

# insight

Planning for  
whatever comes  
your way

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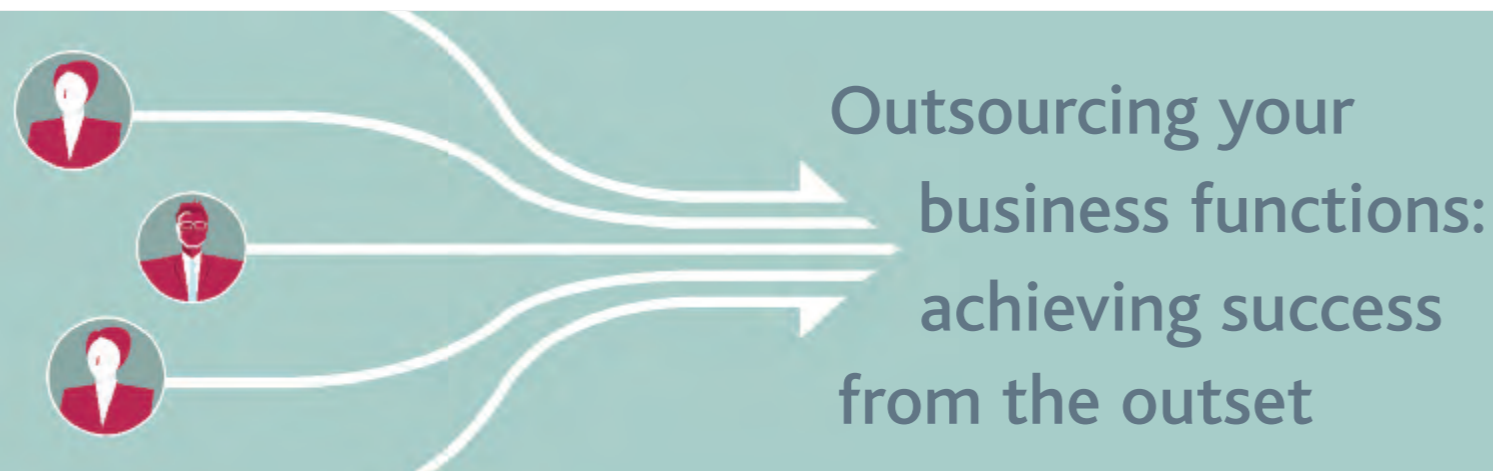
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None of us can predict what life will throw at us, but taking steps to plan for whatever may come your way means you can deal with life-changing moments at a time and pace right for you.



Alex Zachary is B P Collins' new practice group leader of the corporate and commercial team. Here, he advises companies on what they should consider when outsourcing business functions.

Let's start with the bad news. If your contract is not detailed enough, forward thinking enough or fails to consider what could go wrong, you could suffer from a financial, reputational or regulatory point of view. The devil really is in the detail and excellent communication is essential to remove any misunderstanding between both parties as to the type and level of service to be delivered.

An outsourcing contract should normally include:

- how and when the services will start and any initial set-up required;
- details of the services being outsourced and how they will be delivered;
- the standard of service expected, including KPIs and targets and what will happen if those standards are not met;
- the supplier's fee levels, whether and how they can be adjusted and the terms on which they are to be paid;
- the obligations and responsibilities of the parties, including the obligation to insure against relevant risks such as responsibility for loss or damage to property or injury to members of the public or staff;
- employment matters, including in relation to any automatic transfers of staff which might happen under legal rules;
- legal compliance matters, such as for data protection and other relevant laws;
- ownership and usage rights for relevant intellectual property rights, including responsibility for obtaining and maintaining any licences and assets required for the services to be provided;
- confidentiality and security;
- business continuity and disaster recovery planning;
- how the governance of the contract and the outsourced functions will be managed on an ongoing basis;
- whether you have a say in who your supplier can sub-contract any work to;
- the procedure for varying the contract and / or services; and
- how and when the contract and services will end and what happens then, including a process for migrating the services back to you or your new supplier.

#### Services and standards

Many businesses today have to meet certain regulatory or other criteria. If you are considering outsourcing, you need to be confident that the third party you use will be able to carry out the functions delegated to them in a way which ensures your required standards continue to be met.

