# For Business

## Crowdfunding

Simon Green looks at the possibilities and how it can be used.

## Bar talk

A few drinks and a few careless words could end up in court! This article explains what's required for a contract to be legally binding.

## A landlord's motive

An interesting recent court case appears to have strengthened the position of landlords, as Keith Songhurst explains.

## An end to tribunal fees

With the abolition of fees, more employees are likely to go to tribunal. Reggie Lloyd discusses the repercussions for employers.

In this edition we look at three potential problems for businesses: the end of employment tribunal fees; landlords wanting to redevelop and oral contracts.

The removal of tribunal fees may be worrying as it could lead to more claims against employers. Despite the stress of moving offices - and we have moved two in the past 18 months - it has many benefits. Our article discusses landlords who refuse a lease because they wish to redevelop. We also have some cautionary words about what could lead to a contract. On the positive side we talk about a modern and flexible way of sourcing funding; it may prove successful where traditional methods would not be available.

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# Crowdfunding

## could it save the village pub?

**Crowdfunding typically involves a large volume of small donations in exchange for something, such as a prototype product (known as donation or reward crowdfunding). But can crowdfunding be used to fund property purchases and, if so, what are the implications?**

As well as generating donations, crowdfunding can offer repayment to the investor, with or without interest (debt crowdfunding) or shares in the recipient company (equity crowdfunding). The latter opens up the possibility of tax relief for the donor, depending on the nature of the investment.

The first case of online crowdfunding is believed to date back to 1997, when US fans of a British rock band raised $60,000 for the band to tour America. Since then it has been used in a number of sectors including film, wearable technology, gaming and even a live public participation version of the Channel 4 television show, The Crystal Maze.

But what about property? There is no reason why revenue generated from crowdfunding could not be invested in property, as long as the purpose was made clear. Similarly there is no reason why the donation need be trivial in size, as long as it is clear what, if anything, a donor can expect to receive back.

One wider application could be in the leisure and tourism sector, in particular public houses. Such properties can already be classified as assets of community value, allowing a group of like-minded individuals to save them from closure. Crowdfunding could allow such individuals to reach a wider audience and reduce the number of members (and opinions) in a community interest company.

**"The site of Nikola Tesla's laboratory in New York was purchased by crowdfunding, to preserve it as a science centre and museum."**

What is required is an incentive that is enough to draw people away from rival projects on this ever growing funding platform.

Business tenants can be refused a new lease if their landlord wants to redevelop the property. Keith Songhurst examines a recent case that appears to strengthen the hand of the landlord.

# Motive seems irrelevant

## when it comes to landlords and the courts

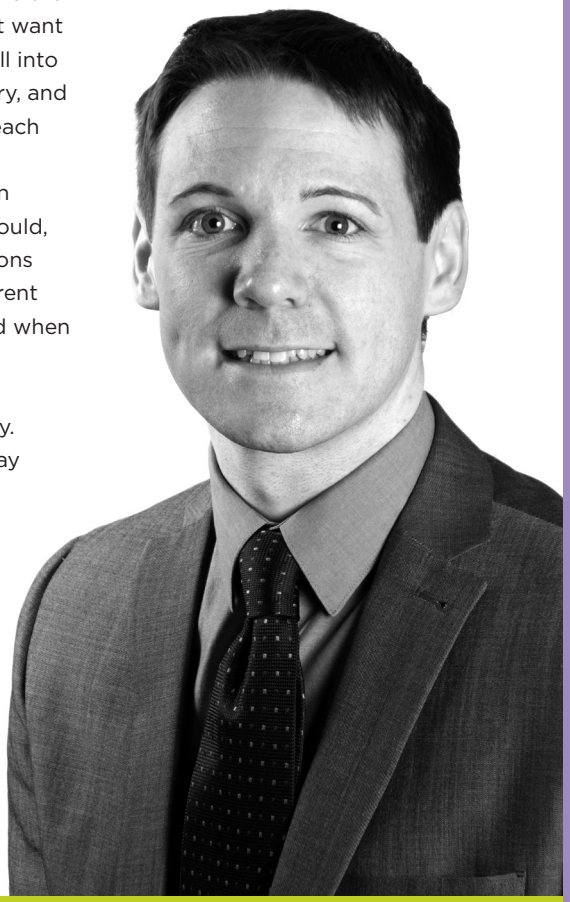
Business tenants are usually entitled to renew their leases unless the landlord can establish one of the grounds for opposition set out in the Landlord and Tenant Act 1954. One of the grounds most commonly relied upon by landlords is that they intend to demolish, reconstruct or carry out substantial works of construction to the premises, and cannot reasonably do so without obtaining possession.

Disputes can arise where the landlord relies on this ground but the tenant does not believe that the landlord genuinely intends to do the work, or that they would be able to get the necessary planning permission or funding. But in the recent case of S Franses Ltd v The Cavendish Hotel Ltd, the issue before the court was rather different.

