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**The ongoing "referral fee" debate**

**Empty nest, empty marriage**

**Tackling toxic leases**

**Is hugging now completely off-limits at work?**

**Can I take my curtains or cooker with me when I move house?**

**Is Commonhold for the common good?**

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# IN THIS ISSUE


04 **RESIDENTIAL PROPERTY**
THE ONGOING "REFERRAL FEE" DEBATE

06 **FAMILY**
EMPTY NEST, EMPTY MARRIAGE

08 **COMMERCIAL PROPERTY**
TACKLING TOXIC LEASES

10 **DISPUTE RESOLUTION**
IS HUGGING NOW COMPLETELY OFF-LIMITS AT WORK?

12 **RESIDENTIAL PROPERTY**
CAN I TAKE MY CURTAINS OR COOKER WITH ME WHEN I MOVE HOUSE?

14 **LEASEHOLD ENFRANCHISEMENT**
IS COMMONHOLD FOR THE COMMON GOOD?

# THE ONGOING "REFERRAL FEE" DEBATE

David Knapp
Partner, Head of Residential Property

The subject of referral fees in conveyancing is something I have commented on a number of times in recent years and the frustration that the Government's ban in certain areas of law has not extended to conveyancing continues to cause many lawyers real concern. I am pretty certain that if a poll was taken of all solicitors as to whether **referral fees should be outlawed** in conveyancing, there would be an overwhelming majority in favour of a ban.

So where are we now? Is the public becoming wise to why some property lawyers have to pay referral fees to estate agents for new residential conveyancing business?

Although it is difficult to pin point exactly when referral fees initially became utilised by solicitors desperate for residential property work, it was some years ago and is now widely used by lawyers finding it difficult, if not impossible, to earn business on a meritocracy basis.

Interestingly we have reached the point where the property sale cycle has come full circle and more and more of the buyers who bought properties using lawyers recommended by agents for the payment of a fee are looking to sell. **On a very regular basis we are finding that a great deal of sellers are shunning the referral fee route** on the basis of poor service at the point of purchase, and the geographical location of the lawyers. Many of those lawyers paying referral fees are many miles from the towns in which the properties are being sold. There seems to be a near zero incidence of repeat business for those "winning" business in this way.

As an example, one agent close to some of our offices refers a firm of lawyers based in Yorkshire and another refers work to lawyers on the south coast.

The savvy sellers are realising that they cannot just call in on spec to see their referred lawyer and that the only interest that the agent has in making the referral is financial. Ironically, even this is fallacious as the agents lose the support of the local lawyer and the stream of business that a solicitor can provide to the local agent. Instead, an independent agent will receive the work.

Sellers are also beginning to avoid using the agents who dealt with the property when they purchased, as the referral of a poor, remote and uncommunicative lawyer all those years ago has tainted their view of the agent.

As the Government has promised to look into the whole issue of referral fees, with the majority hoping that they will be banned, there seems to be a consensus of opinion that **referral fees increases the likelihood of poor client service** in what is always going to be by far and away the largest expense any property owner in the UK will ever make.

**Go local and on recommendation, merit or after having carried out review research on the web rather than following the referral of an agent who is just looking to supplement their fee.**

If you are looking at buying or selling a house, you can contact David directly on **01483 887772** or at **dsk@hartbrown.co.uk**.