Ensure your supplier has a good track record by auditing its expertise, customer references and internal policies (such as for data security) to check they match yours. It is also important to ensure that the supplier has carried out proper due diligence checks to fully understand what they are taking on and won't try to recover additional costs later when realising the scope of the services required.

The contract should provide a means for service standards to be assessed and for the contract to be reviewed, and possibly terminated, if the expected standards are not met.

It is also important that the contract provides a mechanism for changing the nature or scope of the services to be provided so it has the flexibility to react to any change in circumstances; a disaster recovery plan from your supplier is essential so that you are ready if the worst happens.

#### Fees

The contract needs to have clear and comprehensive pricing provisions which set out how much the third-party provider will be paid, when payment will be made, and the circumstances in which payment may be reduced, increased or withheld.

For example, you could negotiate credits for service failures and if the supplier makes efficiencies as time goes on, the contract could say that they must pass on a share of the resulting costing savings to you.

**"The devil really is in the detail and excellent communication is essential to remove any misunderstandings."**

#### Obligations and responsibilities

The contract should set out the detail of your and the supplier's respective obligations and responsibilities. It is vital to agree these clearly, capturing all important requirements, to avoid misunderstandings and scope for dispute down the road.

The contract should be clear as to who is liable for what, what insurance should be in place and who should obtain it and the extent of any agreed exclusions and limitations of liability. Specific consideration needs to be given to risks for loss of business data, particularly where this has the potential to damage or hinder your business.

You will want to be clear around which of the supplier's staff will deliver the outsourced functions and consideration will need to be given to the applicable employment legislation. Depending on the circumstances, it is possible that certain legal rules could apply so as to transfer staff between you and the supplier and / or your legacy or incoming service providers. If that is the case then there are specific consultation and other procedures that need to be followed and it is important to appreciate and allocate responsibility in the contract for the relevant risks and associated costs.

Where the third-party provider will be processing any personal data for the business, consideration will also have to be given to how continued compliance with the data protection requirements can be assured and who will be responsible for what in the event of a breach. It is usually the case that your business will remain legally responsible for ensuring that your relevant data is processed lawfully, in which case it will be appropriate to pass on compliance obligations to the supplier in the contract.

You should also detail the process for how any disputes which may arise should be dealt with.

#### Term of contract

You need to be clear about how long the outsourcing agreement will run for, whether and in what circumstances it will be possible to end the contract early, and whether and in what circumstances it might be possible for the contract to be extended.

#### Termination

The contract needs to be clear about when the agreement will end and the process that needs to be followed when this happens. It should include an obligation on the business and third party to cooperate with each other to achieve an orderly transfer of the outsourced function, either to another third-party provider or back to the business itself. It should set out the steps each party will need to go through and specify a timetable.

Outsourcing agreements are complicated and require specialist advice. Alex and his team can guide you through the process. Call 01753 279022 or email [commercial@bpcollins.co.uk](mailto:commercial@bpcollins.co.uk)

## Commitment to the community

B P Collins' long standing partnership with Heart of Bucks and SportsAid is well documented. But what about our involvement with the great causes that don't make the headlines?

Our commitment to the local community is important to everyone in the firm and our sponsorship of key events, volunteer work and participation in local fundraisers is testament to that.

In June, we were the lead sponsor of Beaconsfield High School's 50th anniversary ball. On the night, 210 parents, alumni, staff and friends of the school came together to celebrate this huge milestone. Over £15,000 was raised for the school which will go towards vital projects such as upgrading its learning environment.

We also avidly support the Gerrards Cross Community Association, local Rotary Clubs and were recently awarded the GX Boost Awards from the Gerrards Cross Town Council for our services to the community.

For the past 50 years we have supported and encouraged the communities in Buckinghamshire and we look forward to continuing to boost our local schools, sports clubs and charities in order to make our local area a great place to live.





# Guarantees on lease assignment: what landlords need to know

The law concerning guarantors' liabilities under authorised guarantee agreements (AGAs) can be complex. Senior associate Scott Goldstein advises on what to watch out for.

## What is an AGA?

Under the Landlord and Tenant (Covenants) Act 1995 (the Act), tenants and guarantors under leases granted after 1 January 1996 are automatically released from liability to the landlord when a lease is lawfully assigned to a third party.

However landlords can require outgoing tenants to enter into AGAs guaranteeing the liabilities of the incoming tenant. AGAs cannot bind the outgoing tenant to guarantee the liabilities of the incoming tenant's successors. This means that the outgoing tenant has some certainty that its liability will continue only for so long as the incoming tenant is the tenant under the lease.

