



Welcome to our Winter Newsletter

Christmas is around the corner and here at DSL we don't know where the last year has gone! The staff are getting into the festive spirit by buying presents to donate to Mission Christmas, Nick Wheeler and his family have taken part in the Chester Santa Dash, whilst Catherine Gregson took part in the Liverpool Santa Dash. If you follow us on Twitter, Facebook or LinkedIn, then hopefully you have seen the photos! Looking back it's been a very exciting year for us with the company expanding by taking on new members of staff, our entry into the Legal 500 and the success of our seminars. Plans are underway to make next year better, brighter and more successful for us and our clients.

Plebgate – Can costs be recovered in litigation?

We've all heard of the Plebgate scandal surrounding the former Conservative chief whip, Andrew Mitchell, and his alleged verbal abuse of police officers in Downing Street. News Group Newspapers, via the Sun, also became involved when they reported the story and purportedly made defamatory comments against Mr Mitchell, as a result of which he issued legal proceedings. What you may not be aware of is that the legal proceedings are testing part of the current reforms relating to the costs of litigation.

The current reforms require the parties to attempt to agree costs budgets before they are filed at court, with the deadline for filing the costs budget 7 days in advance of a case management hearing and after court hearings. Unfortunately for Mr Mitchell, his solicitors failed to engage in any discussions on agreeing the budgets and failed to file their costs budget in time – they eventually filed it the day before the hearing.

When the matter came to Court the judge decided that Mr Mitchell's recoverable costs were strictly limited to the court fees. This was a particular kick in the teeth as the court fees would be around £5,000 whereas his legal bill (now unrecoverable) would be in the region of several hundred thousand pounds. The approach of the judge is a strict interpretation of the cost reforms.

Mr Mitchell took the obvious step of appealing the decision and the hearing is due to be heard imminently and should go a long way to establish whether the reforms should be strictly followed.

Alex Sandland comments "It is not surprising that this case has such an impact. It is the solicitors who will primarily be liable for missing a deadline or failing to file a document. This is particularly significant as many commentators are predicting that the decision will be upheld".

Jonty Gordon comments "All good solicitors have the ability to manage the flow of documents to the court and to other parties. If the judgment is upheld solicitors will have to be exceptionally wary and be more proactive in ensuring that clients provide documents and information promptly".

If you would like some further advice on litigation and costs implications then please contact **Alex Sandland or Jonty Gordon on 01829 773 100**.

Road Transport Seminar – Mercure Hotel Tuesday 12th November 2013



On Tuesday 12th November, we held a transport seminar at the Mercure Hotel, Chester. The event was well attended and was declared a great success by both attendees and speakers.

After a welcoming cup of coffee, the event got under way by an introduction from our Commercial Director, Hugh Megarrell. Hugh made reference to a recent speech given by Robert Goodwill, Under Secretary of State for Transport, in which he emphasised the importance of the haulage industry to the wealth of the country and he also emphasised the current buoyancy in the market place. Hugh was a little at odds with this given that most conversations he has with hauliers only emphasise how tough the sector is. This set a precedent for the rest of the seminar with both Jared Dunbar (Associate Solicitor) and John Dyne (Managing Director) covering at great length the numerous pieces of legislation and regulation that today's haulier is faced with. They both covered hot topics relating to the Operator's Licence including finance, maintenance, driver's hours, good repute and fitness, impounding and legal entities. Both speakers took questions from the floor from what was an attentive and proactive audience.

Our two guest speakers were particularly interesting. Firstly we had three representatives from VOSA, Dave Collings (Area Manager for Liverpool and North Wales), Simon Jenkins and Joanne Henharen, both Senior Traffic Examiners. Simon presented, giving an update on VOSA's work including references to the road user's levy and changes to fixed penalties. As you would expect, Simon's presentation was met with some probing questions from the floor. Our final speaker was Dean Baker from TruTac Ltd, a company providing expertise and solutions for tachograph analysis. Dean's main focus was around the question, 'How safe is your Operation', and his presentation was very well received by the audience. All in all, a day full of information and provoking much thought!

BSA challenges proposals to change Road Worthiness Testing



Jared Dunbar and Hugh Megarrell recently attended the Batched on Site Association's AGM in Corby on 18th November.

As national co-ordinator, Jared Dunbar updated members on the meeting he had with the Department for Transport in March 2013 to discuss the New EU Proposals Relating to Road Worthiness Testing.

