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## Borrowing in the Upswing – What is the Prognosis?

The last eighteen months have seen some of the most difficult trading conditions for British businesses since World War II. With the economy taking tentative steps back to growth, many businesses will be budgeting for increasing sales for the first time in more than two years.

The 'credit crunch' earned its name because the market for short-term borrowing collapsed and a feature of 2009 was the difficulty in obtaining commercial credit. Many businesses have found negotiating the retention of their existing borrowing facilities difficult and customers have been demanding (or just taking) even longer to pay.

Now, it seems, there is light on the horizon. House prices are reported to be on the up, which means that a secured loan offers less risk to your lender. Trade is slowly improving, so increased sales should mean increased profits. A falling pound is good news for exporters as UK-made goods should be more competitive in their home market. Even labour costs are falling, with the result that some call centres are being brought back to the UK from the Third World. Although taxes will clearly need to rise, consumers are willing to spend if the price is right.

Before you get too excited, however, remember two maxims:

- Insolvency risk is greatest in the upswing phase of the economy; and
- Most businesses fail not because of lack of profitability but because of poor cash flow.

These are important to remember, because your bank is acutely aware of them and the fact is that, at some point, the Government is going to have to rein in public spending – hard – which will inevitably mean that consumer demand is affected. This will be compounded by the need for interest rates to rise, which is widely predicted for later in the year.

This combination of factors makes it difficult to predict whether bank lending will get easier to negotiate in 2010. However, what we have seen in deals that are taking place is that banks are looking more carefully at the security offered and are trying as hard as possible to improve their lending margins.

### **Borrowing Tips**

With the economy seeming to be slowly improving, businesses will be thinking about financing the expected expansion of trade. Borrowing cost often dominates the thinking, but it isn't all about the cost of the loan. In order to negotiate the right deal, here are some tips on other things to think about:

## **Borrowing Generally**

- Make sure your lending proposition stands up on a cash flow as well as a profitability basis, and be able to defend your sales forecasts;
- Overdraft or loan? With an overdraft, you pay interest only on the amount you borrow plus an annual renewal fee – if the bank agrees to renew your overdraft. With a loan, you pay interest on the whole sum from day one, but normally at a lower rate, and the loan cannot normally be recalled. Many loans have, in effect, penalties built in for early repayment. It is common advice for 'hard core' borrowing and borrowing to finance assets to be by way of a loan and for overdrafts to be used for short-term borrowing;
- Don't forget to read the small print. It may one day be important to fully understand the legalities. Don't just sign the loan agreement and forget it – take advice first;
- If you are borrowing only to finance greater sales, factoring or invoice discounting may be for you. These agreements are complicated and often impose significant extra accounting costs, but can be a good way of reducing risk;
- If you are self-employed, the lender's 'long stop' is you and your assets. Take advice on how to minimise your risk before you borrow;
- If you are worried about being able to stay within your overdraft limits, it is often worth borrowing on loan to make sure you do: penalty charges and interest rates on unagreed overdrafts can make them a very expensive way to borrow;
- Credit cards. You may be tempted to use your credit cards for finance. This can be very risky as if you incur interest charges on a credit card, these will be much higher than for normal commercial lending – and you won't get tax relief on the borrowing;
- Never borrow from an individual (particularly friends or family) unless you have a proper legal agreement in place (or want to risk a falling-out); and
- Remember that the greater your exposure in respect of any loan, the less 'spare credit' you will be regarded as having for other borrowing.

## **Company Borrowing**

If you are borrowing for a company, the following should also be considered:

- Whether you are prepared to give a debenture for the loan. A debenture will give the bank security over all the company's assets. This improves the bank's security but makes missing loan repayments dangerous, as the bank will have the right to appoint an administrator. Giving a debenture may reduce the cost of the borrowing, however;
- You may be asked to give a personal guarantee. Take advice before agreeing. Again, your assets are on the line; and
- If you borrow money personally and put it in your company, tax relief on the interest might not be available. This can make a cheap loan quite expensive after tax.

Borrowing sensibly isn't just a matter of signing an agreement, taking the cash and making repayments. Negotiating loan finance successfully is easier if you are advised by experienced professionals who fully understand the legal implications of the documents you will be asked to sign.

**For assistance in negotiating the right borrowing deal, contact <<CONTACT DETAILS>>.**

## General

### **Massive Litigation Shake-Up Proposed**

Lord Justice Jackson's eagerly awaited final report outlining proposed changes to the British system of civil litigation has been published and promises a massive shake-up of the current system, which is considered to impose excessive costs on losers in litigation.

