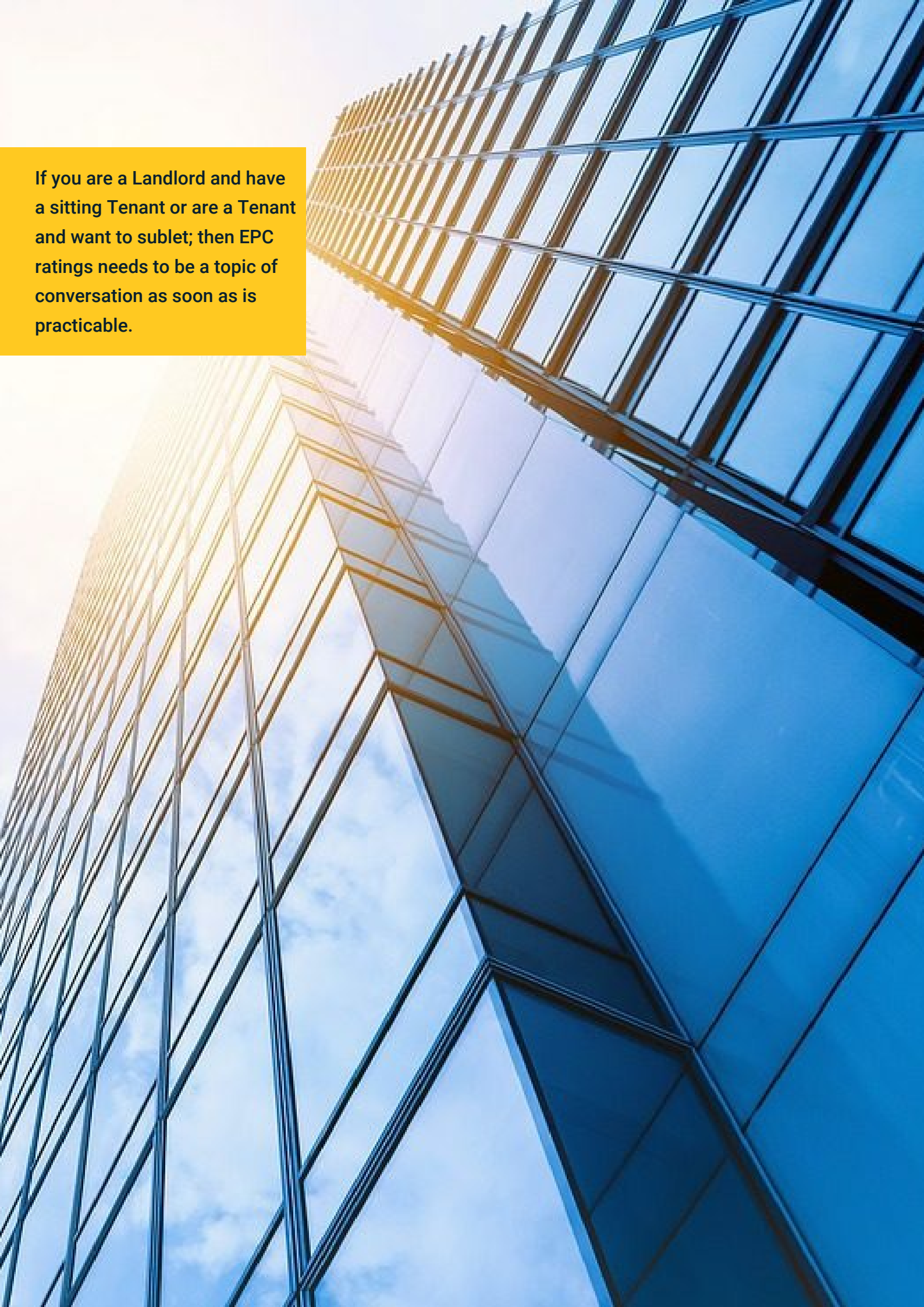
Headway Plymouth are working hard to boost their income from fundraising, grants and, crucially, through building long term relationships with community and business partners and this will help them to provide;

- Brain training programmes to improve cognitive skills
- Life skills – literacy, numeracy, cooking & shopping
- IT skills
- Anger management and behaviour modification techniques
- Informal learning experiences – gardening, art, craft etc.

To ensure they continue these activities, they're working hard to promote awareness of brain injury and of Headway Plymouth along with the support they provide to their clients in Plymouth and surrounding areas.

If your company can help Headway Plymouth, please contact Sarah Conway, the Centre Manager, on 01752 550559 or email her at manager@headwayplymouth.org.uk

If you are a Landlord and have a sitting Tenant or are a Tenant and want to sublet; then EPC ratings needs to be a topic of conversation as soon as is practicable.



COMMERCIAL PROPERTY

Minimum Energy Efficiency Standards (MEES) are changing.

Are you ready to change towards a greener commercial property market?

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 applies and has been validly registered.

This has been in place for almost 4 years now, but things are about to change again. From 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. This means that all currently let properties will need to meet the minimum standard EPC rating of 'E' to be complied with the new regulations.

This is all in aid of gearing up for further, more advanced changes to take place in the future. From 1st April 2027 the minimum rating in scope of MEES is set to change from EPC E to EPC C as a stepping stone for 1st April 2030 whereby all commercial properties will need to have a minimum EPC B to be let out, as set out in the **Government Consultation here**.

Landlords therefore only have 4 years left to assess, finance, implement and improve the energy efficiency in their lettable properties which is likely going to have an impact on costs 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.

If you are a Landlord and have a sitting Tenant or are a Tenant and want to sublet; then EPC ratings needs to be a topic of conversation as soon as is practicable.

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. It is important to always check the terms of your current Lease to see whether you need to comply with any terms in accordance with obtaining an EPC and access to the property. 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.

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.