The proposal will result in vehicles currently exempt from Plating and Testing being subject to some form of annual test. These changes are likely to be implemented in the UK by 2017. The BSA explained to the DfT the consequences which the current proposals would have on that sector.

It is understood that a further consultation process will take place in the new year on both the exemptions from the requirement to have an MOT and on the exemptions from the Operator Licensing regime. The DfT informed the BSA that it should be under no illusions. Things are heading towards the requirement for MOTs for all vehicles.



Jared Dunbar says that "there are serious unintended consequences of removing the exemptions relating to road worthiness on operators of Volumetric batching plant. The changes would give rise to operational issues that could extend well beyond the objective of applying road worthiness tests to vehicles.

In terms of Operator Licensing, if the industry does not want to come

within the scope of Operator Licensing then it will have to make its case against the changes to the Department for Transport at the appropriate time."

For further information on the BSA contact **Jared Dunbar on 01829 773 105**.

No rest for Nick Wheeler!

Nick Wheeler has now been with us for 5 weeks and has hit the ground running. During his first few weeks he's been busy negotiating 2 option agreements, selling 3 businesses, varying a lease, creating new leases of farm buildings and commercial units, executing a licence to carry out works and an access licence amongst other things.

Nick has also been getting to know our consultants at our consultancies meeting, as well as meeting up with local bank managers and is looking forward to getting out and about meeting all the local land agents. He has also attended the Chester Business Club Dinner, which played host to Peter Hain, MP for Neath, as speaker and the recent Tattenhall Business Alliance Lunch.

Heavy Transport Association – Celebrating 30 Years



John Dyne (HTA Secretary) and Katharine Narici (HTA co-ordinator) were pleased to attend the HTA 30 year dinner celebrations on the

22nd November. The Heavy Transport Association (HTA) was initiated by a group of heavy haulage operators struggling to cope with less than clear regulations regarding the movement of abnormal loads. It seemed apparent that enforcement authorities/police officers were not happy to have abnormal loads on the roads, and so the operators decided that something had to be done. Initial meetings were informal and then as news of the meetings spread, more and more operators wanted to attend. This was back in 1983.

The objectives of the HTA were initially heavily focused on issues relating to STGO and Special Order movements and now the focus is also on promoting the professional and trade interests of escort drivers. Members of the HTA actively participate in meetings and workshops organised by the Highways Agency and the HTA is regularly consulted by the Highways Agency when guidance is formulated on abnormal load movements and self escorting.

The objectives of the Heavy Transport Association were, and remain to date, to promote the professional and trade interests of all its members. The Association is the only specialist Trade Association for the heavy/abnormal load industry. Members include abnormal load hauliers, truck/trailer manufacturers, route surveyors, permit agents, consultants, abnormal load escorters, ferry owners, infrastructure owners/managers and abnormal load officers. HTA members are consequently a highly specialist group of operators.

DSL are very proud of their membership and involvement with the HTA. John has been involved with the HTA since 1990 and acts as legal adviser and as the Secretariat to the Heavy Transport Association, whilst Katharine has been acting as the HTA co-ordinator since 2005.

The HTA are in the process of compiling a publication of a bespoke Yearbook.

For further information on the HTA please visit www.hta.uk.net, or contact **Katharine Narici, HTA Co-ordinator on 01829 771774** (email: info@hta.uk.net).

Nick is looking forward to building local connections and, as part of this, has donned a Santa outfit and took part in the Chester Santa Dash with his family on the 8th December!

Nick comments "Although the practice is small, as a niche firm with experts in their fields, DSL is able to offer knowledge and service to rival that given by the large Liverpool and Manchester practices but more cost effectively and with a friendly and approachable manner. I am certainly very happy to be part of the team."



Renewable energy is the way for forward for UK's commercial organisations



REDUCING ENERGY COSTS

“Companies are only now waking up to the potential that renewable energy has to offer,” comments TGE Group Managing Director, Rupert Higgin. “It isn’t just about securing additional revenue, but also reducing bills, lowering carbon emissions, stabilising energy prices and securing a competitive advantage. With the ROI for solar energy at 10-15% and even higher for heat pumps and biomass, it makes good business sense for companies to go green. Where cash flow is an issue, we offer a range of financing and fully funded options available.”

Supported by the Feed-in Tariff (FiT) and the Renewable Heat Incentive (RHI), commercial installations are showing steady growth in the UK. TGE Group has also seen more commercial work replacing residential, with 95% of our solar, heat pump and biomass installations now undertaken for business customers. With recent reports revealing that 11GW of coal and oil plants are to close by 2016 and blackouts likely, prices are predicted to continue their steep rise as demand outweighs supply and reliance on imported gas increases. At that point, businesses without renewable energy may well find themselves at a disadvantage.