Among the changes proposed are:

- the end of the 'loser pays' principle in British law. A winning defendant's costs will normally no longer be payable by the claimant in those areas of claim in which the claimant is normally an individual and the defendant an organisation;
- the end of the current system of 'no win, no fee' agreements by making lawyers' success fees and the costs of 'after the event' insurance premiums paid irrecoverable from the losing party. No win, no fee was widely regarded as a panacea when introduced, but in reality has proved problematic; and
- allowing lawyers to charge contingency fees, by which they receive a percentage of the judgment sum and take the risk of not being paid if the case is not won. In effect, this will replace no win, no fee and should act as a brake on pursuing weak cases.

The current pre-action protocols are to be retained and judges are to be encouraged to become more involved with cases to assist in controlling costs.

The 584-page report can be found at

[http://www.judiciary.gov.uk/about\\_judiciary/cost-review/jan2010/final-report-140110.pdf](http://www.judiciary.gov.uk/about_judiciary/cost-review/jan2010/final-report-140110.pdf).

## Property

### **Law of Covenants Set to Change**

With nearly two thirds of freehold titles subject to an easement (which gives someone other than the owner a right over the land) and nearly four fifths of properties having some form of restrictive covenant, it is no wonder that disputes over land rights are common.

The Law Commission has been looking into the problems caused by restrictive covenants and easements and in 2008 produced a report highlighting several ways in which the law was deficient. The upshot of this process is that new legislation has been proposed, which should see the light of day within the next year or so.

The Law Commission's proposed solution involves replacing the existing law on covenants with 'land obligations', which can be an obligation to do something or refrain from doing something on the land. The main aspects of the proposals are:

- The obligation would have to be specifically labelled as a land obligation in the document under which it is created and would have to be created in a

prescribed form. This would make the obligation sufficiently specific to render the likelihood of a dispute over its meaning or the land concerned unlikely;

- An obligation which creates a legal interest in the land would have to be registered;
- New obligations which pass from owner to owner could not normally be created where title to land is registered; and
- Damages for breach of the obligations could be by way of legal remedies (payment of a sum in damages) or equitable ones, such as an injunction.

There are, in addition, a number of more technical proposals.

The consultation paper can be found at <http://www.lawcom.gov.uk/docs/cp186.pdf>.

### **Buyers Who Won't Buy – What to Do?**

Developers are increasingly faced with the problem of having to persuade buyers who bought 'off plan' before the credit crunch struck to complete their purchases in the light of the subsequent decline in property prices.

If you are faced with such a situation, it helps to understand the buyer's dilemma. Where buyers are reliant on mortgage finance, they may have a real problem as the security they are able to offer may no longer be able to support the mortgage. Although low interest rates mean that financing the repayments has become easier, the combination of lower property prices and more stringent loan to value criteria creates significant problems in such cases. In any event, interest rates are expected to start edging up this year.

Some buyers may seek to renegotiate the purchase price, based on the premise that selling the property elsewhere might be problematic. Some may simply walk away from the transaction hoping that a forfeit of the deposit is the only recompense you will seek and you will re-market the property. In each instance, the best action to take will depend on a number of factors, so take advice.

One possibility in such cases, however, may be to agree to take a second mortgage on the property, which at least presents the possibility of obtaining the amount 'left in' when the property is eventually sold. The provider of the primary mortgage would normally have to agree to such an arrangement. An alternative might be to enter into a shared ownership agreement.

If no other solution can be found, then you could consider serving a notice requiring completion and then, if this does not produce the desired result, taking an action for specific performance, which, if successful, will require the buyer to fulfil the contract and buy the property.

**If you are a developer and have, or expect to have, problems with reluctant buyers, contact us for advice.**

### **Reasoning Critical in Planning Decisions**

A conservation area is an area of historical or architectural interest, the character of which is considered worthy of preservation, not an area in which each building itself is worthy of preservation. An application to create a conservation area must be on appropriate grounds and cannot be used to achieve some other objective.

The importance of this distinction can be seen in a recent planning decision. An application was made to list an area as a conservation area because it contained an

architecturally significant building, which it was considered important to save from demolition, but this was defeated on appeal to the High Court.

