

# AUTUMN

## NEWSLETTER 2015



### WELCOME TO OUR AUTUMN NEWSLETTER

The following is a quick update on what Dyne Solicitors have been up to since our last newsletter.

John Dyne, Katharine Narici, Catherine Gregson and Miranda Proctor attended the Liverpool Law Society Awards dinner on 15th May and some of you may noticed our picture on the front of the Liverpool Law Society magazine.

Jared Dunbar has attended a number of public inquiries and met with the Parliamentary under Secretary of State for Transport on behalf of the Batched on Site Association in relation to proposed legislation changes.

Together with Swayne Johnson Solicitors and Knox Commercial and Insolvency Solicitors we officially launched Legal Alliance Wales to great fanfare. 80 local business people attended the launch event at the Quay Hotel in Deganwy, North Wales. Legal Alliance Wales is a consortium of legal experts allowing clients to access a range of niche specialities throughout Wales.

Jared Dunbar was shortlisted for the Lawyer Monthly Legal Awards 2015 in the category of Transport Lawyer of the Year – UK.

Dyne Solicitors Limited is pleased to announce that it has again been recognised in the prestigious Legal 500 listings. It has been recognised, in particular, for its work in transport law.

The Firm has been ranked in Chambers & Partners UK 2015 for work carried out by Brian Wake in advising landowners and operators on minerals issues.

Katharine Narici, Practice Manager



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## MIGRANTS

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### HAULAGE NEWS

There was renewed media attention this week at Calais, concerning migrants attempting to enter the UK illegally following another fatality. This time the driver of a heavy goods vehicle made the tragic discovery when checking his load. The deceased migrant had been crushed by pallets. The number of attempted stowaways does not appear to be abating and therefore we would remind all our Clients that as operators they must be certain that they are ensuring that their drivers are operating systems and taking the necessary steps to ensure that their vehicles are not broken in to.

UK Border Force can impose a civil penalty up to £2000 upon both the operator and/or the driver if an illegal immigrant is found in their vehicles. There is a statutory defence available in some circumstances, but this will only be applicable if the operator can show lack of knowledge of the situation coupled with an effective system in place, which was operational at the time, to prevent the carriage of a clandestine in the vehicle. We would therefore recommend that now would be an appropriate time to review your procedures.

If you have any concerns or require advice please contact our **Katharine Dyne** on [kmd@dynesolicitors.co.uk](mailto:kmd@dynesolicitors.co.uk).

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## INSOLVENCY

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The 1st October 2015 also heralded a major change in bankruptcy proceedings. As of this date, the minimum threshold to be able to start the process to obtain a bankruptcy order against a debtor has risen from £750.00 to £5000. This will have a major effect on debt collection for undisputed debts nationally. There are no plans at present to increase the threshold with respect to companies. Winding Up proceedings can still be pursued for a debt due in excess of £750.00.

For further information please contact our **Deborah Bond**. [db@dynesolicitors.co.uk](mailto:db@dynesolicitors.co.uk)

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## THE CONSUMER RIGHTS ACT 2015. (THE CRA)

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The CRA came into force on 1 October 2015. It is important that all our Clients are aware that their customers now have enhanced rights under the CRA. As such our Clients may need to take steps to comply with changes brought in by the new legislation. The act covers matters including the supply of goods and services, unfair terms in consumer contracts, new enforcement processes and introduces regulation to digital content. Sales procedures and processes, both contractual and pre-contractual documentation, complaints procedures and existing contracts should be reviewed due to changes brought in under this new legislation.