Consultancies

To enhance our newsletters we are asking our consultants to contribute to our newsletters. We believe that close relationships with different consultants means that when our clients need us to assist with something which is outside the legal sphere but is related to the services we provide, we can refer our clients to the appropriate expert.

*A case study from Dyne Solicitors’
Renewables Partner, TGE Group*

Renewable energy is now a hot topic in boardrooms across the UK, as companies realise they risk being left behind on securing a renewable business advantage.

The Project

With sites in Lincolnshire, Scotland and Somerset, Branston is one of the largest buyers, packers and distributors of potatoes in the UK. The company has a strong environmental policy to minimise use of energy and natural resources wherever possible.

The Solution

TGE Group designed and installed four solar PV installations ranging from 100 - 235kWp across three sites in Perthshire, Lincolnshire and Somerset. Different requirements at each site included Mansafe systems, access ladder systems and on site container storage. Monitoring was installed at each location, including a link to a previous solar PV system that immediately highlighted faulty inverters, demonstrating the benefits of robust monitoring to ensure continued optimal performance.

“To be selected to install on all four projects is a credit to the work done by the design and operations teams at TGE. As the sites included food preparation buildings, good project management was essential to ensure no contaminants were brought into work areas.”

Stephen Davies, Sales Director, TGE Group

Energy Saving

With 637kWp of solar PV installed on this multi-site project, the 2,388 solar panels will provide Branston with an estimated 487MWh of electricity in the first year. Additionally the shading effect of the modules is expected to reduce the cooling load on the potato stores by a further 5%.

As well as working with our consultants we have regular quarterly meetings with our consultants so that the important relationships are maintained. We hope you find the information our consultants provide useful.



Can I represent myself in court?



The simple answer is yes - you can represent yourself at Court - but at what cost?

With the restrictions placed on the availability of legal aid; the increase in the Small Claims Track threshold; and the need to save on exposure to fees; more and more people are deciding not to engage a solicitor to act on their behalf but to represent themselves as what the Court calls, a Litigant in Person ('LiP'). But is it a really a saving representing yourself?

There are a number of points you should consider:

- You may well find the court procedure confusing and you may not appreciate the significance of each of the steps of civil litigation – if you don't comply with the rules your claim may be thrown out, even if it is a sound claim!
- You will need to prepare the factual and legal basis of your case and you may not fully, or at all, understand the law;
- You may need to devote, in some cases, extensive amounts of time in dealing with evidence and preparing for and attending the final hearing;
- And finally, the stress and personal pressures associated with litigation can result in some extreme cases of frustration within the court room, one shocking example in a recent family case resulted in a LiP assaulting his wife who formed the opposing party.

If these issues were not enough, there are specific costs rules for LiPs that place restrictions on the amount of costs that can be recovered. These rules are applicable to all cases where the substantive debt exceeds over £10,000.00.

Some of these rules amongst others are:

1. There is a cap imposed on the amount of costs (not disbursements) that you can recover; you cannot recover more than two-thirds of what would have been allowed had you been represented by a legal adviser.
2. The amount of costs allowed for work by a LiP is measured by either proving financial loss (which can be difficult for some LiPs), or where financial loss cannot be proven, a prescribed hourly rate, currently £18 per hour from 1 October 2011.

The journey from inception of a case to its conclusion can be hard and challenging, but this burden may be reduced by seeking assistance from legal professionals like a solicitor or barrister. These costs may be recoverable where the case is successful or where the court exercises its discretion.

Alex Sandland comments "The first question most clients ask is how much is it going to cost me - and this is a question which is also important from my point of view. Any Court action must be looked at on the basis of the soundness of the case, the outcome to be achieved and the costs of achieving the desired outcome. Sometimes clients may be covered by insurance and this is always something to consider. Whilst representing yourself at Court can seem like the cheapest option, if your claim gets thrown out because you didn't follow the rules then a considerable amount of money can be lost and you could end up in a worse financial position."

For further information or advice please contact **Alex Sandland on 01829 773 101**.

We hope you have enjoyed reading our winter newsletter.

May we take this opportunity of wishing you a Merry Christmas and a prosperous New Year.

Le-Ann Walker & Hugh Megarrell – Commercial Directors

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