The building, a former Carmelite monastery, was considered by the council to be worthy of preservation. However, an attempt to have it 'listed', under Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990, failed, so the council sought to have the property listed as a conservation area instead. The application, which was supported by English Heritage, failed because the evidence presented to the Court was that the sole reason for the application was to prevent the demolition of the building.

**If you consider that a planning decision which affects you has been taken or is being argued for on spurious grounds or based on incorrect reasoning, we may be able to help. Contact <<CONTACT DETAILS>>.**

### **Monthly Rental Payments – BRC Keeps Campaigning**

The British Retail Consortium (BRC) has been campaigning for the past few years to try to encourage more commercial landlords to accept monthly rental payment arrangements instead of the quarterly payments commonly used. Although the BRC began pushing for changes to the way retailers pay landlords before the recession, it has become an even more significant issue as many retailers are struggling to make ends meet.

The BRC has had some success in persuading more landlords to accept monthly rather than quarterly payments of rent by retailers. According to the BRC's Monthly Rents Survey, since January 2008 two thirds of new leases contain monthly payment terms. However, a BRC survey carried out at the end of last year showed that only 12 per cent of retail leases are on a monthly payment basis and 40 per cent of these are for a temporary period only, for example permitting the retailer to pay monthly for one year only. It was also found that 90 per cent of those who had switched to monthly payments had been, or would be, subject to extra charges.

Although the BRC's campaign has made good progress, there is still a long way to go to convince more landlords to accept monthly payment terms and to reduce the charges levied on those retailers who switch to this type of payment plan. As the effects of the recession continue to impact on businesses, it benefits both landlords and retailers to keep shops open where possible, rather than have empty premises. This can be more easily achieved if retailers do not have to find the funds for quarterly payments.

**Whether you are a landlord or a tenant, if you need advice relating to a tenancy agreement, we can help. Contact <<CONTACT DETAILS>>.**

## Tax

### **VAT – New Place of Supply Rules**

For suppliers of services, 1 January 2010 was an important date because the place of supply rules for cross-border services changed.

The new basic rule is that the place of supply of a trans-national service is the place in which the recipient of the service belongs, provided that the recipient is regarded as a 'taxable person'. You might think this would exclude a business person who is not registered for VAT in their own country, but this is not the case. The rule will apply

wherever the recipient is a business or a person acting in a business capacity, or indeed to an entity which undertakes both business and non-business activities.

In such cases, the recipient of the service must account for any VAT using the 'reverse charge' procedure.

As always, there are exceptions to the rule. These include the following:

- Supplies connected with immovable property (supplied where the property is situated);
- Short-term hire of transport (supplied where the vehicle is put at the disposal of the hirer);
- Cultural etc. services (supplied where performed, but this is due to change next year);
- Restaurant and catering services (supplied where carried out); and
- Transport of goods (supplied where the transport takes place).

For more information, see VAT leaflet 741A.

### **Landlords and Tenants – VAT on Cleaning**

HM Revenue and Customs (HMRC) have now published their interpretation of an ambiguous decision of the European Court of Justice (ECJ), made last summer, which is relevant for landlords that supply ancillary services to tenants.

It involved the common case in which the cleaning of a non-opted building is supplied by the landlord to the tenants, but a tenant is free to obtain cleaning services from a third party instead if they prefer. The ECJ ruled that in such a case there are two separate supplies for VAT purposes – an exempt supply of leasing and a standard-rated supply of cleaning services.

HMRC have decided that this means that where cleaning services are supplied by the landlord (or the landlord's agent) as a condition of the lease, there is a single supply. However, where the tenant has the choice of suppliers, there will be two separate supplies.

For tenants who have paid their landlord for cleaning but were not obliged to use the service under the terms of their lease, a claim to recover unclaimed input VAT may be available.

### **Revenue Target Medics and Minimum Wage Cheats**

Although we all know that it is sensible to take any newly-announced Government initiatives with a pinch of salt, when HM Revenue and Customs (HMRC) announce they are giving certain areas special interest, it is worth taking notice.

Recently, HMRC announced that they are intending to target doctors and dentists (for whom a 'disclosure window' has been opened, allowing disclosure of undeclared past income to be dealt with on a concessionary basis involving lower than normal penalties), and also employers who do not adhere to minimum wage regulations. With regard to the latter, HMRC are particularly targeting employers which use migrant labour and pay workers less than the minimum wage in order to undercut their competitors.

The disclosure window for medical professionals ends on 31 March 2010.