## Recent litigation involving AGAs

There have been several important court decisions which show that the impact of the Act has been much wider than had first been thought. These cases concern in particular the role played by a party which guaranteed the performance of the outgoing tenant's obligations under the lease. The following principles have been established:

- An agreement by the outgoing tenant's guarantor to guarantee the liabilities of the incoming tenant is void.
- However once it is released from liability on an assignment, a guarantor of the outgoing tenant can guarantee the liabilities of the incoming tenant's successors in title.

- A tenant cannot assign its lease to its own guarantor.
- Although it is not beyond doubt, it appears that an outgoing tenant's guarantor can guarantee an outgoing tenant's liabilities to the incoming tenant under the AGA. In other words, the guarantor may be able to guarantee the outgoing tenant's own guarantee of the incoming tenant's liabilities. This is known as a sub-guarantee.
- The Court of Appeal has suggested that the outgoing tenant's guarantor may also be able to guarantee the performance of the incoming tenant by having the outgoing tenant assign the lease to an intermediary entity, and then simultaneously assigning the lease to the incoming tenant. However this solution is not without risk, because transactions whose purpose is to circumvent the Act are void.

## Consequences

There are a number of consequences to the recent AGA litigation.

Perhaps most importantly, the parties cannot agree to contract out of the Act. This means that arrangements that are prohibited by the Act will be void, even if the parties enter into them freely. The Act thus seriously interferes with the parties' right to reach whatever commercial agreement they wish to.

One area where the consequences are felt is where there is a tenant which may not be

financially stable, but which is part of a much larger corporate group. Formerly, the group comprising the tenant would be able to restructure its business by assigning the lease from one shell company to another, with the performance of both companies guaranteed by the parent company. That arrangement is no longer possible.

Restricting the ability of a corporate group to structure itself as it needs to will itself have many undesirable consequences, which may include encountering funding difficulties.

If the Act raises obstacles to the tenant assigning its lease, that could have an adverse impact on the capital value of the landlord's interest.

In recognition of these problems, the Property Litigation Association has produced a briefing note to the Secretary of State for Communities and Local Government.

This proposes amending the Act to, amongst other things, permit sub-guarantees, and (in some circumstances) parental guarantees in intra-group assignments, but in the meantime landlords, tenants and guarantors must ensure that they take proper legal advice before assigning a lease which is subject to the Act.

To speak with Scott about AGAs, call 01753 279035 or email [enquiries@bpcollins.co.uk](mailto:enquiries@bpcollins.co.uk)

# California's got talent

John T. Hendricks, a resource of B P Collins, is the founder of Hendricks Law, P.C., a boutique law firm in San Francisco, California, where he practices business and employment law. In the second of a two-part article series, John provides tips for UK-based businesses that are considering scaling up, organizing or funding businesses in the United States.

## "Businesses must realise cultural norms and complex employment laws vary substantially from what managers are accustomed to in Britain."

John Hendricks,  
Hendricks Law, P.C.

where some act(s) by employers, usually unintentionally, overcome the presumption of employment at will. For businesses that do not follow professional advice, the latter situation is ripe with costly litigation.

## Classification

Not all workers are employees, but businesses sometimes improperly try avoiding tax and other regulatory burdens by classifying them as independent contractors. The term "independent contractor" is not uniformly defined, but analysis under California Labor Code § 3357 begins with a rebuttable presumption that "person[s] rendering service for another" are employees and not contractors. To legitimately engage contractors where appropriate, businesses should analyze relevant facts on a case-by-case basis to overcome this presumption.

Even where businesses do not control work details, California finds that

employer-employee relationships exist where businesses retain pervasive control, workers' duties are integral to operations, and the nature of work makes detailed control unnecessary. Penalties for misclassification are high; this area recently has been subject to increased government enforcement.

## Non-competition agreements

Surprising many, California's fundamental public policy prohibits non-competition agreements designed to prevent workers from leaving positions to work for competitors. California Business and Professions Code § 16600 provides that contracts restraining competition are to that extent void. California law is unusual in this respect. Thus if parties adopt another jurisdiction's governing law by contract, California courts may apply such choice of law to enforce other covenants, terms or conditions, but only to the extent that the chosen jurisdiction's law does not contradict California's fundamental public policy. Fortunately, other legal techniques help mitigate risks from departing employees.

