MOON BEEVER
SOLICITORS

NEWSLETTER SUMMER 2019

Welcome to the Summer edition of the Moon Beever newsletter.

As with the new season, this edition brings new articles, commentary and dates for your diaries. We hope you enjoy. Please follow us on our social media to be kept up to date with the latest legal news and events.

FIRM NEWS

Moon Beever converted to a Limited Liability Partnership with effect from 1st July 2019. The new SRA number for the LLP is 659195. Our insurer will remain QBE (Europe) Limited with the same cover for our professional indemnity insurance. The Partners decided that the LLP structure was more suited to the modern age and opened up more possibilities for the firm and its future. The LLP is Moon Beever LLP :-No **OC424175** – registered in England & Wales:- registered address:- Bedford House, 21a John Street, London, United Kingdom, WC1N 2BF

SAM FENWICK

We are pleased to announce that Sam Fenwick has been made a Partner. Sam is an Insolvency & Turnaround solicitor specialising in contentious and non-contentious restructuring and turnaround matters, in particular advising office-holders, lenders, companies, directors, creditors and other stakeholders in distressed situations

Sam has worked on a wide range of restructuring assignments across many industries, including hotels, leisure parks, retailers, financial advisers, insurance and mortgage brokers. Sam joined Moon Beever in January 2017 prior to which he was with well-known practices Gowlings WLG and Osborne Clark, where he trained. Congratulations to Sam and welcome!

Annual Property and Private Client Quiz a Roaring Success

The infamous Moon Beever pub quizzes have been successfully fundraising for Macmillan Cancer and Debbie Fund for several years now and each quiz proves to be both enjoyable and lucrative. We are delighted to say that this quiz was no different and over £1,800 was raised for the 2 charities. New Square Chambers were crowned the winners for the second year in a row – can they retain the title next time?

Moon Beever heading into Orbit for Farleigh Hospice

Ian Pickett, part of our IT team, will be abseiling off of the ArcelorMittal Orbit in July in order to raise funds for Farleigh Hospice. Ian has already raised around £500 for the hospice, so there's no backing out now!

A wonderful cause and a terrifying undertaking, we are incredibly proud of Ian for this achievement.

London & Essex Legal Walks

Moon Beever staff In London and Essex walked 10K alongside other law firms and barristers' chambers for The London Legal Support

Trust and The Eastern Legal Support Trust, both of which work to support law centres and legal advice agencies to help more people access legal advice. We managed to raise over £1100 for these worthy charities.

Thank you for sponsoring us!

Charlie fights

Insolvency & Litigation Solicitor Charlie Dessain took to the ring earlier this quarter to fight for Mind: the mental health charity.

Not only did Charlie win the fight but he also raised over £2000 for the charity. Congratulations to Charlie!

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TRIBUNALS AND ADMINISTRATIONS – A MINEFIELD? NOT WITH OUR HELP!

The case ***of Ince Gordon Dadds LLP and Ors v Mrs J Tunstall and Ors [2019] UKEAT 0141_19_1906*** is of particular interest because the EAT decided an issue which had not previously been determined regarding the scope of the statutory moratorium which applies to legal proceedings against a company in administration. The case also demonstrates potential risks for individuals in certain employment claims and the risk to Companies acquiring businesses in administration.

C a solicitor had commenced employment tribunal **(ET)** proceedings against R1 and R2 and six others. These claims are thought to include claims for unfair dismissal, pregnancy-related discrimination, sex discrimination, part-time worker discrimination and disability discrimination.

R1 and R2 (one of whom was the employer) went into administration and a stay was ordered under para 43(6) Sch B of the Insolvency Act 1986 **(IA 1986).** Initially the stay was ordered against all 8 respondents, but then the stay was then lifted by the ET in relation to R3-R8.

R3-R7 were employees or agents of R1 or R2 and so could incur a personal liability for acts of discrimination under the Equality Act 2010.

R8 was said to be a transferee of R1 and R2's business (or part thereof) under The Transfer of Undertakings Protection of Employment Regulations 2006 **(TUPE).** R8's liability arose from the principle of automatic transfer under Reg 4 of TUPE. R8 had argued as part of the case that it had not received employee liability information in relation to C and thus would presumably have difficulty in defending a claim which it knew little about.

