

# Blandy's

Issue One 2010

BRIEFING



Dispute resolution

## Spring clean for litigation

### THE JACKSON REVIEW

The final report in the Jackson Review was published at Christmas. Its purpose was to review the rules and principles governing costs in civil litigation and to make recommendations to promote access to justice and proportionate costs. The Review therefore included the consideration of the benefits of alternative dispute resolution ("ADR"), and whether the litigation rules should be changed in order to increase its use.

During the consultation process Lord Justice Jackson received submissions concerning the use of ADR (and in particular mediation) – all of which were in favour of various measures designed to increase its use.

The common theme of the submissions was that ADR should be encouraged in the litigation process and that it is presently under-used. It was also argued that mediation should be built in to the case management

timetable in all cases except where there is a good reason to excuse it.

Lord Justice Jackson agreed that mediation is generally a highly effective means of achieving a satisfactory resolution of many disputes. He also commented that mediation has a significantly greater role to play in the civil litigation system than is currently recognised.

However Lord Justice Jackson did not accept that there should be any change in the civil litigation rules in order to require parties to engage in ADR. Instead he concluded that Judges should retain the discretion to encourage mediation, and to direct it where they see fit. This goes no further than the current practice which, arguably, has led to the under - utilisation of ADR.

Lord Justice Jackson's primary justification for not making ADR an integral part of the system is that his proposed changes to the costs system will encourage the use of ADR.

Lord Justice Jackson did however propose that ADR should be promoted more heavily, and this is to be welcomed. Nevertheless, for those of us who see the benefits of ADR in practice, it is disappointing that the Jackson report does not contain more extensive proposals fully to integrate ADR in to the civil litigation procedure. This would be more likely to achieve the stated aim of increasing the use of ADR.

It remains to be seen whether the Jackson report recommendations will be implemented – in the meantime we will continue to promote and engage in ADR on behalf of our clients where possible and appropriate.



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**BLANDY & BLANDY**  
solicitors



Welcome to the first Blandy's briefing of 2010 and to the first since the firm converted to a Limited Liability Partnership (LLP) on 1 December last year. The conversion to LLP is part of Blandy's strategic plan to become the leading full-service law firm in the Thames Valley. It is a progressive move that will ensure we continue to expand and build on our reputation as a client-focused law practice.

As a testimony to the success of our approach, this year we have been recognised by *The Lawyer* magazine as one of the top 200 UK law firms. In addition, our commercial and private client teams have been acknowledged as leaders in their field in nine service areas by the independent legal directories.

Bucking the industry trend, Blandy & Blandy has witnessed a growth in turnover over the last six months, and that has led to the recruitment of a new assistant (Rosalind Prue) into our planning and environment team. More details on Ros appear later in this briefing. We are also pleased to have expanded our family team and welcome Jessica Reid and Claire Burton.

We would like to thank you for your continued support and loyalty and we hope to continue working together in the future.

**Phil D'Arcy and Nick Burrows**

*Joint Managing Partners*

# the JMP review



Employment law

## New "Fit Notes"

The old MED3 sick notes used by GPs have now been replaced by 'Fitness for Work' notes. These will allow a GP to indicate whether an employee is 'not fit for work' or 'maybe fit for some work' (subject to any adjustments the GP suggests). The aim is to focus more on what the employee can do, rather than just their incapacity.

It is hoped that the new notes will give employers meaningful advice from a GP which they then are able to act upon with confidence. The advice is not binding on employers but intended as a guide. Employers will not be obliged to make any changes the GP suggests as the advice is advisory only, but they should be mindful of their obligations under disability discrimination legislation. Under the new system:

- The 'may be fit for some work' option has been replaced with 'you may be fit for some work taking account of the following advice.'
- The statement lists common changes which could be made to an employee's work environment or job role to help facilitate a return to work including a phased return to work, amended duties, altered hours and workplace adaptations.
- The maximum duration a medical statement can be issued for will be reduced from 6 to 3 months during the first 6 months of a health condition.