Clients scaling up, organizing or funding businesses in the United States need services from a lawyer well-versed in navigating these topics. John will be elaborating on this series in an interview with B P Collins' senior partner, Simon Deans, later this year. This will be covered in a future edition of Insight.

For corporate and commercial advice, call 01753 279022 or email [commercial@bpcollins.co.uk](mailto:commercial@bpcollins.co.uk)



# The future of waste management

A number of waste management, recycling and CSR firms were invited by B P Collins' team of environmental lawyers to discuss the future of waste and recycling in the UK, particularly with Brexit on the horizon.



## Roundtable participants:

- Matthew Farrow, Environmental Industries Commission
- Alison Taylor, B P Collins LLP
- Alex Zachary, B P Collins LLP
- David Smellie, B P Collins LLP
- Craig Williams, B P Collins LLP
- Jeff Rhodes, Biffa
- Graham Flynn, Anenta Ltd
- Matthew Ball, Green Redeem
- Peter Charlesworth, Carbon Statement
- Richard Collins, Ecobrand
- Sam Pentony, British Metals Recycling Association

## History

**Matthew Farrow, Chair:** Over the past ten years there's been a big shift in environmental policy. Nowadays, waste and recycling doesn't garner much attention. Brexit is on the horizon and it could bring both risks and opportunities. But who should take control of driving the waste and recycling agenda?

## Government's role

**Matthew Ball:** Aside from the Green Party, no one else seems to be interested in DEFRA's 25 year plan. We do need some direction, otherwise with a dwindling budget the issue will fall further down the agenda.

**Alex Zachary:** I don't think direction will come from government as it's very difficult to regulate. I also think that other environmental priorities are higher on the agenda, such as air quality. It's possible that Whitehall is looking to the business sector to drive it – particularly when they are delaying the progress of their policy plans.

**Jeff Rhodes:** I agree. Defra seems more occupied with reporting statistics to the EU for compliance purposes than providing useful data and policies for UK waste producers and managers.

**Matthew Farrow:** Post Brexit perhaps Defra can use this time to focus on the UK, including what we want to do here and what the UK targets should be.

## Targets

**Matthew Ball:** The 2020 targets have undoubtedly failed. Although most people are aware of these targets people are not mindful of the repercussions if they are not met. And I think if the consequences were known, then the money originally set to meet those targets might not have been diverted to other sectors deemed more important.

**David Smellie:** The problem is that guidance is needed. Industry is not going to spend money going down a particular route unless it has got certainty as to what the end goal is and it has support from the government for 25 years.

**Matthew Farrow:** Regardless of whether you agree with EU policies and laws, a framework was in place and everyone knew what they had to work towards.

But when we set new targets for the UK, we need to think about how we are going to meet these and it will need some form of intervention whether that is through tax, regulation, circulating examples of best practice or businesses taking the lead.

## Engaging SMEs

**Graham Flynn:** We've spoken about large corporates and the work they're doing. But there are thousands of small businesses which don't know about legislation targets or the segregation of waste required. All they care about is what they are being charged and when it is being taken away. All they see is an increase in price for collection but don't understand the benefits to their company. They don't have a sustainability CSR manager – they just want the waste taken away.

If there was some commitment to raising awareness amongst SMEs around the benefits and incentives of being committed to recycling, waste collectors would see the quality of the product they're receiving increase.

**Ian Binns:** It's the practical aspects that need to be considered with SMEs too. In the absence of a sustainability manager, whose responsibility is it to ensure that proper recycling practices are put in place? That's difficult to ascertain and implement when companies have other focuses.



**Peter Charlesworth:** There are a few things that could be done in the hospitality sector. The government could introduce financial incentives for commodities. We talk about the commodity prices varying and this has had an impact on the hospitality sector and there's a debate about what's valuable and what's not, or what makes sense to separate out.

The other is to mandate these things happening, which has happened in Scotland where waste has to be separated out.

The other thing they could do is standardise packaging, which could help reduce the need to sort out composite materials. But top-level guidance is needed from the government.

Old school recycling incentives are also required, just like in the past when everyone put out their milk bottles to be collected and refilled. Breweries are offering 10% off when you send your glassware back. The government should encourage that.