The ET held that that it had no power to lift the stay in respect of R1 and R2 but that para 46 (6) IA 1986 did not prevent legal proceedings continuing in respect of standalone claims against the other respondents.

The ET accepted it was up to the administrators as to whether they participated in the proceedings. If R1 and R2 were active participants then they would be bound by findings against the other respondents however, the ET did not consider this to undermine the statutory moratorium as the remedy for this risk sat in the hands of the administrators (i.e. to participate or not).

The ET considered potential prejudice - R1 and R2 being likely to hold most of the relevant documents etc. but decided that this could be ameliorated by orders for disclosure under Rule 31 of the ET rules 2013.

R3-5, R7 and R8 appealed.

The EAT dismissed the appeal holding that the ET had properly taken account of the potential liabilities of R1 and R2 but that it was a matter of choice for the administrators whether or not the consented to the proceedings continuing against R1 and R2 and that it was a real choice to be taken when considering whether participation would help or hinder the administration.

Issues of disclosure, privilege and potential reputational risk were issues that arose out of the proceedings, not necessarily out of the issue of the stay itself.

The case demonstrates how individual employees can incur personal liability for acts of discrimination. The EAT observed in relation to issues of res judicata/estoppel that if C succeeded against R3-R8 she could recover in full from them and withdraw her claims against R1 and R2. Small comfort of course to R3-R8. From a professional perspective since those involved are solicitors or law firms in the event of an adverse finding against R3-R8 the matter should be reported to the SRA

For more advice, contact Sarah Rushton on 0207 440 7770 or info@moonbeever.com.

MEMBERS OF WOUND-UP POLITICAL CLUB RECEIVE SEVEN-FIGURE SURPLUS FUNDS

If a club devoted to serving a community benefit enters insolvency, should its surplus assets be distributed to its members, or the cause for which it was founded? The High Court tackled that issue in a case concerning a political club which had surplus funds in excess of £1 million when it was voluntarily wound up.

The club, founded in 1934, had the aim of promoting the principles of Conservatism and the implementation of Conservative Party policies. It was expressly affiliated to the Association of Conservative Clubs. After its membership dwindled and it began to suffer losses, its members voted in favour of winding it up.

Following the sale of its clubhouse, the club was left with a seven-figure sum in the bank and its liquidator set about distributing the money to its 137 known members. That prompted the Association to launch proceedings on the basis that it, rather than the members, should receive the surplus funds.

In rejecting the Association's arguments, the Court found that, on a true reading of the club's registered rules, the liquidator had no alternative but to distribute the surplus to members and that that represented the only proper outcome. The membership had unanimously voted three times in favour of winding up and procedural irregularities in the club's decision-making had neither caused harm to creditors' interests nor affected the final result.

Qureshi v Association of Conservative Clubs Limited.

DATA PROTECTION AND THE PUBLIC INTEREST IN FIGHTING CRIME – HIGH COURT RULING

The clear public interest in effectively fighting crime sometimes requires police forces to share personal details of offenders with those at risk of becoming their victims. As a High Court case showed, however, the right of individuals not to have their data disseminated to all and sundry has to be carefully placed in the balance.

The case concerned a vulnerable 16-year-old girl who had gone missing from home on numerous occasions and had been excluded from school. She had convictions for shoplifting and assault and, according to the police, had been reported for more than 50 incidents of violence, theft or anti-social behaviour.

In those circumstances, the police disclosed data concerning the teenager, including her full name, date of birth, photo and details of her criminal behaviour, to a business crime reduction partnership (BCRP) whose members included a large number of local businesses. The principal function of the BCRP was to operate a scheme by which known troublemakers could be excluded from members' premises.

The teenager challenged the disclosures of her sensitive personal data, which were made under an information sharing agreement (ISA) between the police and the BCRP, arguing that they were disproportionate and amounted to a breach of her rights under the Data Protection Act 2018.

In ruling on the matter, the Court noted that that there were elements of the ISA that could have been better drafted. However, viewed on a holistic basis, the safeguards put in place to protect the teenager's rights were adequate. The data was, amongst other things, stored by the BCRP on an encrypted and password-protected intranet and was only accessible to trained and vetted people, in practice mainly security guards assigned to protect commercial premises.