**Contact <<CONTACT DETAILS>> for advice on any tax matter.**

## Contract

### **Service Providers – New Disclosure Rules**

Providers of services in the EU are reminded that the Provision of Services Regulations 2009 came into effect on 28 December 2009. These require service providers to supply specified information to customers. In this context, a service provider is any organisation which normally supplies services for a consideration.

The required information includes the following (the list is not exhaustive):

- Name, contact details including address (postal, email or fax) and phone number – and contact details for rapid communication;
- The legal status and form of the business and its VAT number;
- The place where the service provider is established;
- Details of any authorisation scheme to which the service is subject;
- If the service provider carries on a regulated profession, details of its professional title;
- Contractual terms which apply, including any general terms and conditions and applicable law;
- The price of the service plus details of any after-sale guarantees provided which are not required by law; and
- Any professional liability insurance the service provider is required to hold.

Some services, such as health care, financial services and transport services are excluded. For further details see

[http://www.opsi.gov.uk/si/si2009/uksi\\_20092999\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20092999_en_1).

Further specified information must be provided on request and there are requirements to have a complaints handling procedure. Also, there must be no discrimination in the provision of the service because of the place of residence of the customer.

**Contact <<CONTACT DETAILS>> for assistance in making sure your business operates in compliance with the current Regulations.**

## Partnership

### **Ex-Partner Bound by Partnership Accounts**

In a partnership, the investment capital on which the business is founded is normally supplied (at least in part) by the partners. Their earnings are credited to their individual accounts in the business and the money withdrawn by each is deducted from their individual account.

When a partner retires, there will almost always be an amount due from the partnership to the partner or vice versa. A partnership agreement therefore normally contains a provision that the final partnership accounts for any period will bind the partners, so that there is agreement over the amount due to or from the retiring partner.

It is not unusual, however, for figures in the firm's accounts to be disputed. What is less common is the situation in which partners claim that the accounts do not bind them. A recent case dealt with precisely such a claim. An ex-partner claimed he was not bound by partnership accounts that covered the year during which he left the partnership because he was not a partner at the end of the year for which the accounts were prepared.

The argument was that the relevant clause of the partnership agreement, which contained a procedure for contesting accounts and which bound 'all partners', did not apply to the retired partner because he was no longer a partner.

The Court of Appeal made short shrift of the claim, deciding that the point of such a clause was to bind anyone who had been a partner in the business for any part of the year in question. It was clearly not intended to create a situation in which some of the partners during the year would be bound by the accounts and others not.

Says <<CONTACT DETAILS>>, "In this case, it needed the Court of Appeal to give the clarity to the legal relations which the partnership agreement did not. A well-drafted partnership agreement is a very sensible precaution, no matter how well you think you know your partners, or your prospective partners, and no matter how well you get along."

**Contact <<CONTACT DETAILS>> for advice on partnership and shareholders' agreements.**

## Intellectual Property

### **Inter-Company Transfer Does Not Defeat Employee Right**

The Patents Act 1977 normally provides that an employee who creates intellectual property (IP) as a result of their work for their employer does not own the IP thus created. Although the patent rights will remain with the employer, the employee is able to claim compensation where these confer a 'substantial benefit' on the employer.

Recently, industrial giant Unilever faced a claim from an employee under the Act. The patent concerned had been transferred from one member of the Unilever group, for whom the man who had created the IP worked, to another. The sum paid for the transfer was £200. Years later, the second company began to earn very substantial sums from the patent rights. Unilever argued that the sale of the patent rights from one company to another meant that no payment was due to the employee. Whilst agreeing that a strict reading of the law led to that interpretation, the High Court ruled that this could not have been the intention of Parliament. The employee was entitled to compensation.

### **Images from Counterfeit Games a Criminal Breach of Copyright**

Individual images displayed on a screen by a computer games console are sufficient evidence of a breach of copyright for the purposes of a criminal conviction. So said the Court of Appeal, in a recent decision dealing with counterfeit games.

In September 2008, Christopher Gilham was convicted at Worcester Crown Court of offences under the Copyright, Designs and Patents Act 1988. Breaches of the Act normally lead to civil actions, although certain activities, such as providing or marketing a service or device designed to 'circumvent technological measures' that exist to protect a copyright work, may give rise to a criminal prosecution.

