

PASSION FOR BUSINESS

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Home sweet home – top tips for buyers and sellers

With the lockdown being lifted for property in England back in mid-May, it was all hands on deck at estate agencies across the country as they were flooded with new enquiries from prospective buyers and sellers alike.

With the public enthused at the idea of moving home after being stuck inside for months, the market appears now to be on an upward trajectory – this has been bolstered by the temporary lifting of the Stamp Duty Land Tax threshold from £125,000 to £500,000 – so we offer some of our top tips for buying and/or selling a home.

Top tips for buying a property

1. Work out your finances. You are going to need to work out how you are going to pay for your new home as well as all of the associated costs such as tax, legal fees, HM Land Registry fees and your mortgage broker's fee too.

Before viewing properties, review your finances and visit a reputable mortgage broker who will be able to advise whether you are eligible for mortgage finance and, if so, how much and what the best deal for you will be. Once you have found a property, your broker, lawyer and estate agent will want to see that you have funds available to complete the purchase, so get your recent bank statements ready.
2. Now that you have an idea of how much cash you will have available for your purchase, contact some local solicitors for quotes so that you can work their fees into your financing.
3. Now the exciting part – look what is on the market in your price range. There are helpful websites like Rightmove or Zoopla that not only have listings from multiple estate

agents but also give you an idea of what properties sell for in a given area, so you know you are not overpaying.

4. Once you have had your offer accepted, the conveyancing process begins. This typically takes between 8-12 weeks from when the seller's lawyer sends your lawyer the contract pack. You will have to be patient whilst your conveyancer makes extensive checks on the legal title to the property. Your conveyancer will be acting in both the best interests of you and your mortgage broker.
5. As the purchase of your property is getting closer to conclusion, you will need to consider removals. Do not book these until your conveyancer has exchanged contracts on your behalf – you may be charged fees by your removal company if the date you have booked has to be changed.

Top tips for selling a property

1. You have decided that it is time to move on from your home. The first thing to do will be to pull out the information your solicitor gave you about the property when you bought it and keep it ready for when you have a buyer.
2. Get multiple valuations from local estate agents. These are usually free and will give you an idea of both the property's value and the current state of the market in your area.
3. Once your house is on the market, get some quotes for conveyancing fees so that you can move quickly once you have a buyer. If your chosen solicitor can open a file for you whilst you are still marketing the property, you can deal with the paperwork and put your solicitor in a position to proceed as soon as you have a buyer (see tip on timeframe for purchasing above)
4. If you are buying as well as selling, consider the financial tip above for purchasing.
5. If you are buying and selling, both properties will need to exchange and complete at the same time to give you the security of knowing that you will have a home to move to.



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Choosing a guardian for your children

Lockdown has been a busy period for the Wills, Trusts and Estates team with a number of people drawing up a will for the first time. One of the trickiest decisions for them is appointing guardians – the people who will care for your children should you die before they reach the age of 18.

In this article, we'll take a look at the role of a guardian and some of the things you should think about when you are choosing them.

What does a guardian do?

A guardian will step into your shoes and will be responsible, amongst other things, for bringing your children up; providing them with a safe home; maintaining their diet and health; and educating them.

On that basis, it would be sensible to choose a guardian who shares your beliefs and values and who will be able to provide continuity to your child's current way of life. For instance, would your children be able to continue to attend their current school or carry on their hobbies?

Who can you appoint as a guardian?

Any adult can be appointed as a guardian but you should consider the change that it would bring to their life.

Your parents may be an obvious choice but will their age and health be up to the physical demands of raising children? A sibling may be an alternative choice but do they have children of their own and how would both sets of children blend?

You can appoint more than one person as a guardian as well as appointing different guardians for different children, if required.

Generally, an appointment of a guardian will take effect on the death of the second parent to die. If you do not appoint a guardian, the court will appoint someone who they consider will act in your child's best interests.

What about the financial implications of being a guardian?

You will be aware that bringing up children is expensive and there will be a financial impact on your children's guardian.

However, you can authorise your trustees (the people you appoint to administer your estate after your death) to make provision for your children to prevent a guardian being out of pocket. Further provisions can allow the making of loans from your estate to a guardian. For instance, a loan could help a guardian buy a larger house.