GPs will be given training on completing the new certificates and helpful guidance for employers is now available at [www.dwp.gov.uk/docs/fitnote-employer-guide.pdf](http://www.dwp.gov.uk/docs/fitnote-employer-guide.pdf)



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# Blandy & Blandy advises on Post Haste sale

Blandy & Blandy has recently advised Reading-based Post Haste Group Limited on the sale of its Thames Valley and Scottish courier delivery businesses to CitySprint (UK) Limited for an undisclosed consideration.

Post Haste is a specialist same day express courier company based at ten locations, employing large fleets of courier vehicles from motorcycles to transit vans to carry out urgent courier deliveries throughout the UK. The sale is a key part of Post Haste's Strategic plans to focus on its London operations at the company's City and Mayfair sites.

CitySprint is a privately owned company operating a network of 30+ wholly owned

service centres across the UK. Whilst the deal does not expand their infrastructure, as all locations will be merged with existing CitySprint ServiceCentres, it does increase staff and fleet sizes.

The disposal was led by David Few, partner and Head of Corporate & Commercial at Blandy & Blandy and Corporate associate, Peter Woolley.

Tim Clark, Employment partner and Employment associate, Sukhpal Matharoo, advised on the employment aspects of the transaction.

David Few commented:  
*"It is a pleasure to have once again advised*

*Post Haste. I have worked with them for a number of years and it was rewarding to have acted for them on this transaction. I wish them, and CitySprint, every success with their new ventures. It is encouraging to see that despite challenging market conditions, there is still an appetite to complete corporate deals in the Thames Valley. As a firm, we have seen this trend reflected in the number of new M&A transactions it has been instructed on recently."*



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# Watch out for new service regulations

The Provision of Services Regulations 2009 came into force on 28 December 2009. The aim of the regulations is to open up the internal EU market for the provision of services - increasing output in the UK by £4-6 billion per year, increasing employment opportunities and trade. One effect of the regulations is to impose new information obligations on those providing services in the UK.

## WHO WILL BE CAUGHT BY THE REGULATIONS?

It is probably easier to ask who won't be caught as the regulations contain a list of those services that will be excluded from the effect of the regulations (these exclusions cover such areas as financial, transport and healthcare services). In addition it is worth bearing in mind that whilst the regulations will not apply to the manufacture or sale of goods, they may well apply to the provision of after-sales services such as maintenance contracts.

## WHAT MUST I DO TO COMPLY WITH THE REGULATIONS?

The regulations impose certain requirements concerning the provision of information to

customers, the handling of complaints and discrimination. The information that must now be made available to customers includes the name of your business, its legal status and form, details of any trade or professional body registrations, the main features of the service, the existence of any after-sales guarantees, relevant insurance and VAT information, and complaints handling information and available dispute resolution procedures (for example any available through a trade body).

It is not expected that many service providers will have to make major changes to their current procedures - but a review will be necessary to establish this.

There is additional information which must be provided if a customer asks - this includes information in relation to any codes of conduct to which you may be subject and how you deal with conflicts of interest which may arise.

## WHEN DOES THE INFORMATION HAVE TO BE PROVIDED?

The information should be provided in good time before the contract is concluded, or, where

there is no written contract, before the service is provided.

## WHAT WILL HAPPEN IF I DO NOT COMPLY?

As with the existing raft of consumer protection legislation, enforcement bodies such as the OFT can take action where there has been a breach of these obligations where such breach could or does affect consumers generally or a group of consumers. In B2B contracts, or in consumer contracts where there has been harm to an individual consumer, the affected party can take action directly - the OFT will not involve itself.

To find out more about the full effect of the regulations contact:



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# What is the CRC and how will it affect you?

The CRC Energy Efficiency Scheme is a UK-wide mandatory emissions trading scheme. It applies to large businesses and large public sector organisations and aims to make large organisations more energy efficient and to encourage them to reduce their CO<sub>2</sub> emissions with the objective of the UK reducing its greenhouse gas emissions.

