

## We're expanding with new recruits!

Wall James Chappell are pleased to announce that Roger Bishop, a former partner of Challinors Solicitors joined the firm in November 2012 as a consultant.

Roger will be supporting the firm's Litigation and Dispute Resolution Team led by Jane Beale as it continues to raise its profile across the West Midlands. He is a senior practitioner with huge experience of handling and resolving legal issues for corporate, commercial and private clients. His role at Wall James Chappell will utilise his in-depth commercial knowledge and business acumen to assist the firm to increase its profile and strengthen its contacts with local businesses. Roger is also joined by his assistant from Challinors Tanya Hill-Thompson and his Secretary Roxanne Watson.

Roger said of his move:

*"I wanted to find a legal practice I respected to enable me to continue to give and oversee the full range of service and advice my corporate and private clients expect – Wall James Chappell has given me just that opportunity. The firm has an excellent and growing reputation and I'm looking forward working with the team and integrating my clients into the practice and also give the benefit of my 50 years experience in the legal profession to help expand the firm and its clientele".*



Head of the Litigation and Dispute Resolution Team, Jane Beale added:

*"We are delighted to welcome Roger and his clients to Wall James Chappell. Roger has an established reputation in the Black Country, Birmingham and further afield for his expertise created over many years service to his clients and the community. He adds substantial experience and knowledge to our existing Litigation and Dispute Resolution Team".*

# Time to re-gear

by Ruth Latham, Partner in our Commercial Property Team



In the current economic climate lease re-gearing and extensions are becoming increasingly popular for both landlords and tenants. It provides an opportunity for a tenant to agree a reduction in rent with the landlord in exchange for agreeing to extend the lease term.

The changes can be documented by:-

1. A variation of the existing lease to deal with the reduction in rent and any other changes together with the entering into at the same time of a reversionary lease (substantially on the same terms as the existing lease) which will take effect at the end of original the term; or
2. A surrender of the existing lease and the grant of a new lease; or
3. A Deed of Variation dealing with all matters including the extension of the term which in law is treated as a surrender and re-grant so in practice is no different to option 2.

Advice needs to be taken on structuring the deal; one of the main considerations is minimising Stamp Duty (SDLT) liability.

Under options 2 and 3 SDLT is calculated on the whole of the term although credit is given by way of overlap relief for SDLT already paid. However, if the existing lease was granted prior to the introduction of SDLT in 2003 then no relief is available which could result in significant SDLT liability.

In order to minimise SDLT many re-gearings are structured by way of the first option. Guidance provided by HMRC confirms that although the effective date for SDLT purposes is the date of the lease it is the start date which could be, say, in 5 years' time which is used for calculating the net present value on which SDLT is calculated.

If you require any more advice on re-gearing or on commercial property generally please contact

**Ruth Latham on 01384 398312 or [r.latham@wjclaw.co.uk](mailto:r.latham@wjclaw.co.uk)**



## November

WJC Partner, James Rousell, took part in this year's Movember raising over £250 for Prostrate and Testicular cancer charities. James had to grow a moustache for the whole of November. James said "It was great to raise money for such an important cause although it was a relief to shave off my moustache at the end of November. Despite looking rather silly, I would like to thank everybody who sponsored and supported me."

## Charity investment and legal seminar

In association with Wolverhampton's Transforming Local Infrastructure project, Wall James Chappell Solicitors and Origin Financial presented a New Year's Legal & Investment Seminar for Charities on 24 January 2013.

The seminar provided senior members of staff, board directors and trustees of charities with an opportunity to explore ways of making informed legal and investment decisions in the current climate.

The speakers at this event were Philip Chapman of Wall James Chappell, and Simon Williams of Origin Financial. Philip is an experienced specialist charities lawyer and Simon's firm, Origin, offers an extensive range of financial services to charities including investment advice, banking and cash management advice.

Further charities symposiums will be held throughout the year with the Charity Trustee Investment Association providing regular market updates covering topical issues to charities.

# State Funding of Nursing and Residential Care The Current Position?



by James Rousell, Solicitor at Wall James Chappell

The fear of having to sell your home to fund the cost of future nursing or residential care is a major concern for many people. A recent report by the Local Government Information Unit indicates that a quarter of pensioners who end up in nursing care will lose their home and almost all of their savings. Whilst the recent Dilnot Report initially provided some hope that there would be a cap or limit put on the contributions that an individual would have to make towards the costs of their own care, the current position is very unclear.

It is estimated that there are more than 400,000 people in 18,000 nursing/residential care homes in the UK and three quarters of these are privately owned. The Dilnot Report had proposed that there would be cap of £35,000 on an individual's contribution towards the costs of their care but, with the Government estimating that the cost of implementing the Dilnot proposals would be £1.76 billion per annum, the Treasury has indicated that is far too expensive - particularly in the difficult economic times. If a cap is ever introduced it is likely to be much higher than £35,000 (perhaps £60,000-£70,000) and is not expected to be introduced before 2015/16 at the earliest.



