



The Advocate

The newsletter of Bennett Griffin Solicitors | issue 3

BG's recession task force Helping you beat the Credit Crunch in 2009

BG Commercial, the Corporate Division of Bennett Griffin has launched an advice service to businesses facing financial troubles in these challenging times.

The current economic climate will provide all businesses with challenges and opportunities during 2009. Business clients may want or need to manage a wide range of financial, legal and operational consequences of the recession which will without doubt impact all areas of their business and organisation.

Bennett Griffin's recession task force can help companies and businesses safeguard their business in this difficult economic period and can provide immediate preliminary advice on a whole range of issues. Businesses are urged as a matter of priority to review:

Contracts and Terms of Trade

The terms of trade under which you supply goods or services should be reviewed as a matter of priority. If your terms of trade do not include a reservation of title clause (which means goods supplied by you remain yours until paid for), you should consider revising them.

Redundancy and Contracts of Employment

Making employees redundant is always difficult. Redundancy presents significant risk of claims being brought by disgruntled ex-employees for unfair dismissal if it is not properly managed. Always take advice before you take any action.



Dismissed employees may attempt to set up in competition with you, using the knowledge and skills learned whilst working for you. A properly-worded non-competition clause may offer some protection. Review your contracts of employment carefully.

Directors' Liabilities

The Companies Act 2006 imposes significant duties on directors with regard to employees, shareholders and other 'stakeholders' in the business. Breach of duty can lead to personal liability for a director. Whether you are a director or non-executive director, you should fully understand your rights and responsibilities.

Partnerships

In an unlimited partnership, the partners are jointly and severally responsible for the partnership debts. If you haven't previously taken an active interest in the finances of your partnership or taken advice on your partnership agreement, now is probably the time to do so.

Debt Management

Effective management of debt has always been a key to good cash-flow management. An effective system for policing debtors is essential.

In particular, watch out for customers whose payments start to 'slide'. Make sure your bad debt risk is minimised and take prompt action when monies owed are not paid.

Property Issues

Whether landlord or tenant, it may be time to re-read your

lease. If financial problems are looming, you may consider a move to new premises or renegotiating terms. Many issues can arise on a change of premises (for example, employment law issues), so taking advice before acting is crucial.

Our aim is to assist our clients in ensuring that they have the tools and resilience necessary to handle whatever the economy throws at them. We have a first class team of lawyers with expertise in their fields together with a wealth of experience that businesses need in times of recession.

Partner Peter Bennett said "We believe the service will prove very useful to businesses that require prompt and practical preliminary advice on a number of issues which are starting to affect their businesses. We urge local companies to take advantage of this opportunity to ensure they are meeting legal obligations in these trying times for business."

The task force comprises of:

Peter Bennett – Company Commercial

Elaine Smith – Debt Collection and Employment, Dispute Resolution

Charlotte Hammond – Employment and Landlord and Tenant, Dispute Resolution

Rob Fawcett – Commercial Property

Kate Hallin – Company Commercial

Darren Edwards – Commercial Property and Terms & Conditions

Joanne Lee – Landlord and Tenant, Dispute Resolution

Stephen Hollamby – Crime and Copyright/Trademarks

Contact details are below so please don't hesitate talking to your 'task force in the Law'.

For further advice contact the Recession Task Force by calling **01903 229999** or email taskforce@bennett-griffin.co.uk if you prefer, please talk your usual Bennett Griffin contact

Manage your cashflow

One of the most important considerations for a business to survive the credit crunch is to be able to manage their cash flow.

In the current economic climate it is essential creditors ensure that they can count on their own cash flow, primarily through the prompt payment of their invoices.

Partner Elaine Smith who deals with Debt Recovery at Bennett Griffin says *"There is always a risk of non payment of invoices in any situation, however, in the current climate it is vital to ensure effective credit control and debt recovery procedures are in place to combat late payers, for example, by paying proper attention to credit control and not waiting until invoices are 90 – 120 days old as by then it can often be too late. Knowing what can be done legally to recover a debt as well as what works practically in different situations, can make the difference between 'being paid' or 'having to write a debt off'. Adopting a course of action without first properly*

understanding the process can often mean failure, but worse still can be failing to take action promptly".

Instructing solicitors, with their considerable knowledge and expertise, should not be viewed as last resort for business. At Bennett Griffin we can deal with debt recovery at a nominal cost and it can be a very effective tool. Elaine is confident a large number of debts can be recovered within just 14 days of a being instructed and says "this a real benefit to a business as not only do they quickly recover monies owed, the service provided is cost effective and eases cash flow problems in these difficult times".