In this case, Mr Gilham sold devices known as 'modification chips' or 'modchips', which, once installed in a games console, allowed counterfeit games to be played. His products could be used to modify Microsoft Xbox, Nintendo GameCube and Sony PlayStation games consoles.

At issue was the question of whether or not the playing of a counterfeit CD or DVD involved copying a substantial part of a copyright work. The prosecution at the original court hearing argued that, even though only a relatively small proportion of the game was copied into the console memory and then onto the screen at any one time, simply displaying images from the game via the console memory onto the screen meant a 'substantial part' of the copyright work as defined by the Act had been copied.

The Appeal Court judges held that creating an individual image for a computer game involved sufficient skill on the part of the artist to warrant being protected. For instance, in the case of the game character Lara Croft, an artist had designed and developed the cartoon image and, as such, any copy of the original work would be protected, whether on paper or in a computer memory.

Mr Gilham argued that the display on a screen cannot be a substantial copy of a copyright work because it is seen for only an instant. However, the Appeal Court judges held that this argument was irrelevant given that the Act states that a transient copy is a copy: the appeal was therefore rejected.

**"This case underlines the determination of the courts to protect copyright owners from software pirates and purveyors of devices intended to circumvent copyright," says <<CONTACT DETAILS>>. "If your intellectual property is under threat, we can help you to protect it and your business."**

## Insolvency

### **24/7 WebCheck Service**

Companies House has announced that from now on its 'WebCheck' company search service will be available all day every day...so, if a company owing you money is causing you to lose sleep, you can at least download their accounts in the middle of the night.

The WebCheck service is available at <http://wck2.companieshouse.gov.uk>

**For advice on any insolvency issue, please contact <<CONTACT DETAILS>>.**

## Data Protection

### **New Penalties for Serious Data Protection Breaches**

New powers, designed to prevent serious breaches of personal data security, are due to come into force on 6 April 2010. The Information Commissioner's Office (ICO) will be able to order organisations to pay up to £500,000 as a penalty for serious breaches of one or more of the eight principles in the Data Protection Act 1998 (DPA).

When serving monetary penalties, the Information Commissioner will take into account the circumstances surrounding the failure to comply with the DPA, including:

- the seriousness of the data protection breach;
- the likelihood of substantial damage and distress to individuals;

- whether the breach was deliberate or negligent; and
- what reasonable steps the organisation has taken to prevent breaches.

Factors to be taken into account when determining the level of the fine will include the type of organisation, its financial resources and the size and severity of the data breach, so that undue financial hardship is not imposed on the organisation.

Statutory guidance on how the ICO will use this new power can be found at [http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/ico\\_guidance\\_monetary\\_penalties.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/ico_guidance_monetary_penalties.pdf).

Information Commissioner, Christopher Graham, said, "Getting data protection right has never been more important than it is today. As citizens, we are increasingly asked to complete transactions online, with the state, banks and other organisations using huge databases to store our personal details. When things go wrong, a security breach can cause real harm and great distress to thousands of people. These penalties are designed to act as a deterrent and to promote compliance with the DPA."

In addition to these new powers, the Ministry of Justice has carried out a consultation on exercising the power to provide for custodial sanctions for those found guilty of knowingly or recklessly obtaining, disclosing or procuring the disclosure of personal data, without the consent of the data controller, and of selling or offering to sell personal data that has been obtained unlawfully. These are all offences under Section 55 of the DPA.

However, the proposals make it clear that the Government does not wish to prevent legitimate investigative journalism and there is therefore a proposal to commence, simultaneously, a new defence under Section 55 relating to the purposes of journalism, art and literature.

**Contact <<CONTACT DETAILS>> for advice on any data protection issue.**

## Employment

### **Whistleblowing – Allegations Arising During Tribunal Claims**

When someone believes they have been dismissed or suffered a detriment at work because they have made a protected disclosure under the Public Interest Disclosure Act 1998 (PIDA), they can bring a claim to the Employment Tribunal (ET). Last year, there were 1,700 claims involving PIDA allegations. Hitherto, however, the ET has taken no action regarding information arising from such allegations, which may relate to serious fraud, health and safety issues, financial irregularities etc. However, the Government has now published its response following consultation on implementing a practical system whereby this information can be passed by the Tribunals Service to the appropriate regulator for investigation, without unsubstantiated allegations being released into the public domain.