Minimum Energy Efficiency Standards Commercial (Non Domestic) Property	
Date	***Compliance Windows and Requirements***
Continual Requirement	**All Non-domestic Properties must always have a valid EPC**. Check to see whether yours is valid and in date **here** Remember- an EPC is only valid for ten years.
01 April 2018	Unlawful to grant a new tenancy with EPC E Rating or below
01 April 2023	Unlawful to let (new or existing) a building with EPC E Rating or below
01 April 2025	Landlords of all non-domestic rented buildings in scope of MEES must present a valid EPC
01 April 2027	All non-domestic rented buildings must present a further EPC and have improved the building to an EPC C or higher or register a valid exemption
01 April 2028	Landlords of all non-domestic rented buildings in scope of MEES must present a valid EPC
1st April 2030	All non-domestic rented buildings must present a further EPC and have improved the building to an EPC B or higher or register a calid exemption

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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.

EMPOWERING WOMEN IN BUSINESS

by Nash & Co Solicitors

Come and join Plymouth's biggest and fastest growing community for women in business! Check out the website address below.

- Monthly events
- Quarterly events for women on maternity leave or working part time
- Social events
- Monthly email newsletter (starting March 2023)

"I love attending the events. It's fantastic to meet so many people, who I share so much common ground with. It's a wonderfully supportive environment - come along and try it, you won't regret it!"
- Sharon Evans

www.empoweringwomenplymouth.com

HOW TO...

Deal with probationary periods

If you've followed our how to's so far, you'll see that we've now got to the stage where an employee has started working for you. Often, the beginning of a staff member's employment is subject to a probationary period so, in this month's edition of how to, we're answering common questions around probationary periods.

Firstly, what is a probationary period?
A probationary period didn't begin as a legal concept – rather it just became something that was widely understood by both employers and employees to mean somewhat of a trial period: essentially, a period at the beginning of a staff member's employment where their performance and conduct was assessed.

Over time, it has become a common feature in employment contracts, to the extent that in 2020, it became a legal requirement in employment contracts to specify the details of any probationary period, including any conditions and its duration (normally 3 – 6 months). A failure to do so can entitle an employee to make an Employment Tribunal claim (including a claim for compensation in some circumstances).

Do I need to have a probationary period for my staff?
No, a probationary period isn't a legal necessity (however, if you do include one, you must include sufficient details in the contract – see above). Probationary periods are common; however, you may not see them in very senior contracts or short-term contracts.

In reality, the first two years of an employee's employment is a probationary period: the reason being that during that time, a contract can be terminated with or without notice (in certain circumstances) without the risk of an unfair dismissal claim. As such, some employers don't use probationary periods, and simply terminate well in advance of the first two years if an employee's performance or conduct does not meet the requisite standards.

What are the benefits of a probationary period?
As we mentioned at the beginning of this how to, it's a widely known concept with staff and businesses alike. As such, employees usually expect to see a probationary period in their contract and if they don't perform well during it, are sometimes more understanding of their employment being brought to an end. Consequently, including a probationary period can help focus an employee's mind on the fact that their continued employment is not a foregone conclusion.

Further, some businesses use it as an opportunity to have shorter notice periods during the probationary period.

How should businesses manage probationary periods?
Probationary periods can be effective if utilised properly. There should be regular review periods with the employee and evidence gathered as to how the employee's performance and conduct is progressing. If the eventual decision is made not to confirm them in employment, this can help defend any complaints/claims as there is then clear examples of their underperformance/misconduct.

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On that note, employers don't need to wait until the end of a probationary period to terminate an employee's employment – if its evident that its not working out early on, a decision may be made to bring an end to their employment before the end of the probationary period.

Employers should also make sure they diarisie the end of probationary periods: it can get very awkward if the probationary period elapses and the employee believes they have passed by default, but instead the employer was intending to bring an end to their employment and simply didn't get around to doing it in time. This can also wreak havoc with notice periods with an argument that as the probationary period has technically elapsed, they are now entitled to the normal period of notice (rather than the probationary period notice) under the contract.

What about extending probationary periods?

You should include reference in your employment contract of the right to extend probationary periods if this is something you envisage that you may want to do.

If you do wish to extend a probationary period, the employee should be made aware of the reasons why, any improvement the business expects to see moving forwards and how long the extension will last for. Probationary periods can be extended by agreement if there is not a contractual right to do so; and indeed, staff members may be keen to do this to avoid the termination of their employment.

How to deal with probationary periods (contd)

How do I terminate an employee's employment during the probationary period?

If you make the decision to terminate during the probationary period, this should be confirmed to the employee, together with the reasons why. This ensures there is a paper trail setting out the employer's motivation for terminating the employee's employment and can help demonstrate the real reason for dismissal if the matter is ever challenged. This also helps businesses meet the Grandma test – this is a phrase we've coined in our team to mean that if that staff member goes home, they will be able to clearly explain to their Grandma why they were dismissed – that way, the Grandma will agree that dismissal was a reasonable thing for the business to do and hopefully that will be the end of the matter!

When terminating, businesses should also make sure the employee is paid the correct notice under the contract and, in addition, should check their policies as, whilst a short serving staff member can't bring a claim for ordinary unfair dismissal, a failure to follow a contractual policy could lead to a successful claim for wrongful dismissal.