# EMPTY NEST, EMPTY MARRIAGE

Vanessa McMurtrie
Partner, Family Law

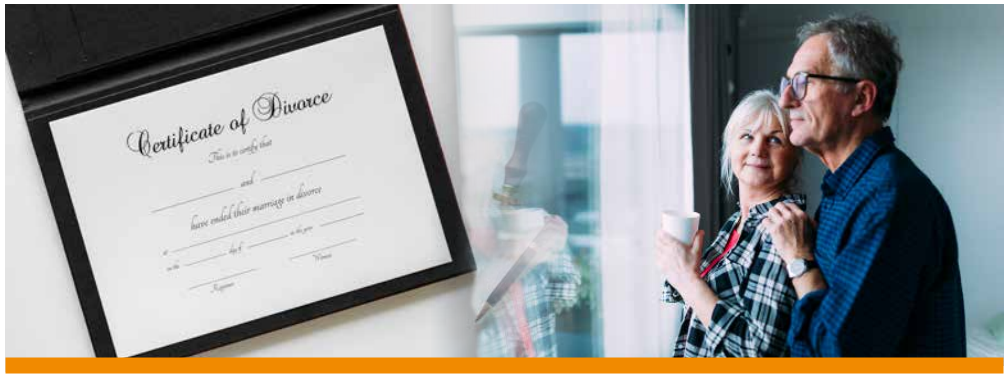
As an individual whose next 'big birthday' is 60, I have become more aware of how ordinary life events can suddenly feel extra-ordinarily scary and unsettling.

Until my son went off to uni I had no idea how hard-hitting that feeling of an empty nest can be. Combine that with one of life's unexpected curve balls such as the death of a friend your own age, a redundancy, a major accident, caring for an elderly parent, or suffering a life-threatening condition, any of these can place huge pressures on your marital relationship. As a family solicitor specialising in the legal consequences of relationship breakdown (usually, divorce), frequently it is one of these curve balls that precipitates a partnership falling apart.

Is one partner more to blame than the other? Or have both individuals been doing their own thing within the marriage e.g. one works long hours, the other keeps the show on the road (by this I mean more than just keeping food in the house and getting the kids to school), that communicating with each other, spending time together, understanding what the other does to support this partnership, is a long forgotten art?

Sadly, I see this all too often in my legal practice. The majority of my clients are in their 50s or early 60s. They have come to see me because they believe their marriage is over or they are on the receiving end of hearing that from their spouse. Either way, it's frightening. Most will have seen a friend or family member or both having gone through a messy break-up. The last thing (or perhaps the first thing) someone in this situation might think they need is a divorce lawyer. The fear comes from coping alone, telling the children, who gets what, maintaining mutual friendships and more. Being informed of likely legal outcomes is a vital part of decision making. Having the right support in place to achieve something which is fair is key. **Dispensing with the blame game makes difficult decisions easier to navigate.**

To resolve relationship breakdown disputes, many assume court is the only option, some will have heard of mediation but few are aware of the Collaborative family law process. Collaboration is a buzz word in business and politics and for my parents' generation it has a more sinister ring to it. What does it mean in a divorce scenario? The Collaborative process involves meetings between the couple and their collaboratively appointed lawyers which explores, discusses and resolves the issues openly and cooperatively. Everyone signs a Participation Agreement which rules out court battles. 'Four-way meetings' are used to sort things out; **the process is transparent and open** and can include family consultants and financial 'neutrals' e.g. an IFA if needed. The Court's involvement is limited to a paper application seeking approval of the agreement reached. The whole process is respectful and focuses upon what is best for the family/separating couple rather than achieving a self-interested outcome. It is not about court battles, getting revenge, taking the upper hand or crushing your spouse's self-esteem.




Behaving respectfully when you are deeply hurt, emotionally vulnerable, scared, angry, bereft, shocked, or feeling unable to trust can be harder than being nasty, mean, calculating, vindictive, abusive or financially manipulative. **It takes more self-control, an ability to admit culpability** and a desire to maintain a respectful, friendly dialogue with your former spouse; how much better to look back in years to come and be able to say to yourself, 'we separated well'. If you have children, be they still in education, grown up or with children of their own, **they will thank you for separating respectfully.**

If you want to learn more about the collaborative process when dealing with a relationship breakdown, then contact Vanessa on **01483 887546** or at **vmm@hartbrown.co.uk**.

# TACKLING TOXIC LEASES

John Guthrie
Senior Solicitor, Commercial Property

The commercial property market has changed dramatically in recent years. Demand for retail space is in decline but with the prevalence of internet shopping, the need for distribution and warehousing space is expected to outstrip supply imminently and this means rents per square foot in this sector are going to rise. It goes without saying that the UK population continues to grow at a substantial rate and with it the need for consumer goods. More warehouses and distribution centres will be needed.