A guardian can also be a trustee of your estate so that they would be responsible for both your child's pastoral care as well as the associated financial decisions. However, it may be sensible to appoint a further trustee who is not a guardian so that they can maintain a more objective viewpoint.

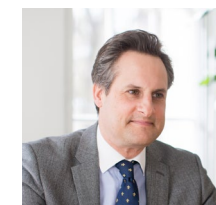
What happens if you are divorced or separated?

A guardian appointed in your will cannot override a parent who has parental responsibility. This can cause upset with those who have had difficult separations but should not prevent you choosing a guardian.

Safeguarding your children's future

Once you have made your decision you will need to ask the person(s) whether they are happy to act as a guardian. You will also need to discuss your wishes for the children.

Hopefully a guardianship provision will not be needed but, by making the decision, you will have taken a considerable step to safeguarding your children's future.



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Why you may be able to claim on your Business Interruption Insurance after all

You may have received an initial rejection of any business interruption claim from your insurer or you may have decided not to pursue a claim given the challenges. However, the situation may not be as bleak as it initially appeared.

Your insurance policy is a contract and is open to interpretation

Your policy and accompanying schedule form a contract between the insurer and your business. Policy wordings vary between insurers and so no blanket approach can be adopted.

Each policy needs to be considered and analysed on the basis of its own terms. It is also important to bear in mind that the terms have not yet been considered by the courts in the context of a pandemic. Therefore, if your insurer is refusing to cover, it is based upon its own interpretation of the policy wording rather than any legal decision.

What should you do?

It is important to carry out a thorough review of your policy. In particular, review the general business interruption clause, and consider any extensions that you have paid for, such as:

- Denial of Access
- Specified Illness / Notifiable Disease
- Loss of Attraction / Event Cancellation
- Supplier / Customer Interruption

We have seen policies where Covid-19 is included within the definition of 'Notifiable Disease' but the insurer is still refusing the claim. Therefore, it is important to carry out your own analysis – consider the natural and ordinary meaning of the relevant clauses. The courts will apply a degree of

commercial common sense, although this will not be invoked retrospectively.

In the context of insurance contracts, the courts can look to the purpose behind the policy, and if there's ambiguity in the clause, the ambiguity should be resolved against the insurer.

It is also important to notify your insurer or your broker of your claim as soon as possible. Typically, you only have 30 days to notify on become aware of an incidence, which may give rise to a claim.

What steps is the Financial Conduct Authority (FCA) taking?

The FCA has issued a claim seeking declarations from the court regarding some of the key and pertinent issues, such as:

- Does 'notifiable disease' or 'human infectious disease' include Covid-19?
- What does the policyholder have to prove in order to establish 'denial of access'?
- If the disease is required to be in the 'vicinity' of the insured premises, what does this mean?

The case is due to start on 20 July 2020 and last for 8 days, so a decision is likely in early August. In light of the court case, insurers and brokers are to consider how coverage decisions may be affected by the final resolution of the test case. There is an obligation to identify policyholders who may be affected by the test case and to communicate with them, particularly regarding whether the policyholder is likely to be impacted by the outcome.

In other words, watch this space.



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Refunds during Covid-19: top tips for consumers and compliance advice for businesses

The Competition & Markets Authority (CMA) has recognised that there are a wide range of contracts that have been affected because of the Covid-19 pandemic. To help consumers understand their rights and to help businesses treat their customers fairly, it has issued guidance that sets out its general views about how the law operates in this area. In this article we'll provide top tips for consumers seeking refunds for cancelled services and offer advice for businesses to help them avoid falling foul of consumer protection law.