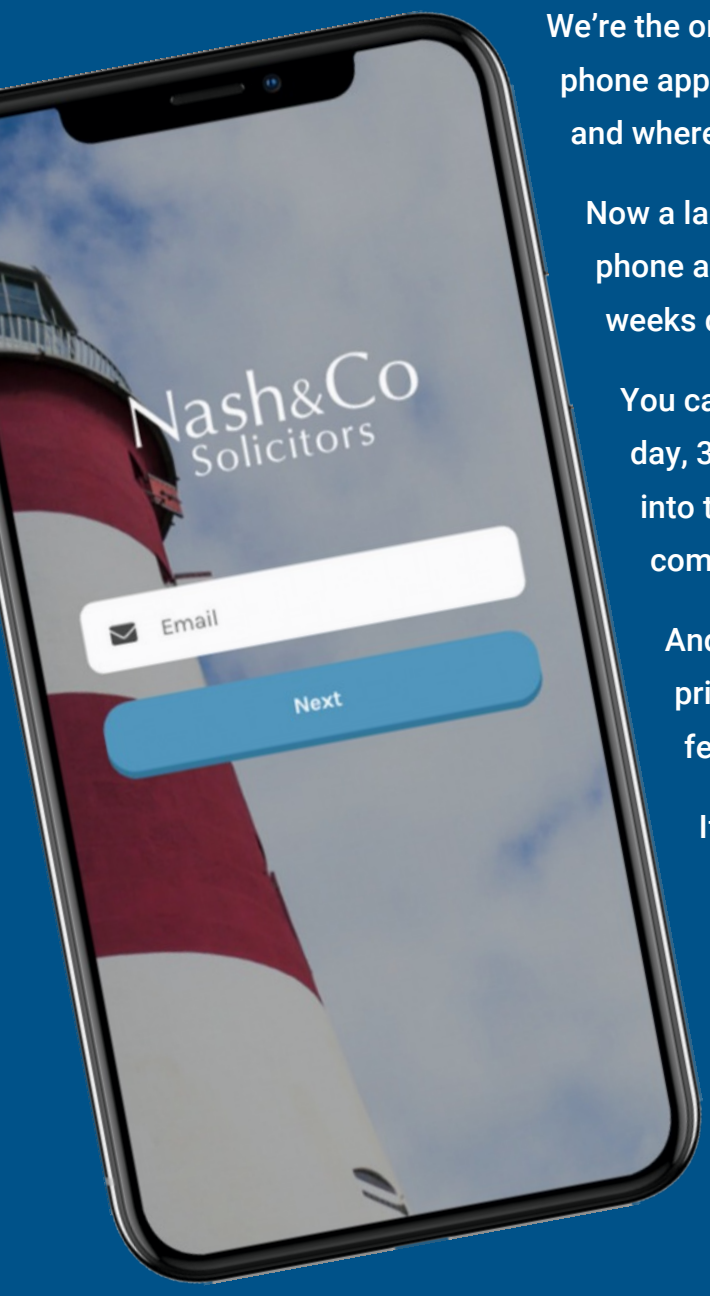
Interestingly, there is technically a right to be accompanied to probation termination meetings by a workplace colleague or trade union representative; however, remember that it is a right to be accompanied if an employee makes a request to be, not a right to be informed that they can bring someone – as such, most employers do not make mention of a right to be accompanied in any invite letters. On the subject of invite letters, unless a contractual policy says something to the contrary, staff do not need to be invited to probation termination meetings – a meeting can simply be held with a letter confirming termination after. Indeed, sometimes inviting staff to probationary review meetings can cause more harm than good, leading to employees going off sick.

What if an employee is absent during their probationary period?

Sometimes an employee may be absent for a prolonged period of their probationary period, for example due to illness or family leave. In this circumstance, its advisable to extend the probationary period to enable an adequate time for their performance to be assessed. A failure to do so could lead to discrimination claims and indeed this was the case in *Haines Lee v Relate Berkshire UKEAT/1458/01*, when it was held that a business should have extended the probationary period for a woman who was absent due to maternity leave whose employment was subsequently reviewed for the short probation period, she had been present and was terminated.

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


“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.

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Amy joined the Wills, Trusts, Tax and Probate team in 2022 and can assist you with the preparation of Wills, management of Trusts, estate administration and the establishment of Lasting Powers of Attorney.

https://www.nash.co.uk/personal/wills-trust-and-probate/

Read our article:

10 Reasons why all parents should 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 >

Save the whale. Save the world.

The ocean provides 99% of the world's habitable space on Earth and is the planet's largest carbon sink, yet it receives less than 1% of global climate finance…

We must draw our attention to the oceans, and remind ourselves of the incredible functions, life, and hope that marine ecosystems provide. Scientists are building an ever-richer depiction of how whales and dolphins act as ecosystem engineers, promoting healthy oceans and locking away carbon through the way they live, feed, migrate, and even die.

A single blue whale can store within itself the equivalent of approximately 825 trees worth of carbon – a whole swimming woodland!

> ***"We can't fix the existential issues derived from the climate and biodiversity crises without fixing the ocean – and we sure as anything can't save the ocean without saving the whales."***

Whales also support an immense amount of life- they feed on prey at depths and return to the surface, transporting vital limiting nutrients to the uppermost layer of the ocean. Their gigantic 'faecal plumes' bring iron, nitrogen and phosphorous to the surface, where they are taken up by phytoplankton – suspended microscopic plants. As they migrate, they transport ocean fertilisers from nutrient-rich polar regions to all around the world, keeping tropical coral reef and lagoon systems bustling with biodiversity. Even when they die they help us, by sinking to the deep sea, where they sequester the carbon stored in their bodies for thousands of years.

More whales mean more CO_2 fixation, storage and sequestration, more biodiversity, and a more resilient ocean system, which in turn means a more resilient climate. If we can work together to help restore blue whales to their pre-whaling numbers, this would have the same impact on the climate as planting more than 280 million trees.

At Whale and Dolphin Conservation, we are working to create a world where every whale and dolphin is safe and free. To do so we must create safer seas from the threats of pollution, vessel collisions, and accidental entanglement in fishing gear, and stop cruelty from deliberate harm in captivity.

DID YOU KNOW?

WHALE AND DOLPHIN CONSERVATION

WDC

As part of our environmental action plan, we're delighted to have a partnership with Whale and Dolphin Conservation. We'll be sharing more information about WDC and what they're doing, in each future edition of Nash Business.

Wherever whales are found, so are populations of some of the smallest phytoplankton. These microscopic creatures not only contribute at least 50% of all oxygen in our atmosphere, they do so by capturing around 37 billion tons of CO_2 - an estimated 40% of all CO_2 produced. That's equivalent to the amount of CO_2 captured by 1.7 TRILLION trees - four Amazon forest's worth

Whales have a multiplier effect of increasing phytoplankton production wherever they go. Whales' waste products contain exactly the substances - notably iron and nitrogen - that phytoplankton need to grow.