The CRC came into force on 1 April 2010 and will be divided into seven phases over a number of years. It is expected to apply to about 5,000 organisations, whose annual electricity bills are approximately £500,000 or over based on prices in the year 2008. Qualifying organisations will be required to buy allowances (tonnes of CO<sub>2</sub>) which will initially be priced at £12.00 per tonne. It will be possible to auction or trade allowances on a secondary market. Allowances will be bought or surrendered annually depending on consumption.

Participants will be required to submit a footprint report, an annual report and an evidence pack and to buy enough allowances to cover the amount of CO<sub>2</sub> consumed each year.

Participants will be rewarded with incentives by way of recycling payments where energy efficiency improves. Penalties will be levied on those participants whose efficiency deteriorates. Results will be published in league tables.

In the case of large corporate groups, all parent and subsidiary companies will be grouped together for the purposes of determining whether the various companies fall within the CRC regime. The highest legal entity within the group will be legally responsible. There are additional requirements for principal

subsidiaries (entities that would have qualified in their own right). Overseas entities will not be treated differently, and the highest global parent company will be required to nominate a UK-based group member.

There are likely to be difficulties that arise between landlords and tenants. Which party should be responsible? Can landlords pass on the costs of complying with its CRC obligations onto tenants by way of service charge? What happens in the case of existing leases drafted without the CRC in mind in the first place? Green leases (designed to encourage the parties to carry out their roles in a more sustainable way) are likely to work best by way of common understanding between the parties rather than by imposing onerous lease clauses on tenants.

The CRC will be regulated by the Environment Agency. Breaches of the CRC are likely to result in a civil penalty, usually by way of fine. In certain circumstances, there may be criminal sanctions (for example in the case of false or misleading statements).



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# Cohabiting? Best make a Will

Family law

## Divorce and Why you must be 'whiter than white'

Marco Pierre White, chef and restaurateur, is bringing a claim for damages against Withers, who were the solicitors acting on behalf of his wife in relation to divorce proceedings. The claim relates to the wife's removal of certain documents which belonged to her husband, most of which related to his financial position, but which included a letter from his daughter from a previous marriage. The documents were passed to her solicitors. White's claim is for wrongful interference with his property. He alleges that his wife was advised to take documents belonging to him although this is denied both by his wife and her solicitor. In any event, it appears that original documents were in the solicitor's possession.

The claim was struck out in the High Court in November 2008, but in October 2009, the Court of Appeal agreed that White should be permitted to pursue the claim. It is likely to be heard later this year. Until then, those involved in divorce proceedings, including their solicitors, will need to exercise caution. It is not uncommon in divorce proceedings for one spouse to be suspicious of the other spouse and to fear that he (or she) might not be honest when disclosing their financial details. Until the White case, the advice was generally that a spouse could exercise a degree of 'self-help' in endeavouring to ascertain the other's financial details, provided that she/he complied with some rules known as the Hildebrand Rules, after a case of that name. Broadly these provide that:

- You should not use force to obtain documents, for example by breaking into a locked room or filing cabinet.

- Post should not be intercepted or opened - it is a criminal offence to interfere with another's post.
- Copies should be taken with all original documents being returned immediately.
- You should not read, copy or remove documents in an electronic form, for example emails.

Provided that these rules are complied with, evidence obtained in this way by one spouse will generally be admissible within the divorce proceedings, although the Court has the power to penalise such conduct by way of a costs order where appropriate.

The White case, however, reminds us that compliance with the Hildebrand Rules does not amount to a defence against a separate civil claim for damages. Worryingly, the Court of Appeal expressed the view that even the removal, copying and return of documents could give rise to a civil claim and, where such documents are passed to a solicitor, that the solicitor could face a claim as well.