Brief summary of changes:

- There are new rights in relation to goods which include a consumer right to reject faulty or not-as-described goods within 30 days;
- Services must be supplied within a reasonable time, at a reasonable charge or to a reasonable standard. If not a consumer has new rights to have the services repeated, or the right to a price reduction;
- Pre-contractual information given to consumers buying goods becomes an implied term of the contract. If there is a breach of an implied term, the consumer will be entitled to claim for costs incurred as a result of the breach;
- Further investigatory and enforcement powers;
- New rights apply to "digital content"; and
- Changes to the existing legislation on unfair terms in any type of consumer contract, both negotiated and non-negotiated. Now added to the list of possibly unfair terms, are terms which allow: the seller/supplier to determine the price after the consumer has become bound; to determine the nature of the subject matter after the consumer has become bound and to prevent the levying of disproportionate charges if the consumer decides not to conclude or perform a contract, for services which have not been provided.

If you have any questions concerning this article please contact **Deborah Bond**. [db@dynesolicitors.co.uk](mailto:db@dynesolicitors.co.uk)

## DYNE SOLICITORS LIMITED IS BRANCHING INTO ANOTHER NICHE AREA- LICENSING LAW.

10 years ago the Licensing Act 2003 came into force stating it would give greater flexibility in pub and bar opening times and indeed the press went into over drive with a scare campaign about the possibility of '24 hour' drinking and the consequential detrimental effect on society. It didn't happen. The reality was a modest extension in opening hours - not the creation of 24/7 venues country wide and the longer drinking hours available did not create a greater demand for alcohol, but in actual fact alcohol consumption has fallen in the UK since.

The then new legislation turned licensing law on its head and transformed the licensing landscape into an integrated scheme to encompass the sale and supply of alcohol, regulated entertainment and late night refreshment all on one licence. Responsibility for the issuing of licenses was taken away from the Courts and transferred to the local authorities.

So where are we now?

### FURTHER REGULATION

Since April 2014, a mandatory condition has been in force throughout England and Wales which bans the sale of alcohol at a price below that of duty plus VAT. This condition has been automatically added to all Club Premises Certificates and Premises Licences. Breach of this condition is an offence which could lead to prosecution and/or a review of the Premises licence. Businesses supplying alcohol particularly on a buy one get one free offer will need to take careful stock of the pricing structure to ensure that they do not fall foul of this condition.

### CUMULATIVE IMPACT POLICIES

The Licensing Act allowed Licensing Authorities to designate an area as being a 'Cumulative Impact' area. The purpose being to introduce a rebuttable presumption that an accumulation of licensed premises within the area may cause one or more of the licensing objectives to be undermined if further licences are granted. i.e. let's not have too many pubs, bars etc. close together in one area. Lots of cumulative impact areas now exist. Did you know that if you purchase a business within a cumulative

impact area, and that business had previously had its licence revoked, or lapsed through insolvency, then you have the additional burden of rebutting the presumption, even though the premises has previously been licenced?

### DEREGULATION

It is not all doom and gloom. Entertainment licensing has been relaxed a little since 2005. Between 8am and 11pm unamplified music and amplified music playing to less than 500 people in an alcohol on licensed premises no longer requires a licence at all. Similar provisions apply to a work places and for the performance of a play or dance.

### PERSONAL LICENCE RENEWALS .

It all seems a very long time ago since the Licensing Act came into force and required huge changes in the licensing sector. Approximately 45000 licensees were rushing around filling in applications, obtaining basic disclosure and sending off fees and photographs for a Personal Licence. If you were one of these please make sure that your Personal Licence has not expired. You cannot act as a Designated Premises Supervisor if that is the case.

Ideally you should be using the Government's renewal form, which helpfully dispenses with both the need for photographs and the requirement to pay a fee. The renewal form should be sent off not more than 3 months before the expiry date and not less than 1 month before. You will need to provide a copy of your present Personal Licence to support your Application.

If you need any help with your Personal Licence renewals, please contact us.

We are pleased to assist on all licensing applications to include: Premises Licences; Club Premises Certificates, Variations to existing Licences, Late Night Refreshment Licences, Table and Chairs Licences on the Public Highway and Temporary Event Notices.