Many businesses are still not aware they can recover substantial interest on commercial debts as well as some of the costs of having to chase late payers, as well as the debt.

Further good news is that Bennett Griffin

is able to recover debts from businesses but unlike most other legal work, the costs are not charged for the time taken to carry out the work. Elaine concludes, *"Businesses need to be ahead of the game and act quickly or their business is likely to suffer. Not only do Bennett Griffin obtain outstanding results for our clients we often exceed their expectations and that of many debtors who have been surprised by our effectiveness."*

For further advice on this important issue, contact Elaine Smith on **01903 706966** or email es@bennett-griffin.co.uk

Budgeting for staff benefits

Many companies are now reviewing their budgets to protect themselves throughout 2009 which generally means reducing unnecessary costs that were perhaps taken on in better years. For any business large or small staff costs are generally the highest overheads. The cost of providing additional benefits for staff is a luxury item that many people are beginning to review. Reviewing does not have to mean removing as many staff with the benefit of pension plans, private medical insurance and other benefits view these as a highly important part of their package. But it is important that you are sure that you are getting value for money as the employer.

I have found that many employers once they set up these benefits received initial advice but then do not get ongoing advice. Very often costs are left to drift and are not properly reviewed. It is quite possible to make substantial savings on the cost of providing staff benefits or indeed better use staff benefits to make tax and national insurance savings just by reviewing the structure of the staff benefit scheme. In the case of insurance contracts such as private medical insurance, shareholder protection or Keyman cover simply reviewing the provider may mean that a substantial cost saving can be made.

I have recently undertaken a review of a firm who had put in place a very good staff benefit scheme which included a pension scheme, life assurance and sickness insurance scheme for their staff. The company had been with their previous advisor for many years but had not ever had the benefits' costs properly reviewed. When we looked at the benefit schemes we were able to maintain all the benefits and cut the cost of the benefit package by one-

third. This was a larger employer so the costs saving was substantial. The benefit of shaving one-third of the costs for a larger or smaller organisation is obviously beneficial. If you would like advice on reviewing your shareholder protection, Keyman or any employee benefit scheme then please contact Andrew Melbourne at BG Wealth Ltd on 01903 250040 or email andrew@bgwealth.co.uk



For further advice contact the Recession Task Force by calling **01903 229999** or email taskforce@bennett-griffin.co.uk
If you prefer, please talk your usual Bennett Griffin contact

Energy Performance Certificates

As everyone should know, from 1 October 2008 landlords were required to provide Energy Performance Certificates (EPC) for all buildings when they are sold or let. By way of a summary, as of 6 April 2008, EPCs became applicable on all buildings sold, let or built with a total floor area of more than 10,000 sq m.

From 1 July 2008, this extended to buildings with a total floor area of more than 2,500 sq m. From 1 October 2008, all remaining commercial premises required an EPC on sale, letting or construction. An EPC is valid for 10 years or until a new EPC is prepared and during that period, it should be made available to a buyer or new tenant.

Does your building require an EPC?

The legislation says, if you have a building (with a roof and walls) that uses energy to condition the indoor climate (ie. heating/air conditioning) then you will require an EPC on sale or letting. The only exceptions are places of worship, temporary buildings with a planned time use of less than 2 years, stand alone buildings with a total useful floor area of less than 50 sq m that are not dwellings, industrial sites, workshops and non-residential or agricultural buildings with low energy demand.

When must the EPC and recommendations be made available? When any written information about the building is provided in response to a request received from the prospective buyer/tenant or when a viewing is conducted or if neither of those occur, before entering into a contract to sell or let.

What are the exceptions?

The Landlord believes that the prospective buyer/tenant is unlikely to have sufficient funds to buy or rent the property or is not genuinely interested in renting that type of property or the landlord is unlikely to be prepared to let the property to the prospective buyer/tenant (you should note that this does not authorise unlawful discrimination).

What happens in the following scenarios?

Selling or letting part of a building where the building has a common heating system. If the building has a common heating source then the Seller or Landlord can prepare or make available an EPC for the whole building. The EPC can then be made available for any part of the building subsequently offered for sale or rent.

Buildings with separate parts and separate heating systems. An EPC should be prepared or made available for

each part of the building being offered separately for sale or rent. The EPC should reflect the services in those parts being offered for sale or let. A separate EPC should be provided for any common areas which exist solely or mainly for access to that particular part of the building.

Selling or sub-letting a building as a whole. You can prepare (or make available) an EPC for the whole building even if that building has parts designed or altered to be used separately, with separate heating systems. If the building has a common heating system the EPC may subsequently be used for any part of the building offered for sale or let.