Disclosures made to a business forum under an earlier ISA were also alleged by the teenager's lawyers to have breached the Data Protection Act 1998. In that case, the Court found that her rights had been breached by the sharing of information that revealed her vulnerability to child sex exploitation. In all other respects, however, her judicial review challenge was dismissed.
R on the Application of M v Chief Constable of Sussex.

LANDLORDS' RIGHTS TO ACCESS TENANTED PROPERTIES – GUIDELINE RULING

Most residential leases contain a standard covenant which requires tenants to give their landlords access to their homes for reasonable purposes, including repair and maintenance. As a matter of good manners, tenants are often asked to confirm that the date and time of such visits are convenient for them but, as a recent case showed, such

politeness can have unforeseen legal consequences.

Pursuant to one such covenant, the landlord of a residential property twice wrote to the tenant, requiring access to the property on a particular date at a particular time. The tenant was invited to confirm that such access would be given at the appointed hour. The landlord took the view that his failure to respond to either letter amounted to a breach of the covenant and sought a declaration from the First-tier Tribunal (FTT) to that effect.

In ruling on the matter, the FTT noted that, for practical reasons and in order to foster good relations, landlords frequently communicate with tenants in order to ascertain whether the proposed date and time of a visit is convenient. However, such an approach was not a pre-condition for enforcement of the covenant, which required the tenant to allow the landlord access, for proper purposes, on 48 hours' notice. There was no requirement that his permission be obtained.

In rejecting the landlord's arguments, the FTT noted the tenants' evidence that he had never refused to afford reasonable access to the landlord. The landlord had made no actual attempt to enter the property pursuant to either letter. The tenant's lack of response to the letters did not amount to a refusal to afford access and he had thus not breached the covenant. The Upper Tribunal dismissed the landlord's appeal against that decision, having detected no legal flaw in the FTT's reasoning.

New Crane Wharf Freehold Limited v Dovener

PUB FREQUENTED BY NOVELIST EVELYN WAUGH TO BE DEVELOPED FOR HOUSING

Maintaining community facilities in small settlements is obviously important, but that must sometimes take second place to the pressing need for affordable homes. In a case on point, the High Court opened the way for a village pub once frequented by the novelist Evelyn Waugh to be developed for housing.

Waugh, who taught at a prep school in the area, used the 158-year-old village pub as a model for a hostelry featured in his 1928 comic novel 'Decline and Fall'. Following its closure, however, the pub had been purchased by a social housing provider who had been granted planning consent to convert it into a four-bedroom house and to construct 24 affordable flats in its grounds.

In challenging the permission, a local campaigner pointed out that the village would be left with only one pub. She argued that the development should not have been approved without a full assessment of whether it would be economically viable for the pub to reopen.

In dismissing her complaints, however, the Court rejected arguments that councillors had misinterpreted a local planning policy which was designed to protect community facilities in rural areas. The purpose of that policy was to guard against the village being left with no pub at all. The community would still be served by one pub, together with a village hall and a Royal British Legion Club.

The campaigner also argued that the development would put pressure on class sizes at the village school, which was already oversubscribed. The Court, however, noted that the developer would be required to pay about £17,000 towards the construction of a new school within five years. Councillors had not been misled about the purpose to which that money would be put. The planning permission was upheld.

R on the Application of Thompson v Conwy County Borough Council.

BENEFICIAL OWNERSHIP OF ASSETS IS HARD TO PROVE – ALWAYS GET IT IN WRITING.

When the real owner of an asset is different from its formal owner, that fact should always be recorded in writing. However, as a High Court case showed, repeated judicial warnings to that effect all too frequently fall on deaf ears.

The case concerned a former couple who were registered as equal shareholders in a company. After the relationship ended, the man supported his mother's claim that, regardless of the formal position, she was the true owner of the entire company, its subsidiaries and a number of residential properties that were paid for from its profits.

In dismissing the mother's case, the Court noted the complete absence of anything in writing to support her claim to be the beneficial owner of all the assets concerned. In the absence of any documentary evidence, the Court was constrained to rely upon oral testimony and the conduct of the parties over many years in discerning what their intentions had been in respect of the company's ownership.

The mother had agreed, as an act of maternal generosity, to allow her home to be used as the company's premises in its early days and as security for its borrowings. However, that did not signify that she was some sort of quasi-partner in the business or that the company's shares were held on trust for her.