This would appear to limit the ability to challenge a spouse who has been dishonest in disclosure without exposing oneself to a potential claim, which would be unfortunate indeed. (The outcome of the White case will be

reported in a later Blandys' Briefing)



**Brenda Long**  
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Over recent years there has been a significant increase in the number of unmarried couples living together. This trend is likely to increase as has been highlighted in a recent survey which projects that the number of unmarried couples will rise to 3.7 million in 2031, compared to 2.25 million in 2007. Despite the vulnerable position of unmarried couples on death, the research found that they are least likely to have made a Will, with only 17% having done so.

It is a common misconception that an unmarried partner attains various rights as a "common law spouse" after living long term with their partner, however, there is no such concept in UK law. In particular, unmarried partners do not have any rights under the intestacy rules, and are therefore in a very vulnerable position if their partner should die without making a suitable Will. Many cohabitants are unaware of this fact and therefore fail to make suitable arrangements.

The Law Commission published a consultation paper on 29 October 2009 reviewing the law of intestacy and family provision claims on death relating to both married and unmarried couples. The sections of the report which deal with cohabitants highlight the vulnerable position of unmarried couples and set out various proposals in order to offer them some protection. The consultation period ended on 28 February 2010.

The main recommendations contained in the report, with reference to cohabitants, are to give them automatic rights under the intestacy provisions. Additionally, it is also proposed to extend their rights under the family provision legislation. There is however no guarantee that these proposals will come into force. In the meantime it is therefore vital that cohabitants have suitable estate planning arrangements in place to protect their unmarried partner from potential hardship and emotional strain at what is already a very difficult time.



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## New faces

Blandy & Blandy, has expanded its Planning & Environment team with the recruitment of new solicitor Rosalind Prue.

Our Planning team is one of the largest in the Thames Valley and is top rated in independent legal directories for providing strategic advice to some of the largest institutions in the Thames Valley.

Before joining Blandy & Blandy in January 2010 Rosalind trained and qualified as a

solicitor at Roythornes LLP, a leading East Midlands firm. She will be specialising in planning, including environmental, highways, and conservation law.

Commenting on her arrival, Senior Partner Simon Dimmick said *"Rosalind's appointment is a significant development for our planning team at a time when we are seeing an increasing amount of instructions across the planning and environmental law spectrum. We are delighted to welcome her to Blandy & Blandy. We look forward to enhancing the team's already excellent capabilities and driving the department forward as a major player in the Thames Valley region."*

## FA appoints B&B



Following a competitive tendering exercise Blandy & Blandy has been selected onto The Football Association's (The FA's) first group legal panel.

Having worked with Wembley Stadium for a number of years, we have been selected to advise on alcohol and entertainment licensing issues relating to its venues. In a panel that includes eight global and national law firms, we are the only regional firm to have been selected.

The FA, the governing body of football in England, selected the panel in order to gain more certainty over costs and to allow them to operate more efficiently.

Sue Dowling, head of licensing at Blandy & Blandy, commented: *"We are delighted to have been appointed by The FA Group. We have provided licensing support to Wembley Stadium for many years and look forward to continuing and developing our relationship with The FA."*

## Date FOR YOUR Diary

### PLANNING UPDATE SEMINAR

**Date:**

Tuesday 8 June 2010

**Time:**

Reception from 4.30pm

Seminar from 5.00pm – 6.15pm followed by refreshments

**Venue:**

Central Reading

**Speakers:**

Simon Dimmick, Senior Partner, Blandy & Blandy

Karen Jones, Partner and Head of Planning, Blandy & Blandy

Anna Sabine, Director, Meeting Place Communications

**Topics will include:**

- The Body Politic – reading the election entrails
- Implications of Proposed Change of Government on the Planning Regime
- Update on recent Planning Law including:
  - Community Infrastructure Levy, S106 & all that!
  - GPDO amendments, new UCO C4 and duration of permissions

**Booking:**

To attend please email your details to [events@blandy.co.uk](mailto:events@blandy.co.uk).

Please type 'Planning Update' into the subject line.

Contact details for all our solicitors are available through our website [www.blandy.co.uk](http://www.blandy.co.uk) or by telephone on 0118 951 6800

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**BLANDY & BLANDY**  
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