Please contact **Deborah Bond on 01829 773101 or by email [db@dynesolicitors.co.uk](mailto:db@dynesolicitors.co.uk)**

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## **DRIVING LICENCE PAPER COUNTERPART SCRAPPED: HOW CAN YOU CHECK YOUR EMPLOYERS AREN'T DISQUALIFIED FROM DRIVING?**

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On the 8th June 2015, the paper section of the two-part UK driving licence was abolished. It has been replaced with an online system that holds the details of all licenced drivers.

The DVLA says that paper counterparts are no longer valid and should be 'destroyed'. However, motorists with the old-style paper driving licences, which pre-date the photocard's introduction in 1998, are unaffected and can continue to use them.

This means that the counterpart can no longer be relied upon to check drivers' entitlements, endorsements such as penalty points, or whether their driving licence is still valid, as the DVLA will now only record this information online.

### **Penalty Points**

Since 8th June 2015, penalty points will only be recorded electronically. If you commit an offence you'll still have to pay the applicable fine and submit your licence to the court but the way the court deals with things has changed.

For photocard licences, the court will retain the paper counterpart and only return the photocard to you. For paper licences, the court will return the licence to you but it won't have the offence details written on it.

### **How to view your licence details**

The Government's online service 'View Driving Licence' lets you see what details are on your licence, including which vehicles you are entitled to drive and how many points you may have.

### **What about operators that need to check their driver's driving licence?**

Haulage companies that rely on the counterpart to check the driving record of their drivers can use a free online Share Driving Licence service.

This new service is offered in addition to the existing services, but is designed for those who have a business need for real-time access to the information, and may not wish to call DVLA or be in a position to use an intermediary.

However, driving licence information via Share Driving Licence will only be made available with the consent of the driving licence holder.

The driver needs to log on to the service and generate a 'check code' which he can pass on to his employer. The employer can then log on to check the driver's licence details. However, this code is only valid for 72 hours.

Alternatively the check can be done by phone; however this will not provide the Operator with a hard copy of the licence information and therefore Operators are advised against this route.

Remember operators should be checking the drivers' Driving Licences every three months. Previously these photocopies should have been signed and dated; now they need to be printed out from the online service, dated and filed in the driver's employment file, along with copies of his Driver's Qualification Card and Driving Licence photocard (as before).

For advice on transport law, contact **Jared Dunbar at Dyne Solicitors on 01829 773 100.**

*Content is believed to be correct at time of writing. Content written on 10.06.15*

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## FREIGHT

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Freight being transported can be moved through a variety of mediums to include by road, train, ships and airplanes. It is not unusual for one shipment to require to be moved by multiple carrier types. An international freight forwarder must be able to prepare and process customs documentation, ensure the correct customs charges are levied, review shipper's export/import declarations, prepare and check bills of carriage, bills of lading and arrange insurance and if needed, storage. It is essential that the goods arrive on time and in the requisite condition, but what where problems arise? A freight forwarder needs to have a well drafted freight forwarding contract to ensure that they do not end up lumbered with unwanted liability. Here are a few pointers to consider.

- Beware- The contract agreed between a seller and buyer of the goods prior to the freight forwarder being involved can impact upon the freight forwarder.
- In any negotiations the freight forwarder's terms should be repeated to ensure that when the contract is concluded, the contract is on the freight forwarder's own terms and not those of their Client.
- The freight forwarder will want to ensure that they get paid irrespective of any contractual disagreement between seller and buyer.
- The Freight forwarder wants to be paid upon completion of their part of the transaction and not to have to wait for everyone else involved.
- The freight forwarders own trading conditions should limit the freight forwarder's liability in the event of a claim against them.
- The Freight forwarder needs to be careful that it is not liable for damage incurred by a subcontractor.
- The Freight forwarder needs to make sure that its' Client is aware of where the burden of insurance lies
- It is always wise for the freight forwarder to have its own insurance too. This will help cover any compensation should liability attach.

We at Dyne Solicitors Limited have experience of litigating for freight forwarders and are familiar with the British International Freight Association (BIFA) Standard terms and conditions. We can help make your business stronger. Don't wait for the unexpected to occur.