Residential accommodation. Any separate residential accommodation which is self-contained requires its own EPC. Residential space that can only be accessed via commercial premises (ie. house with shop in downstairs room or shop with accommodation above where access is through the shop) is assessed with the commercial premises as a single building.

Scenarios where EPCs will not be applicable

Lease renewals or extensions to existing Tenants;
Compulsory Purchase Orders;
Lease surrenders.

For further advice contact Rob Fawcett on **01903 706967** or if you prefer, please email

Redundancy – getting it right

Employers may need to make employees redundant for a number of reasons. Trade may have declined, a restructuring may be necessary or advances in technology may result in the need for fewer employees.

Whatever the reason, handling the redundancy process properly is essential to avoid unfair dismissal claims. A failure to comply with a fair procedure (including the minimum procedures set by the Employment Act 2002) may prove costly. Charlotte Hammond says "For obvious reasons we have recently seen an increase in the number of companies contacting us for redundancy advice. We are finding that many employers do not realise that unless

procedurally intricate steps are followed when making redundancies, they are exposing themselves to Employment Tribunal claims. Getting redundancy dismissals wrong can be costly at a time when resources are stretched and taking advice before embarking on that course of action can be extremely cost effective."

Bennett Griffin's employment team has extensive experience in advising in relation to both individual and larger-scale redundancies and can offer a redundancy package which includes:

- an initial advisory meeting;
- a thorough step by step guide to the

correct redundancy process;

- a complete set of template letters to employees to enable employers to carry out the redundancy process.

This service is inexpensive, which is of vital importance to a business facing redundancies and has been carefully put together to enable employers to complete redundancies of less than 20 employees efficiently and lawfully. As many employers will know, getting things wrong can be much more costly.

For further advice contact Charlotte Hammond on **01903 229914** or email ceh@bennett-griffin.co.uk or Elaine Smith on **01903 706966** or email es@bennett-griffin.co.uk

Compromise Agreements

What are Compromise Agreements?

Sometimes employers want to part company with an employee. This can be in contentious or amicable circumstances and Compromise Agreements allow for employment to be ended on agreed terms. A Compromise Agreement is a legally binding agreement (put into written form) whereby an employee agrees to accept compensation from an employer instead of pursuing a claim through an Employment Tribunal.

With redundancies on the rise, employers are increasingly using Compromise Agreements to prevent employees issuing claims in the Employment Tribunal after they have been made redundant.

The effect of signing a Compromise Agreement is that an employee, in effect, signs away their right to complain to the Employment Tribunal. The terms

of a Compromise Agreement will include:

- *severance payments*
- *return of company property*
- *confidentiality statements*
- *future restrictions*
- *references*

It is essential an employer wanting to terminate a contract of employment with a Compromise Agreement receives practical advice aimed at achieving a sensible compromise as swiftly as possible and the appropriate terms are incorporated into any agreement.

Charlotte Hammond says "*Compromise Agreements remain a good way to avoid litigation and achieve certainty. A poorly drafted agreement will leave an employer exposed to the risk of tribunal proceedings and further expense. If you wish to enter into such an agreement,*



we can assist you to ensure that all potential claims have been compromised".

For further advice contact Charlotte Hammond on **01903 229914** or email ceh@bennett-griffin.co.uk or Elaine Smith on **01903 706966** or email es@bennett-griffin.co.uk



Bennett Griffin Employment Club

Bennett Griffin's team of employment law specialist have everyday first-hand experience of the difficulties employers have in keeping up with, and understanding, the ever changing world of employment law.

Our Employment Club which meets quarterly over breakfast offers a service whereby we can keep our clients and associates up dated with new developments, new case law and new legislation in the pipeline on a regular

basis, conveniently and at a low cost.

Part of each meeting is also devoted to an open forum where members raise any employment issues they would like to discuss and share their experiences with other members.

Who should attend?

Anyone wanting to keep up to date with legal developments and refresh their knowledge in these key areas of the law.

The venue

Ardington Hotel, Worthing.

Time

7.30am – 9.00am on the first Friday of February, May, August and November.

Cost

£100.00 plus VAT per annum to include breakfast.

The first meeting is complimentary. If you would like to attend, please contact Charlotte Hammond by emailing ceh@bennett-griffin.co.uk or telephoning 01903 229914



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Legal summaries provided in this newsletter are not a definitive statement of the law in any area. Advice should be sought from a solicitor in respect of any information that affects any individual matter with which you may be concerned.

If you are interested in benefiting from any of the aspects discussed in this newsletter, please call us on 01903 229999 or email recw@bennett-griffin.co.uk