Ocean conservation has received **less than 1%** of all philanthropic funding since 2009.

In the 20th century, humans killed almost **3 million** whales, reducing some populations by **99%.** We need them back to help tackle the climate crisis!

Up to **200** specialist deep sea species can be sustained by a whale carcass in the deep sea, with some of them hanging around for decades!

Sperm whales in the Antarctic could help lock away **114 million trees** worth of carbon if their number recovered...just by pooing!

www.whales.org

If you or your business is interested in how you can help, please email **Partnerships@whales.org** today!

It is essential to get a fair and correct valuation of the business to be sure that the outcome is fair.

FAMILY / COMMERCIAL

What happens to your business when you separate?

If you or your spouse own a business whether in a sole name or in joint names, it is likely to form a key part of financial proceedings should the two of you separate.

The first stage in dealing with finances following separation is for there to be financial disclosure so that both parties and their legal representatives have full understanding and negotiations can then take place in relation to settlement.

The financial resources of both parties are considered and divided according to various factors including the needs of any children, both of your needs for accommodation and income and ultimately the resolution of the finances must be fair.

Business assets including shares in a limited company or assets owned as a sole trader or an interest in a partnership are considered within the financial proceedings and full disclosure in relation to their nature and the value of them is required.

In some cases it is possible to say that if an asset is owned before a marriage or civil partnership it is not to be considered a marital asset but that is difficult to establish if the business has generated income throughout the marriage or civil partnership.

It is essential to get a fair and correct valuation of the business to be sure that the outcome is fair.

There are some key things to take into consideration when valuing a business and they are:-

1. Value of the business assets themselves and at least two years of business accounts are disclosed to assist with this;
2. Analysis of comparative business models;
3. Cash flow

Depending on the nature and size of a business, a simple desk top valuation could be sufficient if the

company is small and you each trust that you are being open within the disclosure. In some cases, it is necessary to jointly instruct an accountant to produce a formal valuation and in some cases also a forensic accountant to work through the business documentation.

There are various potential outcomes in resolving finances where there is a business asset and which of those is relevant will turn on the individual circumstances of a case, but they can include the following:

1. One party retaining the business and buying out their spouse.
2. The business can be sold, and net proceeds divided.
3. Business interests can be offset perhaps with one spouse retaining the family home or other assets and the other retaining the business. Maintenance payments may also be appropriate.
4. In some circumstances ex-spouses can continue in business together although, for obvious reasons, this is relatively unusual and both parties would need to be sure of their ability to work together into the future for that to be an appropriate outcome.

Prenuptial Agreements

It is possible to plan for what would happen with a business should a relationship fail before getting married and one effective way of doing that is to put in place a Prenuptial Agreement or a Postnuptial Agreement that outlines how the business is to be dealt with in the event of separation. A Nuptial Agreement can outline how business assets are to be divided or perhaps that it is agreed that one spouse will retain the business and have the option to buy out the other spouse prior to any sale. A Nuptial Agreement can go so far as to exclude a business entirely from financial proceedings following a divorce.

It is important to remember that currently Nuptial Agreements are not legally binding and are one of the circumstances of a case that the court will consider. However, courts are giving them greater weight subject to certain steps being taken including full financial disclosure being provided and both parties having taken independent legal advice before entering into the Agreement.

Keep things easy and simple

A way of keeping business assets more separate from family finances is not to use the family home to raise any funds for the business. Also, do not to involve your spouse in the business. Do not employ them, appoint them as a director or secretary or give them any shares.

It is important to understand that none of the above steps are fail safe, but they would paint a clearer picture for a Judge if there was a dispute in the future that the intention from the outset was to keep the business separate from family finances.

What happens with business partners?

Finally, we are often approached with a query from business partners when their partner is involved in divorce proceedings. It is highly unlikely that any Order would be made that would negatively affect a third party although it is possible for the court to order that documents relating to a business are disclosed throughout proceedings which may be of a personal nature.

Again, you can plan for these eventualities when you go into business. You can put in place a Shareholders Agreement that sets out a method of valuation and places limits for example on the transfer of any shares. You can also have a Partnership Agreement to set out provisions in the event of one partner's relationship breakdown. It is particularly important to do this if business partners decide to involve their spouses in the business.

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Anne specialises in divorce cases and in resolving financial matters that arise from the breakdown of a relationship. Anne also prepares cohabitation and pre-nuptial agreements and separation agreements. She recognises that very few clients wish to go to Court and seeks to resolve disputes through careful negotiation outside of a Court managed process if possible.

https://nash.co.uk/personal/family-law-solicitors-in-plymouth/

Great Beer – Changing Lives: the Devon brewery making a difference

We recently read about Simon Rundle and a company he had set up to help the employment prospects of adults with learning difficulties in the area. We were so impressed with what he had done, we wanted to shine a light on both Simon and Ivybridge Brewery and everything that Simon was doing there. It's pretty awesome, and we hope you enjoy reading this - if you're anywhere near Ivybridge at a weekend, pop in and see them! They'd love to see you.

The employment prospects for adults in the UK with learning disabilities is vanishingly small, with only 5% of people with this form of disability in paid work. Ivybridge Brewing Company founder, Simon Rundle, wanted to try and so something towards changing this statistic. In 2018, he set up the brewery up as a social enterprise, the main aim of which was to provide training and work opportunities for people with learning disabilities in Ivybridge and the surrounding area.

The brewery started as a small set up in Ivybridge Town Hall, where the Town Council provided a kitchen and office space for free. This allowed a team of four trainees to help Simon develop and produce three beers that they were able to sell in the local market and online. By early 2020 it was clear that this model had legs as demand for beer was outstripping production, and so Simon looked to secure extra funding to upscale. In early 2021, the brewery received a grant from Comic Relief and moved into their new premises in the centre of Ivybridge where they set up a new kit and a bottle shop. This upscaling has allowed them to increase the size of their team of trainees to ten and the addition of a taproom at the same site has also provided extra training and work opportunities in bar service.