**Jeff Rhodes:** Whatever approach is taken, there are constraints that people need to be realistic about. If you take a city like London where they have a relatively low recycling target of 25%, that is the average for a comparable European city. They have a lot of flats and transient residents, and from a political and tourism perspective, they have to have clean streets. They cannot have waste lying around and they can't have large bins all over the place. From the regulatory end you could have targets similar to Scotland where businesses rather than waste collectors have to separate waste but you have to build in the fact that not everyone can physically do that and there are also different logistics issues when comparing sparsely populated rural areas to densely populated cities.

**Peter Charlesworth:** What might help SMEs to recycle more is to leverage off larger producers and their businesses' recycling capabilities.

**Richard Collins:** I agree. We work with a lot of shopping centres which can typically make a saving of £160,000 in a year by installing bio digesters, putting beehives on the roofs, implementing recycling and zero to waste schemes and, most importantly, educating all the microbusinesses, or rather the shop tenants, about the recycling they can do. The savings made from recycling result in a rent reduction so the shops can see an immediate benefit to them. It's a great model, with schools coming in to see how it works so children are being educated too.

If that system could be transferred to the high street or NHS, then a

small business could feel supported and encouraged to recycle more.

## Supply chains and considering waste as a resource

**Sam Pentony:** I think there needs to be responsibility across the supply chain. The producers need to play a significant role and in certain markets, the government has already taken responsibility such as creating legislation around vehicle disposal and WEEE. But we have come a long way and we are no longer considered the dirty man of Europe. The metals recycling industry, for example, is a success story as they are now regarded as a permanent material. But if we look at Scotland, they are pushing very hard towards shifting the paradigm of recycling and waste. We should be looking at them and to other countries as to how to do things better.

I think it is also about shifting the language of waste and changing its definition. We should regard it as a resource.

**Jeff Rhodes:** In addition to considering and valuing waste as a resource, we also need to recognise from a UK industrial and economic strategy perspective that we need the infrastructure in place to manage whatever waste we produce. As well as facilities to process recyclable materials and plants to generate energy from combustible waste, we are still going to need some landfill disposal facilities to deal with treatment capacity shortfalls and specialist wastes like asbestos or industrial sludges that have to be landfilled. The whole infrastructure jigsaw needs to be in place for the economy to function properly.

**Matthew Farrow:** Brexit may perhaps be an opportunity to think about that. Particularly since the EU was very taken up with the circular economy but there are a few cases where recycling may not be the best environmental option and it might be easier to recognise that post-Brexit.

Read the full article on B P Collins' website: [www.bpcollins.co.uk](http://www.bpcollins.co.uk)



# What you need to know about cohabitation agreements

Couples living together, but who are not married or in a civil partnership, are the fastest growing family type in the UK, with numbers expected to reach 3.8 million by 2031. Family partner Sue Andrews advises on the options available to those who own a property.



## BACK TO *planning* THE FUTURE

For the second year running, the B P Collins wills, trusts and probate team supported this year's national 'Dying Matters' campaign in Beaconsfield to encourage people to talk more openly about dying, bereavement and planning for later life. Here, partner Gary Kiely provides five reasons why it is vital to plan for your future.



According to Resolution (an organisation of family lawyers), over 50% of the population believe that cohabiting couples have equivalent rights to married couples once they have lived together for a period of time. But this is not the case in England and Wales.

People who live together but who do not marry never acquire the same rights and responsibilities no matter how long they are together and regardless of whether or not they have children.

Nevertheless if you own your own property, or are moving into a partner's property, there are things you need to consider. It might seem unromantic at such a time, however thinking about them now should avoid, at best, disagreements and, at worst, legal proceedings if things do not work out between you.

Before your partner moves in, you need to think about who is going to pay what and also whether you intend such a payment to give your partner an interest in your property or if it is simply to be akin to the rent your partner would pay if living elsewhere.

This is important to avoid a bitter dispute if the relationship breaks down – your then former partner perhaps claiming an interest in your home because of monies he/she paid or because he/she carried out works on the property.

So firstly, you need to have a candid discussion with your partner about what they will contribute and also whether you intend them to acquire an interest in your home. Having additional monies each month might be nice but it doesn't follow that that makes it fair for

**“People who live together never acquire the same rights as married couples, no matter how long they are together and whether or not they have children.”**

### Sue Andrews

your partner to acquire an interest in your home. They might for example be paying less than they previously were in rent, or you could afford the mortgage repayments and other outgoings anyway without those additional monies.