The system will work as follows:

When a claim is made under the PIDA, the Tribunals Service will, but only with the express permission of the claimant, be allowed to send a copy of the ET1 claim form, or selected extracts from it if this is necessary to comply with the Data Protection Act 1998, directly to the relevant regulator so that it can investigate if appropriate. The consent of the claimant will be obtained by them ticking a 'yes' box on an amended ET1 claim form. The form will be accompanied by guidance outlining what happens

when a claimant ticks the consent box and explaining that a claimant can contact the regulator directly if they prefer. Where a claimant consents to the information they have provided being passed to a regulator, the Tribunals Service will write to both the claimant and the respondent confirming that a copy of the ET1 form, or extracts from it, have been sent to the regulator.

The relevant regulators for the purpose of sharing ET claim information would be those on the list of 'prescribed persons' under the PIDA legislation. However, a sampling exercise revealed that the majority of PIDA claims are likely to be the responsibility of only a handful of these, namely local authorities, the Health and Safety Executive, the Care Quality Commission, Companies Investigation Branch, the Financial Services Authority, HM Revenue and Customs and the Serious Fraud Office. A phased implementation of the new procedure was therefore proposed, passing information to only these regulators initially. However, following the consultation exercise, the Government will explore whether it is possible for the Tribunals Service to take the proposed action with regard to all accepted PIDA claims from the outset.

The Government intends that the new system will apply to accepted PIDA claims that are received by the Tribunals Service on or after 6 April 2010.

**Contact <<CONTACT DETAILS>> for advice on any employment law matter.**

## Health and Safety

### **Pregnant Women and Risk Assessments**

The Management of Health and Safety at Work Regulations 1999 require all employers to carry out an assessment of workplace risks that could harm employees and to do whatever is 'reasonably practicable' to control these risks. In particular, Regulation 16 requires that where women of childbearing age are employed and the work is of a kind which 'could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any processes or working conditions, or physical, biological or chemical agents', the assessment must include risks specific to new and expectant mothers.

In *O'Neill v Buckinghamshire Council*, one of the claims made by Mrs O'Neill, a junior school teacher, was that the head teacher of the school where she worked had failed to carry out an assessment of the risks her job entailed after she was informed of Mrs O'Neill's pregnancy and that this constituted pregnancy-related sex discrimination.

The Employment Tribunal (ET) found that the employer had not failed in its duty to carry out a risk assessment as there was no need for one because the Regulations did not apply to Mrs O'Neill's work. Mrs O'Neill appealed, contending that the specific health and safety requirements with regard to new or expectant mothers meant that the Sex Discrimination Act 1975 (SDA) required a regime of positive discrimination regarding possible adjustments to a woman's work similar to that contained in the reasonable adjustment provisions of the Disability Discrimination Act 1995. She argued that in her case, once it was known that she was pregnant, a disciplinary procedure instigated on account of various aspects of her work should have been stopped. However, the Employment Appeal Tribunal (EAT) held that this claim sought to apply a model of law which the SDA does not support.

Mrs O'Neill further claimed that a risk assessment should have been carried out because of the potential risk to her health and safety from stress and the additional risk of catching coughs and colds. The EAT found, however, that no evidence was

produced to the ET from which it could have been concluded that Mrs O'Neill's work involved a risk of harm or danger to her as a pregnant worker as defined by the Regulations.

The EAT agreed with the argument put forward for Buckinghamshire Council that there is no general obligation to carry out a risk assessment with regard to all pregnant employees so that a failure to do so amounts to discrimination per se. Whilst it is clearly prudent for employers to carry out a risk assessment for all pregnant workers, the obligation to do so will only be triggered in certain circumstances. These are where:

- the employee notifies the employer in writing that she is pregnant;
- the work is of a kind which could involve a risk of harm or danger to the health and safety of the expectant mother or her baby; and
- the risk arises from either the processes or working conditions or physical biological chemical agents in the workplace.

Furthermore, there is nothing in the relevant law to indicate that the employer must hold a meeting with the pregnant worker in order to satisfy the duty to carry out a risk assessment. The employer must, however, inform the worker of the results of the risk assessment. Where risks to the health and safety of a pregnant worker have been identified, the employer must provide comprehensive and relevant information concerning these and must do all that is reasonably practicable to remove or prevent exposure to them.

**Says <<CONTACT DETAILS>>, "Employers are advised to make sure they are aware of and fulfil their legal obligations in this regard. We can advise you to make sure you act in accordance with the law and are not open to claims of unlawful sex discrimination."**

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