

## Legal Expenses Insurance



Legal costs are always a concern, especially during contentious proceedings. Despite this there are a number of strategies to minimise cost such as alternative dispute resolution mechanisms, which are designed to conclude proceedings before trial, and insurance policies that can provide cover for legal expenses.

Our litigation department has experience in all these areas. With the team's advice, generally only about 2% of cases conclude at contested trials thereby significantly reducing cost for the client. Legal Expenses Insurance, also known as LEI, is potentially the most effective cost reduction strategy, especially where it forms part of a pre-existing insurance policy.

LEI is a complex area but one that should be considered carefully before entering into contentious proceedings. Identifying whether a dispute is covered by your policy terms is the first necessity, but even if you do have cover, recent experiences prove that doesn't always result in the 'no cost' outcome you might expect.

The NFU, insurer of choice for many of our rural clients, offers a useful example. Their strategy is to sub-contract LEI to a preferred supplier and, while the NFU policy provides LEI for a commendable range of risks and disputes, the preferred supplier policy does not always offer the same value. LEI is not confirmed until your solicitor has drafted complex documents and advised you on the consequences of entering into them; additionally your solicitor is obliged to report back to the preferred supplier on a regular basis throughout the case. We can assist with this first vital stage, before the applicable cover is in place, in a timely and cost effective manner depending on your particular needs.

Despite this risk LEIs can be of great assistance in reducing the costs of contentious proceedings, but their use requires careful consideration in the context of the particular case. LEI can also be obtained after the event in question and if you are having difficulty with obtaining cover from your existing policy we have extensive experience lodging complaints with the Financial Ombudsman Service and overturning decisions to decline cover.

As ever it is vital to check your policy very carefully before entering into it as insurance policies may vary considerably, but it is particularly pertinent to obtain professional advice on LEI's impact on contentious proceedings.

## Registration of land

The Land Registry started the registration of property in 1925 and gradually since then an increasing amount of land has been registered. Compulsory registration, initially restricted to sales and long leases, was phased in on a regional basis and in recent years registration has extended to gifts and transfers to beneficiaries of trusts and wills.

The Land Registry is keen for all landowners to register their titles and encourages this by discounting the registration fee by 25% for voluntary applications.

We have dealt with several applications for the voluntary registration of farms and estates in recent years and almost all of them have produced discrepancies that have needed to be resolved either by rectifying mistakes made in earlier conveyancing transactions or by agreement with the neighbouring landowner. Several discrepancies result from the relatively poor standard of plans used in conveyancing documents.

While everyone should consider registering their unregistered titles voluntarily, anyone contemplating a sale will be well advised to do so in advance of putting the property onto the market in order to resolve any issues in advance of the sale and offer the buyer clean registered title.

To discuss any rural issues with our specialists, please contact 01206 217353 or email [ruralbusiness@birkettlong.co.uk](mailto:ruralbusiness@birkettlong.co.uk)

## Topical tax issues



### APR and farmhouses...again!

The ever topical issue of Agricultural Property Relief (APR) and farmhouses has been back in the news with two important cases.

In *Hanson v HMRC*, the taxpayer was victorious. The deceased did not live in the farmhouse, it was in fact occupied by his son, but for Inheritance Tax formed part of his estate. The son farmed 215 acres and the deceased only part owned 61 acres. The deceased's executors claimed APR on the agricultural value of the farmhouse but the Revenue denied the relief saying that only the acres owned by the deceased could be taken into account when deciding whether the farmhouse was "character appropriate".

The First Tribunal concluded that occupation, rather than ownership, was the key point in this test. It is therefore the land that is farmed from the farmhouse rather than the land owned by the deceased which is to be taken into account. The Revenue is likely to appeal the decision but for now the decision stands.

In *HMRC v Exors of Atkinson*, the case turned on whether a bungalow was "occupied for the purposes of "agriculture" and therefore eligible for APR. The deceased was a partner in the farming business and lived in the

bungalow until he moved into a care home. The deceased visited the bungalow occasionally and his possessions remained there.

The Upper Tribunal stated that you must look at the connection between the occupation of the property and the agricultural activities. They held that the bungalow ceased being used for agricultural purposes when the deceased moved into the care home with no intention to return and therefore APR was denied.

Residence in a care home is not fatal to an APR claim but the property must continue to be occupied for agriculture rather than simply left empty. Taking professional advice at such pivotal moments in life is crucial to ensure that valuable reliefs are not lost.

### Reduction in the rate of Inheritance Tax.... but you must give more to charity

For deaths from 6 April 2012, the rate of Inheritance Tax will be reduced from 40% to 36%, if 10% or more of your estate is left to charity. Of course, where the Revenue is concerned, it is rarely a straightforward calculation, and it has left the professionals with a bit of a headache as to exactly how the 10% is calculated, but ultimately if your estate satisfies this rule then it will benefit from the rate reduction.

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## GWCT Best of Essex

Through Annabelle's involvement with the Game and Wildlife Conservation Trust (GWCT), we were pleased to hear what a successful day the GWCT Best of Essex was on 12 January. Stuart Bradshaw and his team of guns were the lucky winners of this special day. They shot at Terling Place, Braxted Park, East Thorpe Shoot and Holfield Grange. This raised over £10,000 for the GWCT and Essex Air Ambulance.

## Point to Point

Birkett Long recently attended the point to point at High Easter on 14 April. It was a fantastic afternoon of racing made even better by the addition of a big screen showing the Grand National! The Birkett Long marquee and hospitality, provided by our rural team, were enjoyed by clients and guests as well as being a prime spot for viewing both the races and the Grand National. It was a real pleasure to see so many clients and business partners at the event and we look forward to seeing you there next year.



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