You should take legal advice. Each couple is different but there are a number of options which a solicitor is likely to suggest:

- One is a simple and relatively inexpensive **deed of waiver** to record you and your partner's agreement that, regardless of payments that he/she makes or work undertaken, they are not to acquire an interest in your property.
- If, however, you agree that they are to have an interest then a **declaration of trust** should be prepared, again to record what you both agree your respective interests to be or might become over time, subject to payments being made/work undertaken.

• Another option is a **cohabitation agreement**. This is a more lengthy document and is likely to be suggested if you want to record your agreement about matters over and above property ownership. It could deal with, for instance, who pays what bills and if there are children child care arrangements and support. It might seem ridiculous but we have also been asked to include such things as who has control over the TV remote or who puts the bins out!

There is no need to feel uncomfortable about bringing up these matters with your partner. You both need clarity and certainty about your positions, and your partner should not be offended that you want to safeguard your ownership of your home. The options above will provide reassurance to you both if the relationship comes to an end or in the event of one of you dying.

You also need to remember that marriage does create rights and obligations so if or when that is on the cards, it may well be wise to consider a prenuptial agreement.

Remember that these types of agreement are not just for the wealthy. It is sensible to have this sense of security in relation to your home, regardless of its value, and to avoid potential future conflict.

To speak with Sue or a member of the family team about cohabitation, call 01753 279046 or email [familylaw@bpcollins.co.uk](mailto:familylaw@bpcollins.co.uk)

Organised by the National Council of Palliative Care, Dying Matters is a coalition of 32,000 members who run a campaign every year to encourage people to talk more openly about planning for later life. B P Collins is an active member and to mark the occasion this year, we hosted a free legal advice clinic in Beaconsfield along with financial adviser Beaufort Asset Management and Arnolds Funeral Care to help people plan ahead.

We understand that the thought of discussing yours and your family's future can be overwhelming and despite knowing the value of preserving your legacy, you may be put off from doing so. Others think that they will die sooner if they make arrangements for when they've gone.

Some believe that it's just too time consuming or expensive and to avoid this, they simply talk through their plans with family or friends or they draft a DIY will online. But not all wills are the same. One size does not fit all and using the expertise of a lawyer with a wealth of experience who can advise on gaps or loopholes will prove priceless in the long run.

Planning for your future will also:

#### Lessen the stress for those left behind

It can protect your loved ones from any further anguish when they have clear instructions from you after you've gone. It is important to have a discussion with your beneficiaries about the decisions that you have taken and why. Having this potentially difficult conversation now can help to avoid people contesting your wishes in the future.

**“Only 7% of people have made others aware of the care they want if they couldn't make decisions.”**

### Gary Kiely

#### Ensure you have control of your later life care

According to a Dying Matters survey, only 7% of people have made others aware of the care that they want if they couldn't make decisions. Take the time to complete a lasting power of attorney now so that you can give instructions for your health care if you become incapacitated. This step will ultimately save energy, resources and stress for your loved ones.

#### Address any changes in your life

Divorce fears are stopping nearly a third of parents leaving children their inheritance. We would advise everyone to review their wills and trusts after any significant changes in theirs or their family's lives and after every Budget.

#### Provide security for your children

Some people assume that making a will or trust is something that older people should just be thinking about. But what if you have young children? It is worth considering if you and / or

your partner pass away, who would you like to look after them and their inheritance. If your wishes are not recorded, a judge will have to make that decision for you. We would usually recommend that a guardian should also be a trustee as they are aware of day to day spending for the children, with another trustee appointed to ensure all activity is in the children's best interests.

#### Provide security for unmarried couples

The myth of common law marriage prevails with many people believing that cohabiting couples have equivalent rights to married couples once they have lived together for a period of time. But this is not the case. People who live together never acquire the same rights and responsibilities no matter how long they are together and regardless of whether or not they have children. Assets don't automatically pass to the surviving partner unless there is an official will put in place.

If you were unable to make our Beaconsfield event and have any queries in relation to planning for your future, the team are running complimentary 30-minute sessions on the **first Wednesday of September (6th) and November (1st)** from 5.30pm – 7.30pm. Please email [enquiries@bpcollins.co.uk](mailto:enquiries@bpcollins.co.uk) to book in.