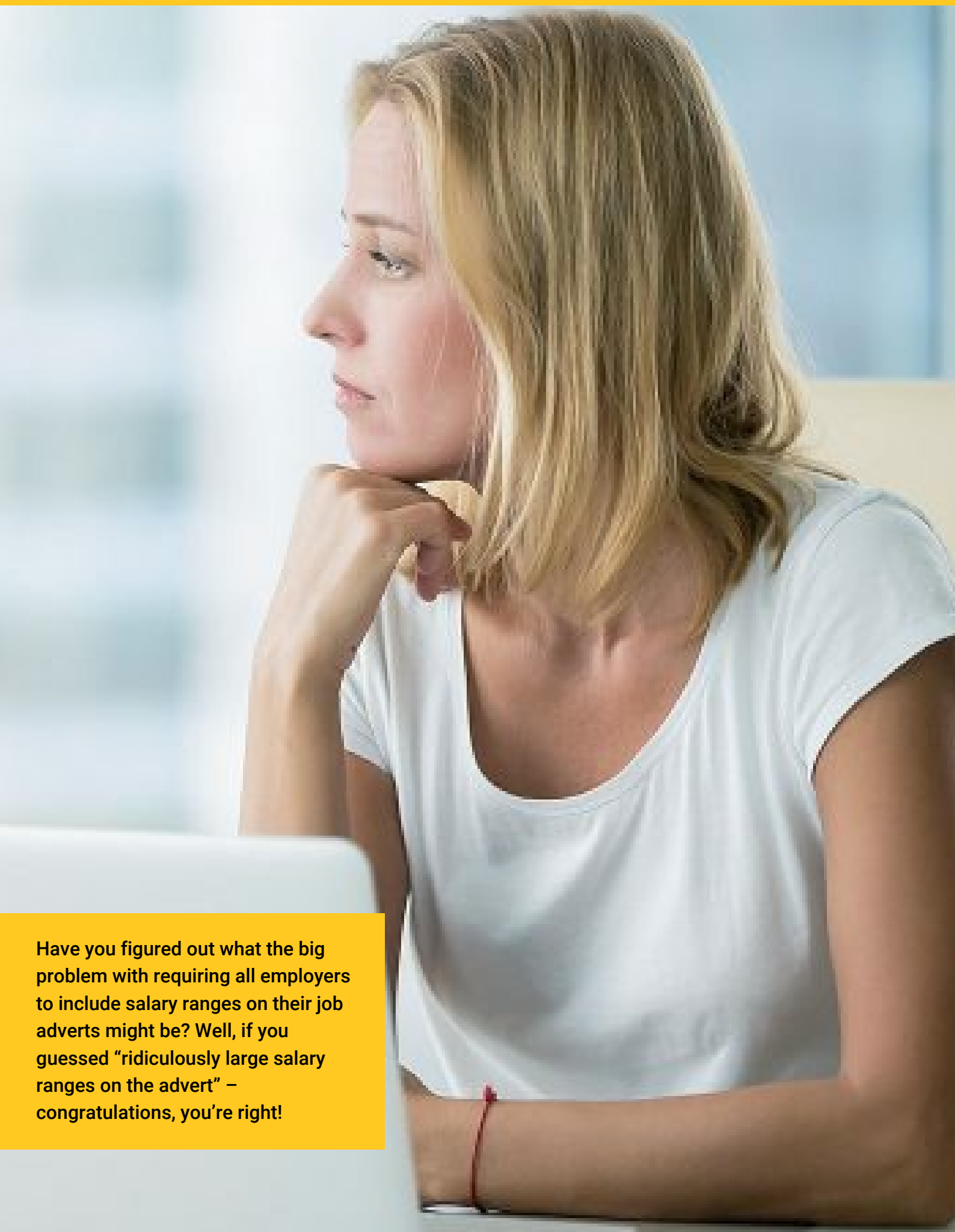
All trainees now attend weekly sessions at the brewery in either brewing, bottling, packaging or shop/bar service. They are trained in the tasks needed for their chosen activity and are encouraged to increase their skills base by trying out different sessions. They also benefit greatly from the chance to work in a team in an inclusive environment and gain a sense of pride from their involvement in the production of a quality product. The increased income from the brewery upscaling has also enabled the brewery to start to pay some of the trainees, helping them in their journeys towards independence.

The main aim for the brewery this year is to increase its income by selling draught beer to local bars and bottles to retail outlets such as farm shops. Part of this drive is supported by a rebrand of the beer labels to reflect more clearly the brewery's mission. Whilst the current labeling had done a great job of launching and establishing the brand, it lacked clear reference to the brewery's unique purpose and story. This drove Simon to commission Plymouth-based creative agency Upshot

to unpack that mission and turn it into a compelling new brand idea. The new labels are dominated with a large coloured letter 'I' motif – representing the divide between people with learning disabilities and job opportunities. The redrawn arch logotype becomes the bridge between the two sides. The new slogan **'Great Beer – Changing Lives'** encapsulates both the social mission of the brewery and the idea that beers made by people with learning disabilities are as good as, if not better, than other beers. Longer term, the aim is to upscale production again, set up a brewing training school and create more hours of paid work. Founder Simon is also keen to encourage other businesses to adjust their practices and consider employing people with learning disabilities.

You can support the brewery by sampling their great beers either by buying bottles from their shop or via their web site (**ivybridgebrewing.co.uk**), or by coming along to their taproom, which is open on Thursday, Friday and Saturday evenings. You can also follow their journey on social media. If you click the ITV Westrounty logo below, you can watch a feature they did on the brewery recently.

itv NEWS
West Country



Have you figured out what the big problem with requiring all employers to include salary ranges on their job adverts might be? Well, if you guessed “ridiculously large salary ranges on the advert” – congratulations, you’re right!