The Court concluded that it had been the common intention of the former couple that the company should be owned by them on a 50/50 basis and that the formal position thus accorded with reality. The former couple were, however, directed to indemnify the mother in respect of the mortgage on her home.

Rothschild v De Souza. Case

ACAS SUFFERS SETBACK IN DISPUTE WITH ITS OWN EMPLOYEES' TRADE UNION

Few would fail to appreciate the irony of the Advisory, Conciliation and Arbitration Service (Acas) being embroiled in a dispute with a trade union representing its own employees. However, the falling out provided the occasion for an important test case on the extent to which public employers are obliged to consult their staff.

The Public and Commercial Services Union complained that Acas had failed to consult its employees pursuant to a negotiated agreement. The Central Arbitration Committee (CAC) ruled that it had jurisdiction to consider the complaint under the Information and Consultation of Employees Regulations 2004. Acas's challenge to that decision was later rejected by an Employment Tribunal.

In challenging the latter ruling before the Employment Appeal Tribunal (EAT), Acas argued that it fell outside the ambit of the Regulations. It pointed out that it is largely funded by the Department of Business, Innovation and Skills and that, as a Crown Non-Departmental Public Body, it is entirely staffed by civil servants. It argued that its activities are governmental in nature, rather than economic or competitive, and that its position could be equated to that of a regulator.

In dismissing the appeal, however, the EAT noted that one of the roles performed by Acas is to advise employers on good employment practices, and that such services are paid for. Although that made up only a small part of Acas's activities, it was nevertheless a remunerated provision of services to a customer. That economic activity was neither ancillary nor so small as to be irrelevant, and was sufficient to bring Acas within the Regulations.

The EAT noted that an economic activity, within the meaning of the Regulations, does not require that payment for goods or services be made by a consumer or end user. It therefore mattered not that Acas is largely dependent on government grants. The EAT also found that an economic activity may include the supply of goods and services by a monopoly in any given market.

The sole point on which the EAT differed from the CAC was in finding that the highly important conciliatory role performed by Acas under the Employment Tribunals Act 1996 is not an economic activity. That role was carried out in the exercise of public powers and thus fell outside the Regulations. That conclusion, however, did not affect the overall outcome of the appeal.

Advisory Conciliation and Arbitration Service (ACAS) v Public and Commercial Services Union.

INCREASES IN NATIONAL MINIMUM WAGE RATES

Employers are reminded that new National Living Wage (NLW) and National Minimum Wage (NMW) rates apply as of 1 April 2019. These are as follows:

The NLW, which applies to those aged 25 and over, will increase from £7.83 to £8.21 per hour;

The NMW for 21- to 24-year-olds will increase from £7.38 to £7.70 per hour;

The NMW for 18- to 20-year-olds will increase from £5.90 to £6.15 per hour;

The NMW for 16- and 17-year-olds will increase from £4.20 to £4.35 per hour; and

The apprentice rate of the NMW, which applies to apprentices aged under 19 or those aged 19 or over and in the first year of their apprenticeship, will increase from £3.70 to £3.90 per hour.

The accommodation offset will increase from £7.00 to £7.55 per day for each day during the pay period that accommodation is provided.

COURT OF APPEAL ACTS TO CLOSE MANAGED SERVICE COMPANIES TAX LOOPHOLE

For those who provide their services personally, there can be significant tax advantages in interposing a corporate vehicle between themselves and clients who would otherwise pay them directly. Such arrangements are, however,

frowned upon by HM Revenue and Customs (HMRC) and are likely be a great deal more difficult to operate following an important Court of Appeal ruling.

The case concerned a company that had established about 1,000 such interposing vehicles on behalf of a wide range of mainly professional people. Payments for the latter's services were received by the vehicles, which employed them and generally paid them the National Minimum Wage. They were otherwise remunerated by the vehicles in the form of dividends. The intention was to achieve substantial savings in Income Tax (IT) and National Insurance Contributions (NICs).

After HMRC challenged those arrangements, the First-tier Tribunal, and subsequently the Upper Tribunal, found that the company was a provider of managed service companies (MSCs), within the meaning of Section 61B of the Income Tax (Earnings and Pensions) Act 2003. That meant that HMRC was entitled to treat dividends paid by the vehicles to their shareholders as employment income. Assessments to IT and NICs were accordingly raised against a number of shareholders.