The hotel, opposing its tenant's claim for a new lease, openly admitted that the scheme of work it was relying on had been devised purely to satisfy the requirements in the Landlord and Tenant Act and therefore gain possession of the property. The work, if

Wider still, is investment in a buy-to-let company for those who do not have the resources to buy alone, or who are able to buy a single property but want to spread the risk. This would fall into either the debt or equity category, and would require due diligence by each investor, or confidence that due diligence has been carried out on behalf of the company. There would, of course, be further considerations regarding identity of occupiers, rent levels, ongoing management and when the property is sold.

Crowdfunding is still in its infancy. Only the future will tell how it may affect our lives.



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completed, was of no commercial or practical benefit to the landlord, whose sole motivation was to get rid of its tenant. The landlord admitted that it would not carry out the work if the tenant left voluntarily.

Rather surprisingly, the court decided that the landlord's motive was irrelevant and that, as long as it genuinely intended to carry out the work - even if for the sole purpose of recovering possession from its tenant - the law was satisfied.

This decision has serious implications for the property sector, as the protection afforded to tenants by the Act would seem to be completely undermined if the landlord can simply devise a scheme of work purely to defeat the tenant's claim. We understand that this decision may yet be the subject of a further appeal, and there will no doubt be many business tenants keeping their fingers crossed that it succeeds! In the meantime, however, the position of landlords wishing to obtain possession from their business tenants is strengthened.

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# Bar talk

## watch what you say!

When talking business in a pub, over a drink or two, could you inadvertently create a legally binding contract?

For a contract to be binding there must be an offer, acceptance, an intention to be legally binding, consideration and certainty. Contrary to popular belief, a contract does not have to be in writing in the vast majority of circumstances; a spoken agreement can be enough to constitute a binding contract. It is often worth more than the paper it is written on.

In the case of Blue v Ashley (2017) the High Court was asked to consider whether a discussion in a pub regarding a potential bonus could constitute a valid and binding contract. Mr Blue said that during a conversation in the pub Mr Ashley said he would pay him a bonus of £15 million if the share price of his company doubled within three years. The share price did double within that time, but Mr Blue (an investment banker) only received a payment of £1 million. He therefore sued for the remaining £14 million, which he believed was his contractual entitlement. The court decided that he was not entitled to the £14 million. They said that no reasonable business person would have considered the meeting in the pub and subsequent conversation to be a genuine contractual offer. Evidence given at court suggested the reference to a £15 million bonus was a joke and bravado. There was no intention to create a legal relationship.

The case highlights that agreements made in jest, anger or an unusual social context may not be enforceable, and shows the difficulties that can arise when attempting to enforce an oral agreement. The case also reinforces the importance of having your agreement written down, and signed and dated by the parties. If you are in any doubt as to the validity of a contract or have questions about what constitutes a legally binding agreement, please get in touch. We will be pleased to give you advice on the most appropriate way to record your contract.

**call Tim Field**
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employment law

# An end to tribunal fees

## the repercussions for employers

**Between 2013 and July 2017, employees had to pay a fee if they wanted to take a case to tribunal. Now that this fee has been abolished, Reggie Lloyd looks at the implications for employers and asks whether the number of claims will rise.**

On 29 July 2013, a ruling was introduced that meant every employee making a claim in the employment tribunal had to pay a fee when they lodged their claim, and a further 'hearing' fee if the case was not resolved before it was heard.

These fees were abolished on 26 July 2017 by the Supreme Court, which declared that the regime was unlawful. The Court said that the imposition of fees effectively prevented access to justice and was in breach of common law and constitutional rights, was indirectly discriminatory under the Equality Act, and was contrary to EU law as it imposed disproportionate limitations on EU derived rights.

Now the fees regime has been abolished, claimants who paid these fees can reclaim them from the tribunal. Where respondents or employers were ordered to pay claimants' fees by the tribunal, they too will be able to seek reimbursement.

When fees were introduced back in 2013, there was a reduction of approximately 75% in claims lodged in the tribunal; since fee abolition in July, unsurprisingly, a sharp increase has been reported in claims being lodged.

Generally, claims must be presented to the tribunal within three months of the event in question. A worrying aspect for employers is that any claimant who lodged a claim on or after 29 July 2013, and whose claim was not accepted because they did not pay the fee, will be able to resurrect their claim. It is also possible that an employee who considered making a claim between 29 July 2013 and 26 July 2017, but was deterred because of the requirement to pay fees, could present that claim now, even though it could be up to five years old. In such instances, however, the tribunal would have to determine whether or not the claim can proceed; that would be dependent upon the facts and circumstances of each case and, in particular, the reason the employee did not lodge the claim at the time.

The biggest difficulty for employers facing old claims is that they may be disadvantaged if the manager, HR officer, dismissing officer and/or witnesses - or other people involved in the case - have since left the company. In these circumstances the tribunal would have to decide if a fair trial is still possible.

The abolition of fees undoubtedly makes it much more attractive for employees to pursue a claim. It is still the case, however, that an employee must engage in ACAS early conciliation before a claim can be issued. Perhaps the perceived 'barrier' of early conciliation is an indicator that the amount of claims issued is unlikely to increase to the pre-July 2013 level. Either way, employers need to be aware that they are much more likely to have to deal with a claim than they have been over the past five years.

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