EMPLOYMENT

Show me the money

Since 1 November 2022, employers in New York City are required to include salary ranges on job adverts, even those which are simply posted on an internal notice board. California followed suit and introduced a very similar requirement earlier this year. Could the UK follow this approach and require all employers to include salary ranges on any posted job adverts?

Have you figured out what the big problem with requiring all employers to include salary ranges on their job adverts might be? Well, if you guessed "ridiculously large salary ranges on the advert" – congratulations, you're right!

We're not one to name and shame, however, here are a few examples that we managed to find in California and New York after the recent laws came into force (which have been painstakingly anonymised):

- If you'd like to work at a billionaire-owned electric car company as a software engineer, you can expect to earn anywhere between $83,200 and $417,600 (weirdly specific numbers for such a large range, right?)
- Software not your thing? How about working for one of the world's largest streaming sites who have just released a very popular film about a transparent vegetable, as a User Interface Artist (whatever that is), you could earn a whopping $600,000 or, for whatever reason, a very measly (in comparison) $50,000.
- One of the largest city banks (huge hint there, think Catchphrase – just say what you see) in New York even posted several job adverts with the salary ranging from $0 (yes, zero dollars) to $2,000,000 – although, they did later apologise with reference to a 'system error'.

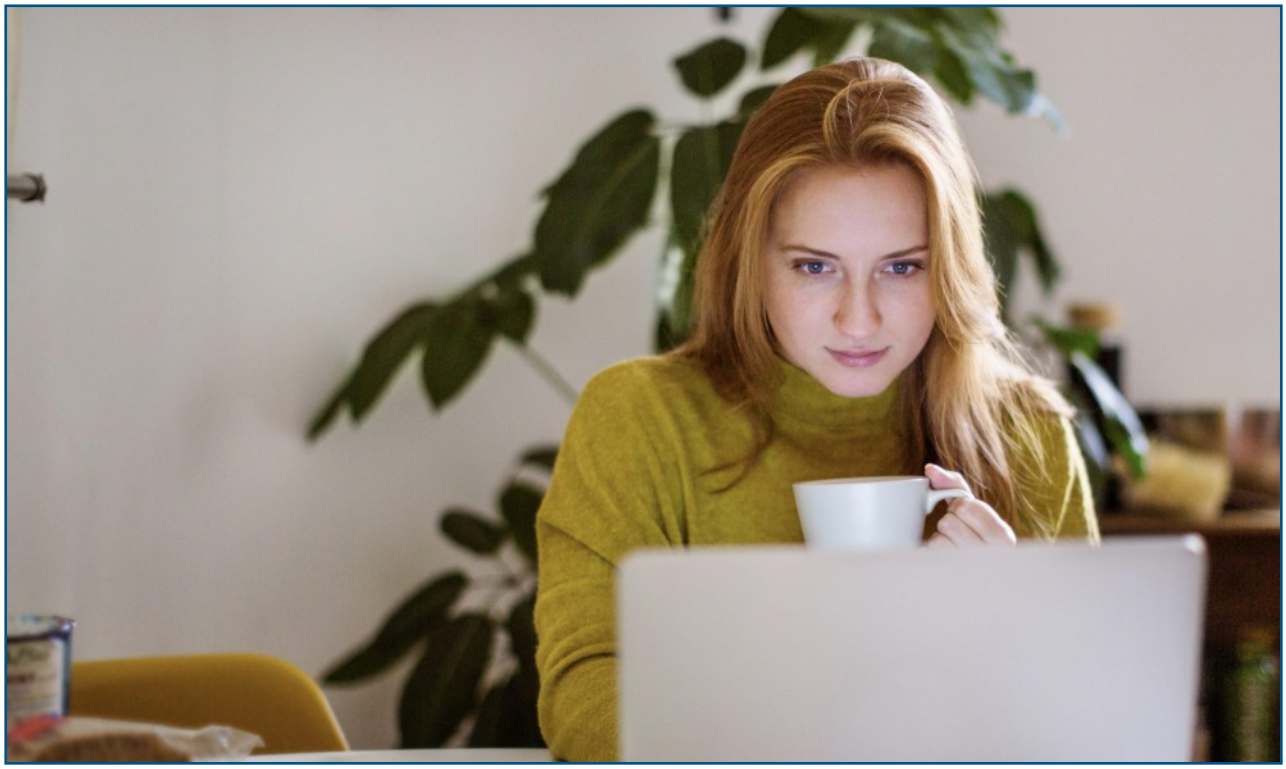
So, what is to stop companies doing this? Well, in New York City, there is a requirement of 'good faith'. This means any job advert posted should be in a realistic range for what the company, at the time of

posting the job advert, would pay for the job. These job adverts will be monitored by a specially set up Commission which will, on top of its own research, rely on anonymous tip-offs from the general public. For first offenders, there's no punishment – more of just an initial warning to give you a friendly reminder. However, once that warning is out of the way a penalty of up to $250,000 dollars could be coming their way.

As with many things, such as doughnuts, Harley Davidson motorcycles, and Nicole Scherzinger, American institutions have a way of creeping into our everyday lives. Although not implemented as law, we are somewhat ahead of our counterparts over the Atlantic, as in March 2022 the government announced a pay transparency pilot scheme. The purpose of this voluntary scheme is to see whether displaying salary ranges on job adverts contributes to any meaningful reductions in the wage gaps of the participating employers. The scheme, which is set to run for two years, wants to make sure that there are genuine benefits before making all employers post job adverts which include salary ranges as a legal requirement.

Do we think that this could be a good thing? Well, in a typically lawyerly fashion – yes and no. Research from Glassdoor highlights that the number one consideration for UK job hunter is salary, with 75% of workers stating that they would be more likely to apply for a role if the advert included a salary range. So this could be a huge benefit in more successful recruitment. Another potential bonus is that salary transparency could reduce pay inequality and pay gaps – as it gives candidates a better platform for negotiations and a greater understanding of what the role they are applying for.