For further information please contact **Deborah Bond on 01829 773101 or by email [db@dynesolicitors.co.uk](mailto:db@dynesolicitors.co.uk)**

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## CIVIL NEWSLETTER

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Over the last couple of years the civil litigation team have been heavily involved in a case which has had far reaching practical effects for landowners, on the way in which the acquisition of easements by prescription can be prevented.

A common concern of landowners is often expressed in relation to their vulnerability to trespassers, who may then acquire an easement by prescription over their land. A third party acquiring such a right could not only hinder the landowners use of their own land but could also reduce the value of the land.

An easement by prescription is essentially the long historical use of the land, by someone other than the land owner, for their own benefit. To be able to claim such a right the third party would have to demonstrate that their use, or passage, over the land has occurred without force, without secrecy and without permission, over an unbroken period of time.

For land owners of large areas, you can imagine that monitoring such spaces can prove problematic and it can be readily understood how such third party rights could easily be acquired.

DSL have pursued this matter from the First Tier Property Tribunal into the Upper Tribunal, where the most recent decision held that erecting signs, which state that the land is private and that unauthorised access is prohibited, should certainly be considered as a form of protest on behalf of the land owner – even if said signs are addressed to the world at large. It is uncertain if these signs alone could defeat the 'without force' element, required to establish a right by prescription but it will certainly go some way in demonstrating the landowners intentions. To use the land, when such signs are displayed, would be deemed to be use of land under protest from the landowner.

However, in the recent decision the Upper Tribunal Judge made it clear that the provision of notices / signs would not be considered in isolation. Conduct of the parties over the previous 20 years will be taken into consideration, along with all of the individual facts of the matter. Erecting signs that demonstrate that user is contentious will certainly improve a landowners chance of opposing a claim for ease by prescription but will not necessarily defeat it if done in isolation. For that reason we suggest that landowners seek advice on their individual situation. The matter is listed for appeal in the Court of Appeal in 2016, so landowners should be aware of the rapidly changing area of law and seek advice relating to any concerns that they have.

# LEGAL UPDATE FOR COMPANY DIRECTORS

## NEW POWERS TO ADMINISTRATORS

On 1 October, some parts of the Small Business Enterprise and Employment Act 2015 and the Deregulation Act 2015 will come into force. Of particular note is that administrators will now be placed on an equal footing with liquidators in that they will be permitted to bring proceedings against Directors for wrongful trading and fraudulent trading.

## CHANGES TO THE DIRECTORS DISQUALIFICATION REGIME.

The period for applying for a disqualification order will be extended from two years to three, but more troubling for Directors will be the new power for the Court to make Compensation Orders against Directors. In respect of relevant conduct which occurs after 1 October 2015, the Court, on the application of the Secretary of State, may order a Director to pay compensation to a creditor or creditors who have suffered loss as a result of the misconduct leading to the disqualification.

As failure to pay any monies owed to HMRC is one of the subject points of the test for disqualification, directors may find themselves personally liable to HMRC despite the company's limited liability status. In the alternative the Secretary of State may accept an undertaking to pay compensation without applying to court.

## DIRECTOR DISQUALIFICATION QUARTERLY STATISTICS - APRIL TO JUNE 2015.

1. 309 directors were disqualified in this period;
2. the most common form of allegation was unfair treatment of HMRC compared to other creditors.
3. the average length of disqualification was 6 years;
4. the number of directors who were disqualified for between 10 and 15 years increased from 12% in the same quarter last year to 16% this year;

## WAITING IN THE WINGS.

Yet to come is Section 107 of the Act. The commencement date for this section has yet to be ordered but this is particularly important. This section of the Act will impose a duty on all office-holders in an insolvency to make a report on the conduct of Directors in every liquidation, administration or administrative receivership.