In dismissing an appeal against that outcome brought by five of the vehicles that had been set up by the company, the Court noted that HMRC's concerns related not only to loss of revenue but also to the risk that MSCs without assets may be put into liquidation or dissolved, leaving liabilities in respect of IT and NICs unpaid.

The Court found that the business that the Act was designed to catch was precisely the business that the company ran. It was engaged in promoting a situation in which workers provide their services through corporate vehicles, instead of directly to end clients. It provided shareholders with significant managerial assistance in operating such vehicles. In those circumstances, the company was undoubtedly an MSC provider and the vehicles it established were undoubtedly MSCs.

Christianuyi Limited & Ors v The Commissioners for Her Majesty's Revenue and Customs.

MAKING A VALID WILL REQUIRES FREEDOM OF CHOICE AND UNDERSTANDING

Making a valid will involves a free exercise of choice by someone who understands the effect of the bequests they are making. A judge emphasised those points in finding that a mother's independent wishes were overborne before she cut her five daughters out of her will.

The woman and her husband had amassed a seven-figure fortune through running a successful restaurant and from canny property investments. He held a traditional belief that their daughters were their husbands' responsibility and that all the couple's wealth should be left to their only son, who would carry on the family name.

Pursuant to that belief, the majority of the couple's assets had been transferred to their son prior to the woman's death. By her final will, she left her only substantial remaining asset – her share in the restaurant premises – to her son, disinheriting her daughters. A few weeks later she gifted that asset to her son's son, thus ensuring that the whole of the restaurant would continue in the male line.

After one of the daughters launched proceedings, the judge found that the woman had executed her final will under the undue influence of either her husband, her son, or both of them, and that the same applied to the gift to her grandson. In those circumstances, the judge set aside both the gift and the will and gave effect to a previous will by which she had left her estate to her six children equally.

The judge found that the woman's freedom of choice had been worn down by the pressure that had been put on her and that her will and the gift represented her husband's wishes rather than her own. Her wish to leave something to her daughters had been a constant source of friction within the family, and the judge noted that it was likely that her desire to avoid family squabbles and to enjoy a peaceful life had played a large part in her giving way to her husband's views.

The Court was also satisfied that the woman lacked the required knowledge and approval of the contents of her final will. She had only a basic command of the English language and had suffered a stroke before signing the document, which rendered her vulnerable and dependent on her husband and son.
Chin v Chin. For advice on wills and probate, you can contact Richard Boulding

INSURERS DEFEAT 'FUNDAMENTALLY DISHONEST' ROAD ACCIDENT DAMAGES CLAIM

There are sadly those who view road accidents as an opportunity to mount dishonest or inflated compensation claims. However, as one case showed, developments in the law, combined with the motor insurance industry's increasing vigilance, mean that they are likely to end up cheating no-one but themselves.

The case concerned a pedestrian who suffered a cardiac arrest after being hit by a bus. His life was saved after a passer-by performed CPR and he spent weeks in hospital, including three days in intensive care. Claiming that the accident had left him gravely disabled and in need of lifelong care, he launched a very substantial damages claim against the bus company and its insurers.

The insurers, however, successfully resisted his claim on the basis that it was fundamentally dishonest, within the meaning of Section 57 of the Criminal Justice and Courts Act 2015. The High Court found that covertly shot surveillance footage of him going about his life with no apparent difficulty was wholly at odds with his presentation to medical examiners as bed-bound and unresponsive.

The Court found that a doctor's initial diagnosis, reached prior to the surveillance operation, that he was suffering from a severe conversion disorder was untenable. Having made a

good recovery from his injuries, his disabilities were feigned and could not be explained on the basis that he had good days and bad. His claim was dismissed in its entirety, including those parts of it that were genuine.
Patel v Arriva Midlands Limited & Anr.

BRITISH STEEL-INSOLVENCY

Following the recent news about the liquidation of British Steel, Senior Associate Christopher Burt provided his comments for Lexis Nexis:

"Many commentators had expected British Steel to enter administration, the insolvency process that is routinely used to provide a moratorium before a company's rescue as a going concern. It is significant that, as with Carillion, British Steel has instead been placed into compulsory liquidation by the High Court. This follows difficult negotiations between the company's management, BEIS, trade unions, Greybull Capital and other lenders and no doubt reflects the strategic importance of the company and wider politics. The blame game has already started with the government and Greybull both criticised. The overwhelming dominance of China in global supply has been raised, as has customer uncertainty due to Brexit (despite the weak pound helping competitiveness).