To speak with Gary or a member of the wills, trusts and probate team, call 01753 279030 or email [privateclient@bpcollins.co.uk](mailto:privateclient@bpcollins.co.uk)

## Hacked off by cyber-crime?

Cyber-crime is on the increase, with the recent attack on the NHS causing significant operational difficulties at a national level. Although it has been around for a long time, the attacks are becoming more effective and now pose a real and current threat to business continuity. Nick Hallchurch, partner, advises on how you can protect your business.



B P Collins currently acts for victims of cyber-crime fraud including a client who suffered two different attacks costing the business over £150,000.

The difficulty with cyber-crime is that once it has been discovered, it is likely that the funds have long since disappeared to fraudsters operating abroad and the payments will probably be irrecoverable from the fraudster at that time. Then the only options for recovery may be your general insurers, any specific cyber-crime insurance, or a claim against the banks for negligence.

Your normal public liability policy may not cover losses caused by cyber-crime, although you should check the position here.

You may have taken out specific cyber-crime insurance – and a very high percentage of businesses and professionals are now considering this in earnest. However there may be issues with the cover, and the burden of proof for making claims, and / or the relationship between the policy and your existing public liability policy. Many promise technical support in the aftermath of an attack, rather than compensation for the actual loss. It may be better to take out cyber-crime insurance with the same insurers who provide your public liability or professional negligence insurance to avoid some of these risks.

You can also consider bringing a claim against your bank or financial institutions. However, as you will have signed the bank's terms and conditions, it will try to limit both its duty of care and liability to you.

It is a little known fact that the banks have the resources and duty to monitor their customers'

**“The difficulty is that once it has been discovered, it is likely the payments will probably be irrecoverable from the fraudster at that time.”**

### Nick Hallchurch

banking activities as part of their duty to protect customers under the Lending Code, the FCA's Banking Conduct of Business Rules, and the Payment Services Regulations 2009. Accordingly a claim for negligence and breach of duty might be taken against the bank if they failed to properly monitor an account for unusual or irregular payments, which bore the hallmarks of cyber-crime or banking fraud; if they fail to immediately notify a customer of any suspicions arising from unusual or irregular payments; if they fail to take all reasonable steps to recover fraudulent payments once notified; and if they fail to make a customer aware of what protections the bank offers to its customers to prevent cyber-crime and banking fraud.

In summary, businesses would be well advised to consider taking the following steps to mitigate the risks of cyber-crime and bank fraud immediately:

1. Check the security of your computer systems – consider engaging professional

assistance or retaining ethical hackers to test for weaknesses.

2. Check what protections your bank or financial institutions offer and ensure that these are implemented.
3. Provide guidance and training to staff about cyber-crime, including policies for use of off-site devices by staff such as phones or tablets to access social media.
4. Ensure that your accounts team are fully aware of the risks of cyber-crime and the ways in which fraudsters can perpetrate their crimes.
5. Tighten up your internal procedures for the authorisation of payments to be made, particularly when your senior executives are absent from the office.
6. Check your public liability insurance policy for cover for cyber-crime.
7. Consider taking out specific cover for cyber-crime insurance.
8. Review your terms and conditions to try to limit your exposure to claims against you for cyber-crime issues arising from glitches which may be passed to third parties by your computer systems.
9. Consider making claims against your bank for loss and damage.

To speak with Nick about any of the issues above, call 01753 279035 or email [disputes@bpcollins.co.uk](mailto:disputes@bpcollins.co.uk)

## Discipline and dismissal: do's and don'ts for employers

From April this year, employers could face paying up to £80,541 for one unfair dismissal claim. Hannah King, employment associate, offers practical advice for any business faced with this potentially costly, morale-denting, time-consuming issue.



### Be prepared

- Do create and share your employment handbook with all new employees so they are completely clear on company policies and what constitutes workplace misconduct and so your managers know the correct procedure to follow.
- Do remember that an employee needs to be working at least two years at your company before disciplinary action needs to be taken. If not, they can usually be dismissed immediately.
- Do read the ACAS code which is intended to help employers and employees deal effectively with misconduct and poor performance and sets out the steps to be followed. If the employer or employee unreasonably fails to follow the ACAS code, compensation can be increased or reduced by up to 25 per cent.