One of the drawbacks, of which there are a few, is that the salary ranges appear to just be a guide – there seems to be nothing stopping an employer



offering less than what was advertised. So unless the UK legislated in a different manner to New York City and Californian legislators, in practice, there could be little meaningful change. An employer could, at least theoretically, lowball a candidate following their application – undoing any good work at promoting equal pay.

Again, there is nothing that would seem to stop an employer from just not posting job adverts. An employer could invite candidates to write to them for 'prospective roles' or could employ the services of a recruitment agency. These are simple methods that *could* stop an employer from having to comply with any provisions that come into force.

That being said, we can get behind measures which promote a fairer application process and including salary ranges on job adverts seems like a pretty unintrusive way of taking positive steps towards this.

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Louis is a Trainee Solicitor in the Employment Team. Louis joined Nash & Co in 2021 and is looking forward to qualifying as a specialist employment solicitor in September 2023.

During his training, Louis has supported the team in defending Employment Tribunal claims, drafting key employment documents such as policies and contracts, as well as assisting with day-to-day advice for clients.

https://nash.co.uk/business/employment-law-team/

Read our guide:

Our guide to navigating an Employment Tribunal

Employment Tribunals are the final step available in resolving disputes between employers and employees. They can often be extremely complicated matters, and pretty unpleasant to go through. Seeking advice from an Employment Lawyer at an early stage is recommended.

In the past few decades, we've seen a radical change in the landscape of Employment Law. The guide will help keep you up to date.

Find out more and read our article by clicking here >

Seagrass restoration off the coast of Plymouth

The Ocean Conservation Trusts fabulous Habitats Team have been working on restoring seagrass in the Jennycliff area for a number of years. In 2022 alone, with the help of nearly 7,000 volunteers, they packed a whopping 16,800 seed bags, each with around 30 seeds in. These were deployed in Jennycliff and covered 2.7 hectares (1 hectare equates to the size of a football pitch)!

To increase restoration efforts further, they also planted seagrass seeds into hessian pillows, and grew them in their seagrass laboratory into healthy adult plants. The dive team then took these and secured them to the seabed in Jennycliff, 0.25 hectares of seabed was covered last year, with potential increased positive effect as the plants were already established.

Over the next few weeks, the dive team will head to Jennycliff to monitor the work they have done. In 2023 a further 100 pillows will be deployed from the lab, each with about 30 healthy plants in, as well as doing 2 more hectares of seed dispersal.

This recent video shows a great overview of current works: **Blue Meadows Seagrass Polytunnel Tour - YouTube**

If your network would like to take a deeper dive into our work, we are proud to have just launched our 5 year Ocean Conservation Strategy, that sets out how we will deliver our Ocean conservation impact locally, nationally and internationally. You can watch the video and view the strategy here: **Conservation Strategy - Ocean Conservation Trust**

DID YOU KNOW?

Seagrass is a wonder-plant that lives in shallow, sheltered areas along our coast. It is vital to the health of our seas and can help address environmental problems. Here at Nash & Co Solicitors, we're delighted to be helping to fund the vital work of the Ocean Conservation Trust and the seagrass restoration project off of Jennycliff in Plymouth.

Seagrass accounts for 10% of the ocean's capacity to store carbon, despite occupying only 0.2% of the sea floor. It can capture carbon from the atmosphere up to 35 times faster than tropical rainforests. In fact, one report by the Intergovernmental Panel on Climate Change (IPCC), observed that mangroves, salt marshes and seagrass meadows can store far more carbon per hectare than most terrestrial ecosystems.

Restoration of these meadows can count towards national climate change plans. This potential is even more significant when we consider that around 159 countries signed to the Paris Agreement have seagrass on their shores.

A hectare of this ancient, delicate plant can soak up 15 times more carbon dioxide every year than a similar sized piece of the Amazon rainforest.

Seagrass is vital for marine life, which depends on the meadows for food and shelter. A 10,000m2 area can support 80,000 fish and over a million invertebrates. Seagrass is an important nursery for endangered wildlife such as seahorses, as well as many of the fish we eat, including cod, plaice and pollock.

When a relationship breaks down, how any joint property should be treated is often the last thing to come to mind.

COMMERCIAL DISPUTE RESOLUTION

Breakups and property disputes

When a relationship breaks down, how any joint property should be treated is often the last thing to come to mind. However, disputes as to how this property – which is usually the family home - should be treated can crop up in a variety of ways and it is important that both parties understand their rights and obligations.

This article looks at how common disputes arise, practical considerations to bear in mind and how to approach resolution.

How might property disputes arise?

It is increasingly common for cohabitees, unmarried couples, to choose to buy a property together.

Typically, such property is purchase in their joint names. When a couple split up and a party moves out, there may be disagreement between the parties as to what will happen to the property.

If both parties have paid towards a mortgage deposit, the party who no longer lives in the property, and no longer has the benefit of living there, may want their money back from their partner. The leaving party may also insist on their former partner 'buying them out' so as to enable them to realise their interest in the property which they are no longer living in. Of course, the remaining party may not have the means to buy them out, may not be able to raise a mortgage in their sole name or may simply not want to.

Alternatively, the property may only be in the name of one party. This may be because only one person contributed towards the deposit or because only one person could secure a mortgage. In this scenario, the property has only a single legal owner.

However, it is commonly the case that, although not a "legal owner" of the property, the other party has obtained a "beneficial interest" in it. This really means that the law recognizes the non-owning party has having a financial interest in the property that, effectively, the legal owner holds on trust for them. In considering whether the non-owning party has such an interest, two key questions should be considered: -

- Whether or not the couple's common intention was that they would own the property together; did they share payment of the mortgage payments, for example?
- Has the non-owning party contributed to the value of the property by carrying out renovations and building extensions, effectively increasing or maintaining the property's value?

The onus is always on the non-paying party to prove any common intention to own the property, that they relied on the common intention and that they took action to their detriment, usually by spending their own money.

What happens next?

