

Summer 2018

# Allan Janes

solicitors



## LEGAL REVIEW

Your quarterly bulletin on legal news & views from Allan Janes Solicitors

[www.allanjan.es.com](http://www.allanjan.es.com)

### Allan Janes is racing to the top!

Once again Allan Janes will be sponsoring the long established Kop Hill Climb event.



15TH & 16TH  
SEPTEMBER  
2018

The climb was originally used by motor journalists and private competitors alike to test, review and compete in the latest advancements in automotive technology. Established in 1910, the climb involved a standing start from the bottom of Kop Hill, with the winner doing so in the shortest time.

Unfortunately following "damage to persons and property" the last competitive climb was held on 28th March 1925.

However, the spirit of the hill climb has been revived in recent years by the Buckinghamshire Community Foundation (Kop Hill Climb) Limited with "non-competitive" runs up the hill in order to raise money for local charities.

The event has grown substantially over the years and now attracts crowds of many thousands from all parts of Buckinghamshire and beyond.

Nick Morrison, managing partner of Allan Janes, historic race car owner, racer and part time collector of what has been endearingly described by members of his family as "expensive rusting piles of junk" will once again be hosting this event and running his FIA 1965 MGB race car up the hill.

Allan Janes will be in attendance the whole weekend with a trade stand giving away free drinks and nibbles as they have done previously, together with a chance to win a ride up the hill on both the Saturday and the Sunday in the race car, which will also be on display.

**Do come and pay us a visit and bring the family. It is a great day out and one which even the non-motor enthusiast will enjoy, as there is a wealth of sideshows and displays ranging from vintage cars and bikes to more modern machinery, trade stands, fairground rides, displays and other attractions.**

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### Alex Stanier joins partnership

We are pleased to announce the appointment of Alex Stanier to the Partnership.

Since joining the Firm 18 months ago, Alex has taken the Private Client Department from strength to strength, proving a hit with clients and colleagues alike. He is widely consulted due to his detailed knowledge of family business succession and general tax and estate planning, and has proved a key contact for both our commercial clients

and private individuals, all of whom appreciate his friendly and efficient manner.

In addition to being a Solicitor, Alex is also a qualified member of the Society of Trust and Estate Practitioners and has extensive knowledge of complex tax, trust and overseas estate work.

With the Department looking in great shape to grow further in the near future, we know that Alex is the right man to be at the helm and will continue to build on his success.

## Placing trust in a family member can be unwise

Even the most apparently trustworthy people can sometimes turn out to be anything but and that is one good reason why it is sensible to appoint a solicitor as executor of your will. In one case that proved the point, an ex-police officer took advantage of his position to steal his disabled cousin's inheritance from her father.

The cousin was vulnerable to financial exploitation and, in the belief that the officer was well placed to protect her interests, her father appointed him as his executor. Following her father's death, however, the officer took almost £130,000 from the estate and used a labyrinthine network of bank accounts to cover his tracks.

He also arranged for the bungalow inherited by his cousin, worth about £50,000, to be transferred to his son for just £1. His wrongdoing was ultimately uncovered and he was jailed for three and a half years after being convicted of conspiracy to defraud and four counts of theft. His son received a suspended sentence for conspiracy to defraud.

The facts of the case emerged as lawyers representing the Solicitor General asked the Court of Appeal to



increase the officer's sentence on the basis that it was unduly lenient. The Court accepted that his punishment did not sufficiently reflect the seriousness of his crimes. However, in declining to lengthen his jail term, it noted that he was elderly and had a wife and a sick daughter to care for. He had also restored everything that he had taken from the estate.

**Cases like this occur all too frequently. When appointing an attorney or executor, the best way to ensure that your assets will be protected is to enlist the services of a professional, who can exercise oversight. Contact Alex Stanier at [alex.stanier@allanjanes.com](mailto:alex.stanier@allanjanes.com) for assistance.**

## ISAs in estates to be tax exempt

One of the issues that has proved difficult for executors of deceased persons who have Individual Savings Accounts (ISAs) is that the interest on them has been taxable once the owner died.