There will be much analysis on the failure of British Steel over the coming weeks. However, the focus at the moment must be on the company's 5,000 direct employees and wider supply chain. It is good to see that the Official Receiver and the three special managers appointed have already launched a support telephone line and started to approach creditors. The special managers have the necessary experience and the same powers as if appointed liquidators themselves. For now, operations will continue and staff will remain employed with costs treated as an expense payable from the company's available assets. It is to be hoped that certain parts of the business can be saved and that clarity is provided as soon as possible for all concerned."

As more information emerges about the British Steel's liquidation, follow us on Twitter for updates and opinions on its progress @MoonBeever.

TAX CREDITS – CULTURAL DIFFERENCES MATTER AND ONE SIZE DOES NOT FIT ALL

When it comes to official decision-making one size does not fit all and account must be taken of different ways of life in a multicultural society. The Upper Tribunal (UT) made that point in the case of a Muslim woman who said that she had for years portrayed herself as happily married so as not to bring shame on her family.

The woman was married to her first cousin, from whom she had not been separated by court order. HMRC rejected her claim that they had in fact been apart since 2009 and ruled that she was not entitled to receive tax credits as a single person. That decision was subsequently upheld by the First-tier Tribunal (FTT).

In ruling on her challenge to the latter decision, the UT noted that the husband had keys to her home and that he kept his belongings there. They had a joint bank account and the husband's mail was delivered to her property, which also appeared as his address on the electoral roll.

In upholding her appeal, however, the UT found that the FTT had failed to give full and proper consideration to the cultural dimension of her case. She explained that her and her husband's families were so interconnected – he was both her mother's nephew and son-in-law – that the pressure to maintain a pretense of a happy marriage was intense.

In her culture, the shame associated with separation meant that it was commonplace for the mask of marriage to hide a very different reality. There were also potential contra-indicators to a subsisting marriage – including the absence of any financial contributions from the husband to the wife and that she no longer wore a wedding ring. The case was sent back to a differently constituted FTT for rehearing in the light of the UT's decision.
UA v HMRC.

HIGH COURT STEPS IN TO SAVE BATTLING ALLOTMENT HOLDERS FROM EVICTION

Allotments are a much-loved feature of British life and their holders enjoy security of tenure and special protection against eviction. In a case on point, a gardener scored in an important High Court victory in his fight to stop his local council taking over his prized plots to make way for development of a new primary school.

The council had purported to appropriate the man's four allotments and had served him and 13 other allotment holders with notice to quit. Their plots were said to be needed to provide playing fields and car parking space for the new school. They had been offered alternative plots but were dissatisfied with them. Although they had no objection to the school proposal, they wanted the plans reconfigured so that their allotments would be saved.

In upholding the man's judicial review challenge, the Court found that the relevant land had, as long ago as 1935, been formally appropriated for use as allotments by the council's predecessor authority. By virtue of the Allotments Act 1925, which conferred security of tenure on the allotment holders and their plots could not be appropriated for any other purpose without the consent of the Secretary of State for Housing, Communities and Local Government. No such consent had been sought or obtained by the council.

The council's argument that the allotment holder had lodged his case unreasonably late was rejected, as was its plea that the Secretary of State would be highly likely to grant the required consent. The council's decision to appropriate the allotments for the new school was overturned, together with the 14 notices to quit. The council was ordered to pay the allotment holder's £12,199 legal costs.
R on the Application of Adamson v Kirklees Metropolitan Borough Council.

VOTING ARRANGEMENTS FOR BLIND PEOPLE A PARODY OF DEMOCRACY, COURT RULES

Judges are the ultimate guardians of democracy and they are always there to ensure that every individual has an unhindered right to cast a secret ballot. In a striking case on point, the High Court pinpointed a grave deficiency in the voting system that undermines the ability of blind people to participate in elections.