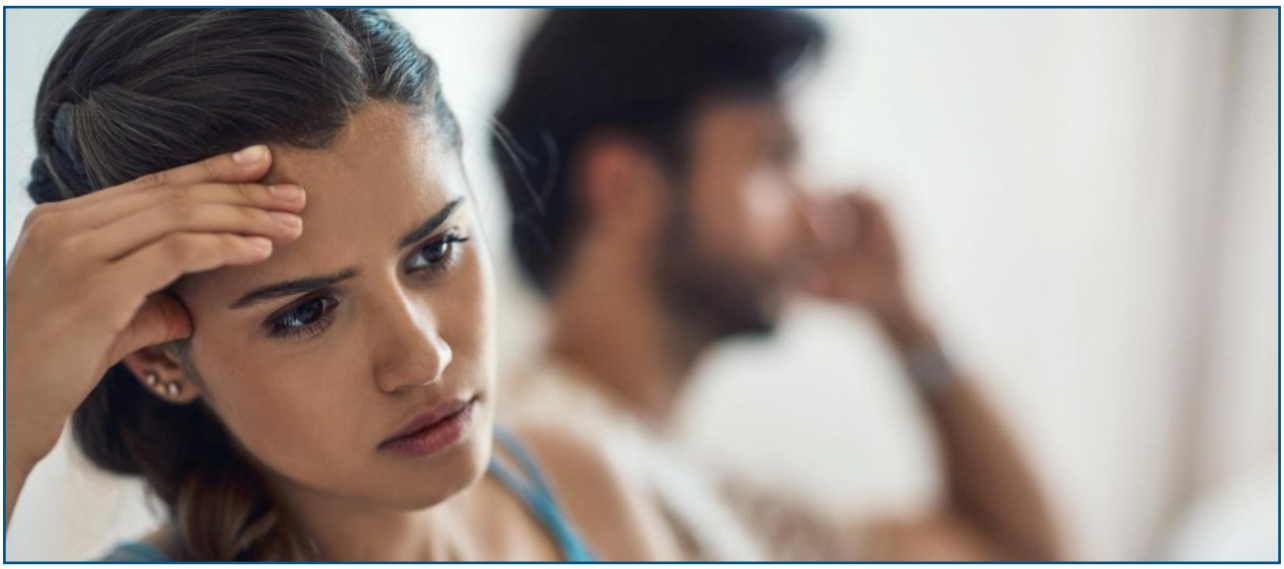
If the parties are at an impasse, either party can make a formal claim against the other to resolve the issues. The courts do not like people just jumping the gun and issuing court proceedings, which lead to a lot of expense and time spent by both parties, so there are steps to be taken prior to that.

First of all, a letter of claim; a formal letter setting out the basis of the party's claim and what remedy they are seeking, must be sent to the other party. The remedy may be in the form of money, or for the property to be sold, if the circumstances do not allow the other party to raise the money. It may be that the party is seeking a declaration from the court, recognising their beneficial interest as a percentage of the value of the property on a sale.

In an ideal world, any such dispute is resolved by agreement, usually involving the sale of the property so that both parties can realise their interest. There are a number of options available in seeking to reach agreement without involving the courts. These alternative forms of dispute resolution can be very informal, to include meetings, the exchange of information or phone calls, to the more formal involvement of trained mediators. We can advise on the most appropriates form of ADR in your case.

Court action

However, if no agreement can be reached, the best option is likely to be to ask the court to step in. Once court papers setting out the details and the legal basis of the claim is set out, the court would issue proceedings and serve a copy on the other party, which commences the court action. How the court then approaches the claim really depends on the precise circumstances in your case.

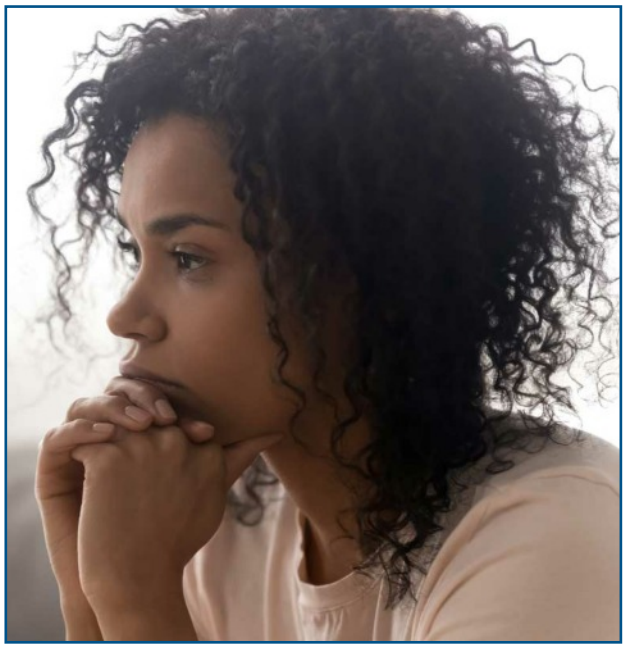


If there is no dispute as to the ownership, the court can set directions relating to the sale of the property. This may involve one party being ordered to transfer their share to the other in return for a sum, based on the current valuation and the equity in the house after the expenses such as mortgage redemption fees, if any, estate agents' fees and solicitors' fees.

If there is a dispute as to the ownership, normally because one party argues that they have a beneficial interest in the property, the court's focus will be on assessing whether this is the case. This will involve consideration of evidence, the court looking to establish whether there was ever a common intention and whether the non-legal owner has acted on this to their detriment, usually by spending either their money or their time on the property.

Successfully proving such a claim require a lot of evidence, so it is prudent to keep evidence of any written conversations as to the intention of the parties. This may include messages and emails and any contribution to the value of the property, such as photographs of the extension/renovation works, and related costs/receipts.

Court action is expensive, stressful and can be very time consuming. It is normally in the interests of both parties to a dispute to find a resolution without recourse to litigation. We can help with this, in advising you on your position at law and the options and approaches available to you in resolving your dispute.



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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

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