Many of these accounts are small and, given that interest rates have been very low for years, the effort associated with the necessary tax compliance was disproportionate.

The Government recognised this and a statutory instrument has now been enacted which exempts ISAs from Income Tax for deaths after 5 April 2018.

## Premature contract signature proves expensive

Signing a contract before you are sure you are willing to complete it can be a huge mistake: judges do not flinch from enforcing valid contracts, as a recent case shows.

It involved a man who reneged on a deal to buy a family home for £5 million. He had not viewed the property before contracts were exchanged and had dealt with the vendors through an intermediary whom he had never previously met. However, he had signed the contract in person and a judge rejected claims that the intermediary had acted without his authority or that the contract was rendered void when the intermediary agreed to accept a secret commission. The result was that the man was ordered to pay a seven-figure sum in compensation to the disappointed vendors.

After the buyer had pulled out and the deal was aborted, the vendors eventually sold their home for the lower price of £4.2 million. They launched proceedings for the difference between the first putative buyer's agreed purchase price and the sum they eventually received. They were awarded £800,000 to reflect the difference between the two figures and further substantial sums to



cover their additional expenses, including the cost of bridging finance occasioned by the breach of contract. Although the precise amount of compensation has yet to be calculated, this is estimated to be in the region of £1.5 million.

**Although the circumstances in this case were very unusual, the principle that you should only sign a contract if you are willing to be bound by it is clear. If there are any potential issues, legal advice should be taken to ensure your interests are fully protected. Contact Peter Collier on email: [peter.collier@allanjanes.com](mailto:peter.collier@allanjanes.com) for advice and assistance.**

## Air travel woes may lead to compensation



After a ghastly year for flight delays, with air traffic control disputes, British Airways suffering two major IT failures and Ryanair's problems with aircrew rotas, a recent report reveals that nearly £400 million in claims could have been made for travel disruption or delay in the 11 months to November 2017.

Popular destinations such as Malaga and Dublin led the way in terms of delays. Domestic flights to Edinburgh and

Glasgow also showed elevated delay and cancellation rates. The amount of compensation delayed passengers are entitled to depends on both the length of the flight and the amount of time of the delay, but for flights departing from an EU airport that cover more than 3,500km and are delayed by more than four hours, compensation of up to 600 euros can be claimed.

However, the availability of compensation depends on the reason for the delay. If it is due to 'extraordinary circumstances', no compensation is payable and your recourse would be to your travel insurance. Airlines are keen to cite extraordinary circumstances as the cause of the delay and it is worth noting that a mere technical problem with the aircraft would not normally qualify as 'extraordinary'.

**If you have endured a travel delay, or suffered illness or an accident whilst on holiday because of negligence on the part of the holiday company or their agent, contact Clive Hitchen at [clive.hitchen@allanjan.es.com](mailto:clive.hitchen@allanjan.es.com) for advice.**

## Seeking to waive dividends?

**F**or a person who has no need of the income from a family company, a dividend waiver, which allows other shareholders to receive dividends but not the person who has executed the waiver, can be a useful device.

However, the use of dividend waivers can present difficulties unless the process is correctly managed and the potential issues are given full consideration. They should never be

put in place without professional advice.

One little-known aspect of creating dividend waivers is that because they are a 'one-sided' agreement (there is no consideration for the waiver), to be valid they must be executed as a deed. However, the drafting, preparation and execution of a deed is a 'reserved activity' under the Legal Services Act 2007 and whilst solicitors are authorised to carry out this work,

many professional tax and accounting advisers are not.

The Chartered Institute of Taxation has recently advised its members that if they carry on such activity they must be authorised to do so under the Act, unless they are exempt.

**For advice on any aspect of company law, contact Iwan Emanuel at [iwan.emanuel@allanjan.es.com](mailto:iwan.emanuel@allanjan.es.com)**

## Refusal to cooperate spells trouble

**B**eing made bankrupt is never a welcome experience, but failing to comply with reasonable requests of the Official Receiver can make matters even worse.