The Representation of the People Act 1983 dictates that devices must be provided to enable blind or partially sighted people to vote without assistance from presiding officers or companions. In purported compliance with that provision, voting stations are equipped with tactile voting devices (TVDs) – plastic sheets fitted with flaps upon which are displayed raised numbers that can be identified by touch and that are also printed in Braille.

TVDs enable a blind voter to put his or her cross in a box corresponding to one of the numbers displayed. But there is no way that, by using a TVD alone, a voter can discern the names of candidates or the parties they represent. TVDs therefore only enable a blind voter to cast a ballot without assistance if he or she memorises the order of candidates on frequently lengthy ballot papers.

In challenging those arrangements by way of judicial review, a woman with only very limited vision in one eye argued that TVDs that do not enable blind voters to identify candidates cannot meet the requirements of the Act. In one by-election in which she voted there were 12 candidates and, on another occasion, elections for two councils and Parliament were held on the same day. Lists of candidates could not in practice be memorised and she had had to endure the continual humiliation of seeking assistance in casting her vote.

In upholding her arguments, the Court found that a device that does no more than enable a blind voter to identify where on a ballot paper a cross can be marked, without being able to distinguish one candidate from another, cannot in any realistic sense enable that person to vote. The use of TVDs in their current form was thus a parody of the electoral process established by the Act. The Court issued a formal declaration to that effect.

R on the Application of Andrews v Minister for the Cabinet Office.

HAS YOUR PRIVACY BEEN INFRINGED BY THE MEDIA? SEE A SOLICITOR.

If you feel that your private information has been misused by the media, you may be entitled to compensation and should consult a solicitor straight away. A businessman who did just that after leaked details of a criminal investigation concerning him found their way into the press was awarded substantial damages.

The businessman was a leading light in a company that was the focus of an inquiry by a UK law enforcement body into allegations of international fraud and corruption. The body sent a 15-page letter to a foreign state, requesting mutual legal assistance, which was leaked to a media organisation.

The source of the leak was unknown, but the letter formed the basis of an article in which the investigation was described in detail and the businessman was identified as a suspect. He was outraged by the publication, which had a serious impact on his professional and private life. He launched proceedings against the media organisation, alleging misuse of private information.

In ruling on the matter, the High Court noted that the letter was headed by the word 'confidential' in block capitals. Although journalists had sought a response from the businessman prior to publication, the media organisation had simply failed to appreciate the highly confidential nature of the letter and that the businessman's entitlement to privacy was potentially engaged.

In considering the media organisation's freedom of expression rights, the Court noted that the issue of overseas corruption, and the suspected involvement in the same of the businessman and the company for which he worked, were matters of high public interest. However, the businessman, who had not been charged with any offence, had an expectation that the contents of the letter would remain private. In those circumstances, the publication was neither justified nor proportionate.

The Court noted the clear public policy that the media should refrain from identifying suspects in criminal investigations before they are charged. The publication risked causing unfair damage to the businessman's reputation and had the potential to harm the public interest in effective law enforcement. The Court issued an injunction against the media organisation, restraining any further similar publication, and awarded the businessman £25,000 in damages.

ZXC v Bloomberg L.P.

PROBATE DELAYS

As reported in the press there have been long delays in all Probate Registries with the old 2 week turnaround now being more like 10-15 weeks. The delays are caused by a lack of resource compounded by the new online probate application system installed in March 2019 and a rush in filings in March and April to beat the higher probate fee regime

This causing delays in the Administration of Estates. Whilst HMCTS says it is working hard to clear the backlog that is little comfort to bereaved families, beleaguered executors and solicitors or to beneficiaries.

DATES FOR THE DIARY

Netball – Most Tuesday evenings we have been training for the tournament which is on 30th July at 4pm near Euston. If you haven't entered a team yet contact newsandevents@moonbeever.com . Charity MQ will benefit!

The Moon Beever Insolvency Charity Quiz – 15th October
The Insolvency Team asks friends of the firm to join them at their annual pub quiz. Contact newsandevents@moonbeever.com if you wish to field or join a team

Moon Beever's Insolvency seminar – 3rd September
Further details to be provided closer to the time.

The TRI Insolvency Conference – 13th November sponsored by Moon Beever when Frances Coulson and Robert Paterson will
Some of our insolvency solicitors be speaking in a full day conference widely attended by the industry and other stakeholders. Get in touch if you are too.

STAY IN TOUCH

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