The current statistics show that the average cost of nursing/residential care in the U.K. is approximately £27,000 per annum. Those who are self-funding typically spend about four years in care with 12% of those staying in care for eight years or more. It is also estimated that up to 40,000 people every year have to sell their home to pay for the costs of care.

Under the current system, if an individual has more than £23,250 in assets (including the value of their house in which they live) then they will, generally, be expected to pay for the costs of their care themselves and in many cases will be expected to sell their home to fund this care. The local authority will only contribute to the costs of care if an individual's capital falls below £23,250 in value and will only fund all of the costs of that care, if the value of an individual's estate falls below £14,250. There are some exemptions that may apply and in some exceptional circumstances an individual's nursing care costs may be funded by the NHS.

I find that most clients do not object to having to pay for the costs of their care per se but do resent the fact that other people, who may not have worked or saved for retirement, have the costs of this care fully funded by the local authority. In addition, many clients tell me that having worked very hard all their lives, they are desperate to leave a 'nest egg' for their own children/grandchildren. The fear that this nest egg may be eaten away by the costs of nursing or residential care is often distressing.

The good news is that there are various options available to safeguard some or all of your property should you require nursing or residential care in the future. These options may not be suitable for everybody but it is worth taking some professional legal advice. By implementing some fairly basic planning, it may be possible to ensure that the value of your house or home is preserved for your children or grandchildren.

If you would like any further advice, please contact [James Rousell](mailto:j.rousell@wjclaw.co.uk) on [j.rousell@wjclaw.co.uk](mailto:j.rousell@wjclaw.co.uk) or call 01384 371622.

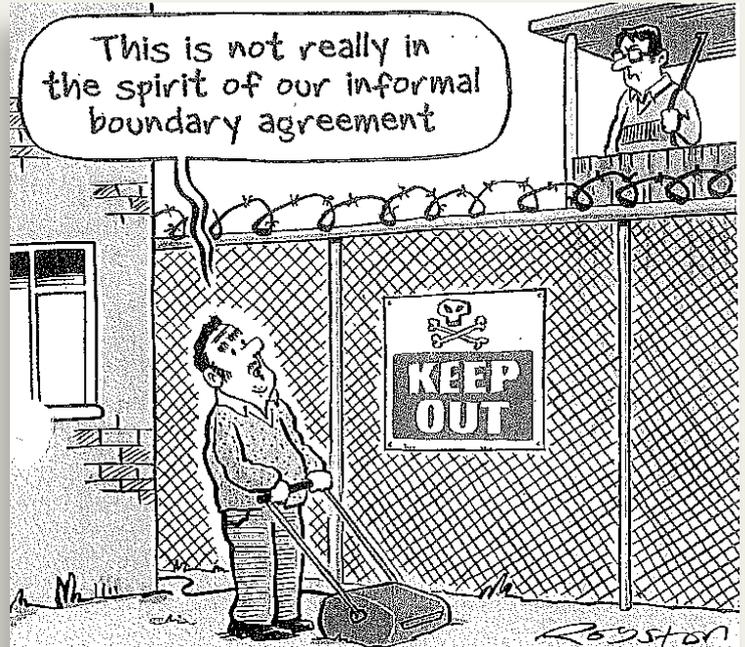
# Boundary Disputes Use of Court, A Last Resort

by Roger Bishop, Solicitor at Wall James Chappell



Litigation over disputed boundaries can be complex and expensive. Simon Barker QC sitting as a High Court Judge recently stated "but a person remains entitled in law to protect and preserve that which is his or hers". The Judge helpfully summarised the principles which apply in determination of boundary disputes:

- For registered land, the file plans usually show only general boundaries and not the exact line of the boundaries.
- Ordnance Survey plans are usually no more than a general guide to boundary features and should not be scaled up to delineate an exact boundary.
- The starting point is the language of the conveyance, aided by the conveyance plan, or guided by the plan if it is stated as being definitive.
- If the conveyance does not bring clarity, recourse may be had to extrinsic evidence, such as features which existed at the time of the conveyance.
- Admissible extrinsic evidence may include evidence of subsequent conduct if this is probative of what the parties intended.
- Evidence of features post-dating the conveyance may or may not be relevant.
- It is important to bring certainty to the boundary, rather than leaving it 'fuzzy at the edges'.
- Where a boundary line can be determined by reference to a conveyance, other evidence may establish a different boundary as a result of adverse possession.
- An informal boundary agreement need not be in writing, because it demarcates an unclear boundary rather than transferring an interest in land.
- Boundary agreements are usually oral, but can be inferred or implied.
- The court must also have regard to what a reasonable layman would think he was buying.