**But what does this mean for an operator in the logistics sector about to become a tenant under a new lease?**

Whilst the market has changed, the framework for commercial leases has changed very little since the 1954 Landlord and Tenant Act, now happily in its 65th year, and with no signs of being replaced yet. The main principles of negotiating a commercial lease remain unaffected.

In advance of entering into a lease, there are four key areas a logistics operator should be thinking about before committing as a tenant.

**Firstly,** the commercial terms (and this is where you need your own independent surveyor to advise). How much should you be paying in rent per square foot? If supply is going to fall well below demand then market rents will inevitably rise, so it may be worth agreeing a different rent review mechanism at the outset to mitigate this. Your surveyor will know what the alternatives are to a regular market rent review. They may well suggest a stepped rent without review or the blunt instrument of relying instead on annual RPI increases.

**Secondly,** the ability to dispose of the lease. Hopefully the site an operator chooses will be ideally located for transport infrastructure and the operator will not want to move out. However, as an operator expands they will need more space and if there is no further space on that estate they may have no choice but to move the operation elsewhere. To achieve this painlessly the lease should not contain any onerous terms in obtaining the landlord's consent for the lease to be sold on or sublet to someone else.

**Thirdly,** repairing obligations. A distribution warehouse is not necessarily a sophisticated building, being little more than a shed to store goods in. However, landlords' surveyors will still try to serve onerous schedules of dilapidations on tenants.

The best way for a tenant to protect themselves at the outset is to seek confirmation that they do not have to return the property in any better condition than it was in at the beginning of the term by attaching a schedule of condition to the lease. In the age of digital cameras and drones a photographic schedule covering the entire building can be produced very easily.

**Fourthly,** environmental obligations. There's a shortage of space and this combined with planning policy means that many warehouses and distribution sites are on recycled land. 'Brownfield land' is a vague phrase encompassing an enormous range of diversity.

The decline in manufacturing means that one time factories are now being levelled and developed into industrial estates. Some former factories are innocuous, some positively toxic. An industrial estate can easily be on the site of a former munitions works or asbestos factory and a tenant having investigated the site before entering into the lease will want to carve out of the lease any responsibility for the contaminants which may exist on site or underground.

These are just some of the points to think about before entering into a lease of warehousing and distribution premises.

For more detailed advice, please contact John by phone on **01483 887530** or by email at **jzg@hartbrown.co.uk**.

# IS HUGGING NOW COMPLETELY OFF-LIMITS AT WORK?

Jane Crosby
Partner, Dispute Resolution

Given the recent headlines about Phillip Green and the alleged victims of sexual harassment, physical contact in the workplace is a very high-profile topic among bosses, workers, and HR departments.

The law regards unwanted physical contact as a violation of someone's rights, especially if they're made to feel that objecting to it could result in them losing their job. Workers are well within their rights to say 'no' to anyone making unsolicited physical contact, without fearing that their position or job could be put in jeopardy if they object.

That means, quite simply, that if a boss or someone in a position of power forces you into a bear-hug that makes you feel uncomfortable or even violated, then you have every right to talk to a legal representative, your HR department, or your union representative.

So how do you prevent an embarrassing situation arising, and a possible resulting legal action?

**Emotional intelligence – to hug, or not to hug, that is the question……**

Emotional intelligence is the ability to read and understand the underlying signals, body language and interpretation of intent that makes up a significant percentage of our non-verbal communication.

It's about recognising the emotions and motivations of others and aligning yourself with them so you're all working towards a common goal.

It's also about recognising when you need to micro-manage your own responses so as not to overstep the boundaries set by another individual. Put simply, one person's bonding hug, given in all innocence and with absolutely no sexual intent whatsoever, may make another person feel deeply uncomfortable.