## POWERS OF ASSIGNMENT.

Additionally as of 1 October administrators and liquidators will have the power to assign claims to third parties that were previously only capable of being brought by the office holders themselves. Wrongful trading and fraudulent trading as well as transactions at an undervalue and preferences will all be treated as an asset in the insolvency estate to be assigned and sold. These Third Parties are likely to be more aggressive in pursuing Claims as they will not be bound by considerations of office holders such as whether bringing the claim can be justified in the interests of creditors. Additionally these Third Parties will in all probability be better resourced than those holding office through the administration or liquidation, whose ability to pursue litigation is often restricted by the amount of assets in the estate.

## A FINAL REMINDER

The Law of Contract is strict. Generally only the parties to a contract can sue or be sued on that contract. Directors should always be careful to make clear to the party with whom contracting that they are doing so as Director of the company and not in their personal capacity. Failure to do so can lead to the Director being personally liable for that contract.

If you have any queries, please contact **Deborah Bond** [db@dynesolicitors.co.uk](mailto:db@dynesolicitors.co.uk)

## EXPLOITING YOUR INTANGIBLE ASSETS

It is often understood that around 80% of a company's value is in its intangible assets, for some businesses Intellectual Property ("IP"), so its brand, patents, copyright, designs and so forth, is the most valuable asset. Many businesses file for patents, design rights and trademarks without re-evaluating their need for these rights as the business develops.

Businesses can and should use external ideas as well as their own to advance their technology, with the appropriate amount of care. Knowledge is so widely distributed these days, businesses often cannot afford to rely entirely on their own research. Therefore, by innovating with others, they share the risk and the reward.

To ensure maximum value for IP, businesses should consider the following:

- Selling or licensing out any dormant IP or IP that no longer has any use. Businesses can decide who to deal with and on what terms. It is also possible to decide to stay within similar markets, or to avoid aiding competitors, businesses can licence out to different markets to those presently associated.
- Creating an essential patent that requires that an invention must be used to comply with a technical standard. By doing this the business is guaranteed a royalty income (assuming the patent is sufficiently popular) but does have to give up exclusivity on the technology. Examples for products it has worked well for include Wi-Fi and mobile phones.

Whilst many of the solutions are better suited for larger companies, all businesses should bare them in mind as all registered rights incur ongoing costs, principally for renewal fees, making further filings or liaising with examiners, therefore it is important that the assets continually work hard to pay for themselves.

For any advice on IP exploitation or protection from infringement, please contact **Jonty Gordon via e-mail: [jg@dynesolicitors.co.uk](mailto:jg@dynesolicitors.co.uk) or telephone: 01248 672 610.**

## THANK YOU

for taking the time to read our newsletter. We hope you found it useful and informative. Should you have any questions then please contact Katharine Narici on 01829 773100.

## WASTE MATTERS: CHARGING FOR PLASTIC CARRIER BAGS FROM 5TH OCTOBER 2015

From 5th October 2015 a plastic carrier bag charge was introduced in England. This will extend the compulsory charging for plastic carrier bags to some retailers to England for the first time when other parts of the UK have been charging for plastic carrier bags for some time. The implementation of plastic carrier bag charges is part of a general government policy of reducing waste and protecting the environment; discarded plastic bags not only form a littering problem, a risk of harm to marine wildlife but often end up the landfill.

There are some exemptions that apply, e.g. for small and medium sized businesses (<250 full time employees) in England, so if you are a large retailer, the minimum price of 5 pence must be charged for single use plastic carrier bags if other exemptions don't apply (for example plastic bags for uncooked fish/fish products/meat/poultry/meat products, prescription medicines etc). There are other obligations on retailers that have to charge for plastic carrier bags to keep records, and submit them to DEFRA annually.

Inspection and enforcement of the law (in most cases) will be undertaken by the Local Authority where the shop/store is located. The Local Authority can fine a retailer if they don't charge at least 5 pence for the appropriate bag, don't keep records, don't supply records or mislead on how they are complying with the law. In addition to fines a Local Authority can issue a non-compliance notice with steps for compliance and order the retailer to advertise that they have breached the law (further fines can be issued for failure to comply with this as well), and can recover the costs of the investigation from the retailer.

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