In practice, this means any consideration of a disputed boundary will be a multi-layered exercise. The court will start by considering the conveyance pursuant to which the boundary was created. Any plan attached to the conveyance will be of particular significance if the property is said to be 'more particularly described in the plan'. If the position of the boundaries can be clearly established from the conveyance, no further evidence can be considered on the issue unless there is a claim for rectification of the conveyance.

If the position cannot be clearly established, the court will move on to look at the extrinsic evidence, including the subsequent conduct of the parties. That may require a very detailed analysis of documents, plans, photographs (including aerial photographs), expert surveying and cartographic evidence and witness evidence.

All of this shows why litigation over disputed boundaries can be so complex and expensive, often (in the words of Judge Barker QC) 'economic madness'. It is one of the areas where emotions (as well as costs) run particularly high. Given the uncertainty involved in most disputes of this type, ALTERNATIVE DISPUTE RESOLUTION should be of great attraction. If settlement is not possible, the parties should be ready to deal with the issues stated above.

Following legal advice, the appointment of a specialist mediator/arbitrator would be the most cost effective and speedy way forward to resolve the matter.

For more information contact [Roger Bishop](mailto:r.bishop@bjlaw.co.uk) on [r.bishop@bjlaw.co.uk](mailto:r.bishop@bjlaw.co.uk) or 01384 371622.

# Launch of Online Services

Wall James Chappell have launched an innovative Online Legal Services website, <http://www.wjc-online.co.uk> that will allow clients to prepare their own Wills, Living Wills and Powers of Attorney online by completing an interactive questionnaire. The online service may be suitable for those clients who are not local to our offices or for those who simply do not have the time to arrange a face-to-face meeting with a solicitor. All questionnaires and completed online documents are checked and fully vetted by one of our qualified solicitors.



James Rousell, a Partner in WJC's Private Client department said that "our online service will provide a new alternative, efficient and convenient way to connect with new and existing clients. It will give our clients online access to various legal documents where they are able to instruct us by answering an interactive questionnaire, at any time and from anywhere. We can then prepare a client's Will or Power of Attorney which, once finalised, can then made available for them to download online at their convenience".

For more information visit [www.wjclaw-online.co.uk](http://www.wjclaw-online.co.uk)

## Corporate golf day at Blackwell

**SUPPORTING**  
Mary Stevens Hospice



Wall James Chappell will be holding its annual corporate golf day at Blackwell Golf Club on Friday 5 July 2013. Last year the event raised £1,000 in aid of Mary Stevens Hospice.

Last year forty five players took part including participants from Barclays, Nat West, Allied Irish, CK accountants, Nicklins, Butcher Woods, Wilkes Tranter and Origin financial. The firm is proud to offer support to the Hospice through this annual fundraising event and we look forward to welcoming more corporate teams this year to raise even more money for such a worthwhile cause.

# WJC and DKRFC

Wall James Chappell are proud to continue as main sponsors of Dudley Kingswinford Rugby Football for the 2012/2013 season. The club are currently sitting mid-table in National 2 North and have put in some excellent performances so far this season, most recently against Luctonians RFC and Darlington Mowden Park RFC. DK's league match v Stourbridge RFC on the 22nd December 2012 saw over 1000 spectators attend Heathbrook – it was a great match but unfortunately, Stourbridge ran out eventual winners 29 -7.

Just a reminder that Wall James Chappell offer a 10% discount on all legal fees for members of Dudley Kingswinford RFC.



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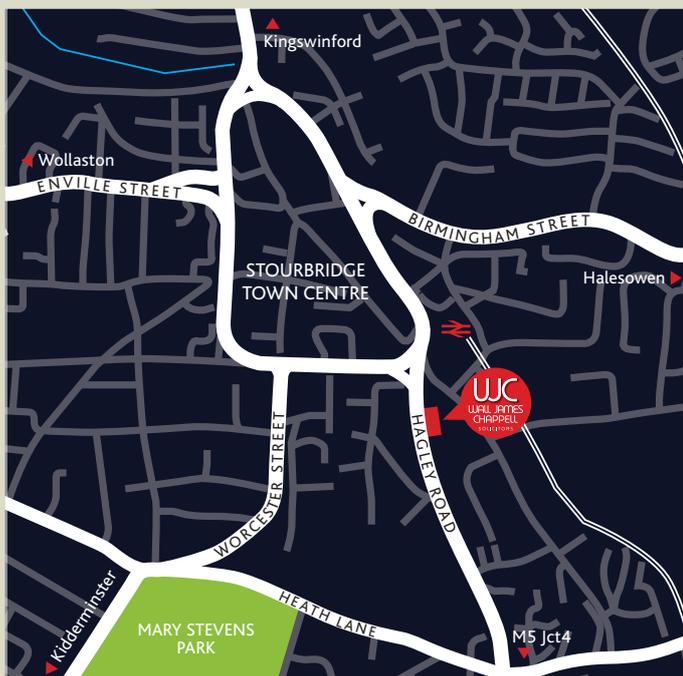
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