Once a person is made bankrupt, they are required to deliver a statement of affairs within 21 days and to hand over to the Official Receiver all relevant books, records and papers in their possession.

In a recent case, a man had failed to provide the Official Receiver with the information requested after he had been adjudged bankrupt. His non-cooperation was total, leading the Official Receiver's representative to give evidence that he 'has not provided any information in writing or orally about



his assets and liabilities, and...has not complied with any obligation that would enable the Official Receiver to investigate his conduct or financial position'.

After he had been given several chances to put matters right, the case returned to court where the judge

concluded that there was nothing in his 'evidence or the documents before the court which is capable of constituting reasonable excuse for failure to comply with the obligations'. The man was found guilty of contempt of court, and his punishment was an immediate term of imprisonment of eight months.

If you find yourself or your company in significant financial difficulties, taking early advice is important. Waiting until a crisis point is reached will rarely lead to the most satisfactory outcome.

**Simply burying your head in the sand is never the best course of action to take, contact Clive Hitchen at [clive.hitchen@allanjan.es.com](mailto:clive.hitchen@allanjan.es.com) for expert advice and guidance.**

## Incomplete partnership arrangements lead to court appearance

**W**hen new partners are being introduced into a partnership, it is wise to finalise the arrangements quickly in case the partners fall out. Any lack of formality in the business arrangements can lead to trouble, as a recent case shows.

The case concerned two GPs who were in practice together. They decided to invite three other doctors to join their practice and requested their solicitors to prepare a new partnership agreement.

While the terms of that agreement were being finalised, the two partners fell out, which led to one of them being effectively barred from the practice. He then applied for an injunction which would allow him to return. The other partner then issued a notice dissolving the old partnership and claimed that a new partnership (a 'partnership at will', because its terms had not yet been agreed) had been commenced with the new partners.

The excluded partner claimed that the new partnership was not yet in existence and the notice terminating the old partnership was therefore invalid. The new partners had not yet legally joined the partnership.

The remaining doctor and the new partners argued that the old partnership had been dissolved and that they had created a new partnership which excluded the other doctor.

The dispute ended up in court, where it was decided that the partnership between the original partners had been validly dissolved and a new partnership (the terms of which had not yet been finalised) was in existence between the remaining doctor and the new partners. They had never intended to retain the original agreement, and in any event it was possible for them to dissolve the existing partnership, without the excluded partner's consent, and set up a new one.

The case illustrates the importance in similar circumstances of putting documentation in place quickly. Where new partners are invited to join an existing partnership and are working in that capacity before the partnership agreement is finalised, there is a good chance that the court may conclude that a partnership at will has commenced.

**For advice on any partnership issue or the creation or review of a partnership agreement, contact Iwan Emanuel at [iwan.emanuel@allanjan.es.com](mailto:iwan.emanuel@allanjan.es.com).**

## Court of Appeal uses real world valuation principles

**A**n empty office block in Blackpool was given a rateable value (RV) of £490,000 by the local valuation officer, who made the valuation based on the expected rent for which the building could be let. The valuation was based on an assumed demand for a similar property.

The property market in Blackpool being saturated, the owner of the building considered that there was little chance of finding a tenant for it at all, so was unsurprisingly unhappy with the valuation.

On appeal to the Valuation Tribunal, the RV was reduced to £1 and that in turn



was appealed by the valuation officer to the Upper Tribunal, which restored the original valuation.

The next step was a hearing before the Court of Appeal. The Court restored the £1 valuation, concluding that in the absence of any evidence of any demand for the office block, there could be no legitimacy in a valuation which required an assumed demand to be hypothesised.

**If you are having problems with officialdom, we may be able to assist you to achieve a better outcome. Contact Richard Harriman at [richard.harriman@allanjan.es.com](mailto:richard.harriman@allanjan.es.com) for advice.**

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