**What should you do therefore before you decide to hug someone:-**

### 1.Evaluate the situation and your relationship with the other person

A promotion, a sales target that's been achieved, or a person who is feeling upset and emotional may generate a 'hug response' in you. However, how well do you know this person? Are you real friends, or just work colleagues? A simple handshake may be more appropriate, or verbal support without any form of physical contact may be all that's required to help the person feel better.

### 2.What should Managers do?

If you're in a managerial position then hugging workers can be seen as a misuse of position and an overly dominant act, as both Ted Baker boss

Ray Kelvin and Philip Green found to their cost recently in terms of the allegations made against them. There has to be a real sense of trust in the person to allow the boundaries between boss and worker to be overstepped in such a personal way.

### 3.Do you ask permission to hug?

If you really want to hug someone then you could ask permission because some people simply do not like physical contact, even if it's well intentioned. You'll also find that in certain cultures physical contact is not as freely given or accepted as it is in other societies. So you'll also need to consider cultural boundaries as well as the individual's response. That polite, 'I'd rather you didn't' isn't an insult, it's the preference of the individual, and those boundaries need to be respected. If, however, they reciprocate then there's no reason why you shouldn't give a brief hug.

### 4.Check their body language

We use body language to convey our emotions and feelings far more than verbal communication, so it's well worth learning a few signals, such as body position, posture, and whether the body language is open and receptive or closed and defensive. Again, you'll also have to bear in mind those cultural indicators – for example, in some countries a greeting is a kiss on each cheek, which would be overstepping a cultural boundary if your recipient is from a culture that regards this as inappropriate. If the person is leaning back or has their arms crossed, then they probably don't want that hug you're offering.

The bottom line is to err on the side of caution and just stop for a second to assess the situation before you go in for that 'well done!' hug. It may not be either appropriate or welcomed.

If you feel uncomfortable about being approached in this way then don't be afraid to say, "Thanks, but I'm not really a hugger," and clarify the situation to avoid any misunderstanding.

If you are an employer or employee and need further legal advice, contact Jane directly on **01483 887742** or at **jzc@hartbrown.co.uk**.

# CAN I TAKE MY CURTAINS OR COOKER WITH ME WHEN I MOVE HOUSE?

Debbie Beswick
Chartered Legal Executive,
Residential Property

When you decide to buy or sell a house, there are many things that you need to give careful consideration to in advance. One of the questions that I am frequently asked by my clients, is whether the seller has a right to take the curtains or cooker with them when they leave. Items like these can become the subject of substantial debate between buyers and sellers. Should they stay or should they go?

As a seller, you will probably have to leave certain beloved possessions behind. This could include the newly fitted kitchen you worked so hard to design exactly to your specification or the showpiece sunken bath in the master bathroom which has helped transform that part of the house into your own idyllic sanctuary away from the hustle and bustle of family life. As we all know, life isn't always straightforward.

**So, 'Fixtures' or 'Fittings', what is the difference?**

As lawyers, we are required to ask a seller to complete a list of fixtures and fittings and this list forms an important part of the contract for sale.

'Fixtures' are items that are literally fixed or attached to the property being sold, such as those kitchen units or the sunken bath mentioned earlier. In most circumstances, these have to remain.

'Fittings', however, are items that are fixed, but by their nature they can easily be removed without any real damage to the property. Pictures, bookshelves and curtains would all be good examples.

This is why the fixtures and fittings form must be completed with accuracy, care and a great deal of thought, as any disagreements will need to be ironed out throughout


the course of the conveyancing process and certainly before contracts are exchanged.

**So it's really quite clear cut then?**

Not always. Even after 35 years of working at Hart Brown, I still find it fascinating to see how the debate over fixtures and fittings can evolve and not everything is as clear cut as you might think. For example, a seller could be justified in removing a freestanding electric double oven with integrated hob that slots in and out of the kitchen space easily. But what about a more permanent cooking feature, such as an AGA, which a buyer is probably paying a premium for as part of the purchase price? It is really important that buyers proceed with caution and try, as far as possible, to ensure that everything they expect to get as part of the purchase of the property will be left behind on completion day.

If you, or someone you know, is considering moving house, contact Debbie directly on **01483 887775** or at **dab@hartbrown.co.uk**.