### Serious offences

- Do carry out a reasonable investigation, which will usually involve interviewing the employee and other witnesses and collecting any documentary evidence. Consider whether you need to suspend the employee to allow a full investigation to take place.
- Don't take disciplinary action after an investigatory meeting alone; there should always be a disciplinary hearing first.
- Do inform the employee in writing of the case against them, what the possible consequences will be (for example it could be a final written warning or a dismissal) and give copies of any evidence, such as statements made by witnesses, so that they can prepare properly for the hearing.

- Do include in the letter the date, time and location of the hearing and explain that the employee has the right to be accompanied by a colleague or a trade union representative. Make sure you allow the employee sufficient time to prepare for the hearing.
- Don't allow the person who carried out the investigation to conduct the hearing except in very rare circumstances. A second person should attend on behalf of the company to take notes and act as a witness.
- Do explain the allegations and go through the evidence with the employee at the hearing.
- Do allow the employee an opportunity to ask questions, present evidence and call witnesses. If new evidence comes to light during the hearing, you should consider adjourning the hearing to you carry out further investigations.
- Do write to tell the employee your decision and the reasons for it. You should remember to take into account any active disciplinary warnings, any mitigating factors and the employee's length of service if relevant when reaching your decision.
- Do highlight the employee's right to appeal, the deadline and the process they should follow, including asking the employee to set out their grounds of appeal.
- Do hold the appeal hearing as soon as possible. It should be conducted by a manager who has not already been involved in the matter and who is ideally more senior than the disciplining manager. They can overturn the original decision if they disagree with it.
- Do consider other alternatives such as demotion, redeployment or a final written warning if appropriate.

**“Carry out a reasonable investigation and don't take disciplinary action after an investigatory meeting alone; there should always be a disciplinary hearing first.”**

### Hannah King

#### Minor offences

Not all offences will warrant taking formal action under your disciplinary procedure.

For minor offences, such as poor timekeeping, it will often be better to speak to the employee informally and determine if there are valid personal reasons for these offences and if there is a way which you can help without being detrimental to the business.

However, if there is no improvement then matters will reach the stage where a formal process should be commenced.

Our team can provide training if you need advice on drafting your company's employment policy or on how to deal with disciplinary or performance matters. To speak with the team about the training or any of the issues above, call 01753 279029 or email [employmentlaw@bpcollins.co.uk](mailto:employmentlaw@bpcollins.co.uk)



# Dame Katherine Grainger DBE presents rising sports star with SportsAid grant

Canoeist Georgia Carmichael was presented with a £1,000 grant at the last Bucks Sporting Lunch Club event in April.

Created in 2011, the Bucks Sporting Lunch Club is a way for local individuals, businesses and trusts - who want to support young, talented athletes in Buckinghamshire - to raise money to help with training, travel or equipment costs. It has raised £35,000 so far.

Starting out in the sport at just ten years old, Georgia Carmichael, 15, has already been selected for the British Canoeing English National Talent Squad (ENTS) meaning that she is earmarked to compete on the world stage and hopefully someday at the Olympics.

Georgia is already on track after becoming National Sprint Champion Girls U14 at Nottingham National Regatta and National Marathon Champion Girls U14 at Reading in 2016.

Her commitment to the sport impressed the SportsAid trustees, particularly with her two hour training regime most days.

Speaking at the lunch, Georgia said:

"I would like to say a massive thank you to SportsAid and the Bucks Sporting Lunch Club for this award.

"But none of this would be possible without our head coach Tom Daniels, who isn't paid a penny yet coaches us six days a week. I'm very grateful for the time he invests in the club and in me.

"Also thanks to Ollie Harding who inspired me as a new junior and is chairman of our club."

Trustee Steve Perry, B P Collins, said:

"Georgia's story is why B P Collins sponsors this award. To have such a dedicated athlete competing on a national and international level at such a young age is inspiring."

Dame Katherine, Britain's most decorated female Olympic athlete and chair of UK Sport, spoke at the event which took place at the historic Dorney Lake on 28 April. She added:

"One of the brilliant things about sport is that you're never doing it alone - you have all this support from your family, coaches and SportsAid funding to help you.

"It's so wonderful and will enrich your life."

**"Bucks Sporting Lunch Club has raised £35,000 for rising stars so far."**



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