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## Trustee landowners – in the Land Registry's sights?

Are you aware that currently only approximately 60% of land is registered with the Land Registry? The Land Registry's ultimate aim is to ensure that all land in England and Wales is registered and there have been a number of changes to the land registration system recently to assist with this.

In 1990 it became compulsory to register land whenever it was sold or a mortgage was granted. In 1997 it also became necessary to register land if it was given away or inherited.



More recently the Land Registry has introduced two new triggers for registration:

- first, the appointment of a new trustee of unregistered land and,
- secondly, the partitioning of unregistered land held in trust among the beneficiaries of the trust. Partition occurs where land belonging to co-owners is divided and the separate parts are allotted among them, so terminating the co-ownership between some or all of the beneficiaries.

The Land Registry believes that registration provides real advantages for owners; it consolidates historical information, helps prevent the owner protect it from encroachment and can speed up and reduce costs of sales or transfers of the land. It also provides a state backed guarantee, and avoids the risk of losing or damaging key deeds. Detractors say that there are issues of privacy; for instance the register shows how much buyers paid for their property.

As well as the statutory triggers which require land to be registered, landowners can opt to register land voluntarily. The Land Registry discounts fees by 25% for voluntary registration; the fees are based on the value of the land. Land Registry fees are due to increase in July 2009, so if you are thinking of registering your property, it may be best to make the application before this time!

For advice and guidance on whether you need to register land, how to do it, or how to keep documents off the public register, please speak to Clare Simmons or Lucienne Sutton.

## Corporate Manslaughter – all employers should read this!

6th April 2008 has come and gone but it heralded the new corporate manslaughter regime and many employers will have hardly given it a moment's thought. I have recently run / been invited to speak at seminars highlighting the implications of this new Act. My key point was that the legislation doesn't require organisations to do anything new but the implications of failing to have a health and safety policy, risk assessments, risk control measures, training and education of managers and workers could result in serious legal and penal consequences in the event of a workplace fatality or other fatality caused by the organisation.

The Act puts corporate manslaughter onto a new footing, setting out a new statutory offence. In summary, an organisation is guilty of the offence if the way in which its activities are managed or organised causes a death which amounts to a gross breach of a relevant duty of care to the deceased. For the offence to bite a substantial part of the breach must have been in the way activities were managed by senior management.

The offence addresses a shortcoming in the law since prior to the new offence, organisations could only be convicted of manslaughter if a "directing mind" at the top of the company (such as a director) was also personally liable. The reality of decision making in large organisations does not reflect this and the law therefore failed (dependant on your point of view) to provide proper accountability, and justice for victims. The new offence allows an organisation's liability to be assessed on a wider basis, providing a more effective means of accountability for very serious management failings across the organisation.

The new offence is intended to complement, not replace, other forms of accountability such as prosecutions under health and safety legislation and is specifically linked to existing health and safety requirements. The new offence will support well managed organisations by targeting those which cut costs by taking unjustifiable risks with people's safety.

## Occupiers' liability – are you an occupier?



Most landowners are aware that they can be held responsible for people who enter onto their land and injure themselves. The standard expected from landowners varies – a private landowner does not have to take as much care to protect an adult trespasser, particularly when the danger is obvious, as a public authority does to protect a child playing in its playgrounds. However, all landowners need to be aware that the duty does not coincide neatly with land that they legally own – they have duties in respect of land that they occupy. In some cases there may be more than one occupier, and if you exercise rights over land that does not belong to you, you should consider whether that duty applies to you. As always, if you have any doubts, please contact us.

## Consultancies

Dyne Solicitors Limited hold a number of breakfast seminars in each year, covering both environmental and health and safety issues.

The meetings are held on alternate months and for more information contact Lucienne Sutton ([ls@dynesolicitors.co.uk](mailto:ls@dynesolicitors.co.uk))

## What's in your tank?

There has been a wholesale review of what types of vehicles are entitled to use rebated fuel. An example of this is the sweeping away of the road construction exemption and replacing it with an altogether more restrictive regime. If you are running road going vehicles on red diesel now would be a very good time to review the legality of what you are doing. Illegal use of red diesel carries a nasty payload of consequences, including impounding of vehicles, assessments for back duty (that can be very considerable) as well as prosecution. I have recently been dealing with cases where farmers have been caught out when using their agricultural tractors for non agricultural work. HMRC appear to be targeting agricultural tractors and dipping tanks with considerable enthusiasm.