# IS COMMONHOLD FOR THE COMMON GOOD?

Sarah Osborne
Partner, Head of Leasehold Enfranchisement

Commonhold is receiving a lot of attention due to the recent Law Commission paper on resurrecting this process. This is part of a long (and some would say overdue) reform of the law concerning leasehold properties and in particular flats.

Commonhold is not new and has been around since 2002. However, fewer than 20 commonholds have been created since the legislation came into force.

**The idea of commonhold is to revolutionise the way that flats are owned.** Currently, a flat owner owns their property as a leasehold. This means ownership is for a limited time (for example a 99 year lease) and they only own part of that property (usually the internal areas). The structure of the building and external areas, such as the communal hallways, roof, etc. are owned by the landlord, sometimes referred to as the freeholder.

**As the lease term shortens, the value of the property decreases.** This means that the lease is by its very nature a wasting asset. The flat owner will have to, at some stage, extend their lease to prevent this from happening and thus incur additional costs to prevent their property depreciating in value. If the lease term becomes too short (i.e. less than 80 years) it becomes very expensive to extend.

There is often tension between the relationship of the landlord and the flat owner with a "them and us" attitude being fostered. There are competing interests, with some landlords seeing the building as an investment opportunity which competes with the flat owners' interests of wanting their home and their surroundings in the hands of a good management company which they often do not control.

Commonhold eradicates both of these elements by making the flat owners the "landlords" of their flats and communal areas, being referred to as "unit holders". The unit holder will be responsible for contributing a proportion of the cost towards the management of the building and they will agree to abide by obligations set out in a commonhold community statement (CCS) which all flat owners must sign up to through a commonhold association. The idea is to **democratise flat ownership** with the flat owners being in control of the maintenance of their building. This way of ownership has been adopted in other countries including Australia (known as the strata system) and the USA (condominiums).

If this sounds like property utopia, why have very few commonholds been adopted? Two of the reasons are that you need 100% agreement between all flat owners before decisions can be taken (i.e. management) which can be unrealistic and it is ineffective in developments that contain commercial premises or houses. There are also very few lenders that are willing to lend on a commonhold property as there is a lack of certainty over the protection of the lender's security (the mortgage) should the commonhold association become insolvent.

It remains to be seen if commonhold will become a way of ownership in years to come as this will mean a cultural as well as a legal shift away from the leasehold way of ownership that has existed in England and Wales for centuries.

At Hart Brown we are passionate about enfranchisement and as an ALEP (Association of Leasehold Enfranchisement Practitioners) member we are actively taking part in contributing towards the Law Commission's proposals concerning commonhold and other areas of leasehold reform.

If you need further advice, please contact Sarah directly on **01483 887561** or at **sjo@hartbrown.co.uk**.

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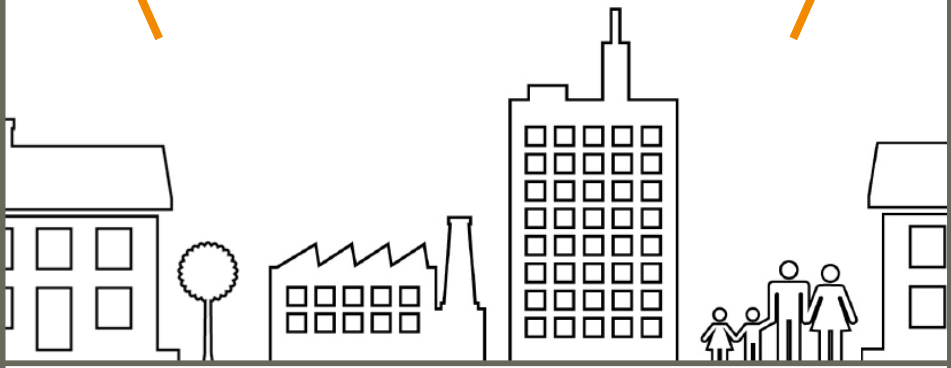

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