Top tips for consumers

1. Know when a refund may be due – the CMA's robust view is that this is when:
 - a business cancels without providing any services, e.g. a wedding venue cancelling on or before the date;
 - a business is prevented from providing services because of Government health measures, e.g. professional sport mandated to be behind closed doors;
 - you cancel, or are prevented from using services, because of Government health measures, e.g. you cannot attend an event because of local lockdown measures.
2. If you booked flights but could not travel due Covid-19 or Government health measures you may claim a refund for up to 12 months after the departure date. If you have an ATOL certificate your money is safe and protected.
3. A partial refund should be due for services only part used or received, for example if only half a sporting season ticket is fulfilled. The same applies for ongoing contracts such as gym memberships. Further payments may be withheld until services can be provided and received.
4. Alternatives such as credits, vouchers, rebooking or rescheduling can be offered, but you can insist on a refund.
5. In limited circumstances deductions can be made as a contribution to costs incurred in relation to your contract, but only when the business cannot recover them elsewhere.

Advice for businesses

For businesses, a careful approach is required because the CMA is taking a dim view of unfair practices. Consumer awareness is growing and the CMA has lobbied for greater enforcement powers.



However, you can create a defensible position by ensuring that:

- terms dealing with cancellations and refunds are clear and easily understandable by consumers and drawn to their attention before the contract is formed;
- deductions from refunds are justifiable as legitimate contributions to costs;
- terms are used fairly, balancing its rights against the consumer's.

This final point is key. A consumer contract term may be perfect from a contractual construction perspective. However, it may still be unfair under the Consumer Rights Act 2015 if it causes a significant imbalance in the rights and obligations of the trader and the consumer, to the consumer's detriment.

In other words, businesses selling to consumers should always look to achieve a balanced outcome when operating their terms and practices.

Get in touch

Our Commercial Team regularly advise on consumer rights issues and can help you navigate this technical area, including ensuring that your terms and conditions and processes are compliant with consumer protection law.



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Should an issue escalate our Dispute Resolution Team are here to help. We have recently advised on an increasing number of holiday complaints and disputes, securing refunds from holiday providers who previously refused.



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How do remote hearings work?

Prior to the lockdown almost all hearings were in person hearings. All of that has changed overnight. Virtually all hearings are taking place remotely. In person hearings are now likely only to take place where there are litigants in person or there is a need to give complex evidence.

Many people prepare themselves for their day in court. But what is this actually like when it takes place remotely?

The first thing to say is that remote hearings are not necessarily inferior to in person hearings. Indeed, in person hearings could be a particularly stressful experience.

Many Court buildings are old and struggle to handle large numbers of hearings. For most people, a day in Court would involve sitting in a crowded waiting area nervously waiting for their case to be called. The Court would list more than one hearing at the same time so there was no guarantee that if your hearing was listed for 10am that the hearing would proceed on time. You could find yourself in Court for much of the day waiting for your hearing to take place.

Whilst there were some private meeting rooms, you invariably had to get there early to ensure you reserved a spot. Advisers often found themselves taking instructions while balancing their laptop on their knee or even standing up. People also often found themselves in the same waiting area as the other party, creating an even more stressful situation and making it very difficult to make decisions when asked to do so.

The practicalities of remote hearings

Now, Directions Hearing take place in a telephone hearing and contested Final Hearings on Zoom, Skype for Business and Microsoft Teams.

The remote nature of the hearing creates a very different dynamic. You have to ensure that you can take the hearing privately and that no one can be there with you or can

overhear the proceedings. The hearings are less fluid and have more structure, which some people find beneficial. Having a hearing via video conferencing can actually be extremely tiring and take longer, especially when there are IT issues.

We are still required to dress smartly for our hearings, but as the Court will only see your top half, wearing a suit to Court may well be a thing of the past.

How can I talk to my legal team privately during a remote hearing?

You will no longer be sitting beside your Barrister passing on instructions in the midst of the hearing. Instead, you will be at home on your own interacting via video call. It can be isolating and you have to be creative about being able to give and take instructions.

Instructions can be taken during the hearing by way of a WhatsApp group. I have also used Zoom – a meeting is left on at all times with the video off and the sound muted when on the call. This enables you to use the chat facility to pass on instructions when needed during the hearing. It also means you can reconvene to have your conference with Counsel and Solicitor easily if there are any breaks during the Court proceedings.

Is this the future?

While there was a push for remote hearings prior to the lockdown, there was with little take up. However, circumstances have forced change upon all Courts. What was considered a rarity is now the norm. It remains to be seen whether it is a permanent shift.



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