*For advice relating to the above issues please contact John Dyne.*



## Losing your Operator Licence is purely voluntary.

The disciplinary issues I frequently have to contend with on behalf of clients are maintenance related. When I compare the standards expected by Traffic Commissioners when I did my first disciplinary Public Inquiry 15 or more years ago to the standards of today it is clear the requirements are far stricter than they used to be. I am unofficially told that the motivating factor is ensuring vehicles do not break down and cause congestion. Congestion on our roads is a major issue for the Highways Agency which has conducted considerable research into the issue. What is to blame? Yes of course, HGVs, especially the larger and slower moving ones.

Losing an Operator Licence is something that is entirely voluntary. The best way to lose a Licence is to operate more vehicles than you are entitled to, fail to regularly inspect your vehicles, have no systems in place for driver daily checks, operate overloaded vehicles, permit drivers to breach EU Drivers Hours legislation etcetera. We run regular Operator Licensing Compliance Seminars which explain the requirements of operator licensing and I commend this seminar to anyone who operates HGVs as well as to CPC holders and Transport Managers.

*John Dyne, Director*

## Dangerous Goods Safety Advisor (DGSA)

UK and EU Regulations require individuals and organisations engaged in the carriage of dangerous goods, which fall into scope, to appoint a DGSA (by Road or Rail). The regulations affect small, medium and multi-national business, for example hauliers, warehouse keepers and chemical and petroleum plants. A DGSA is a vocationally trained professional, who will hold a certificate endorsed by the Department for Transport. They will advise on: the undertaking of the carriage of dangerous goods; the implement of verification, training, safety and emergency procedures and they will undertake an annual site audit.

*Miranda Proctor, DGSA by Road*

## Juggernauts!

In a recent edition of the Irish Independent, there was a short account of a fatal road accident in which an elderly lady had been killed as the result of a collision with a 'juggernaut'. Unhappily the majority of the readers of the Independent will recognise the 'juggernaut' as being an articulated lorry.

At the moment there is no great hostility to those who drive and operate commercial vehicles but, as the enforcement authorities publish figures to demonstrate the increasingly effective action being taken against road users, and press reports of breaches of the safety legislation in the transport industry gain some prominence, environmentalists and others may take the opportunity to target the transport industry. A much more difficult task if the transport industry has persuaded the public that their quality of life depends, in large part, on an efficient transport service.

*Jonathan Lawton*

## Employment issues

Claims against employers for racial discrimination in the workplace are certainly on the increase if our current workload is anything to go by. Knowledge of equality law is of particular importance when employing workers from EU member states, e.g. Eastern European drivers. There is an alarming trend in the haulage and skip operating industry of the absence of employment contracts, which leave employers open to (often spurious) claims by workers of discrimination in the workplace. It is essential that terms and conditions of employment be laid down at the outset of employment so that each party is aware of its respective obligations.

Another real issue facing employers today is the increasing problem of employees working under the influence of drink and drugs. This is particularly common where workers from different countries and cultures are employed where rules on drink driving are not as strictly enforced as in this country. Employers will potentially fall foul of a myriad legislative requirements if they do not put systems in place to reduce such risks. The time to act is now!

The introduction of a drink and drugs policy allowing employers to screen and test employees whilst at work may well be necessary where the operation of vehicles and machinery is involved but also in other working environments if a risk assessment so concludes. The correct implementation of such policies is vitally important. If put in place haphazardly an employer will potentially leave itself open to claims for breaches of employment legislation including constructive dismissal or discrimination.

It is important for employers to be proactive rather than reactive and get their employment policies and procedures in place. The potential costs in terms of money, stress, disruption and management time lost of a claim is so considerable that it makes absolute commercial sense to get one's house in order now rather than react only when a problem emerges - often this is too late!

*For further information on employment issues please contact Kathryn Lucas.*

### Quiz

- Which comedian's tombstone has the words 'I told you I was ill' engraved on it in Gaelic?
- Which American president is depicted on a \$5 note?
- What is the first name of the dad of footballers Gary and Phil Neville?
- How many acres are there in one square mile?
- Which TV family's address is 742 Evergreen Terrace?

A very decent bottle of Champagne goes to the first person to notify us of all the correct answers!

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