

# Brief Encounters

THE QUARTERLY MARTIN KAYE  
SOLICITORS NEWSLETTER

SUMMER 2023 - ISSUE 1

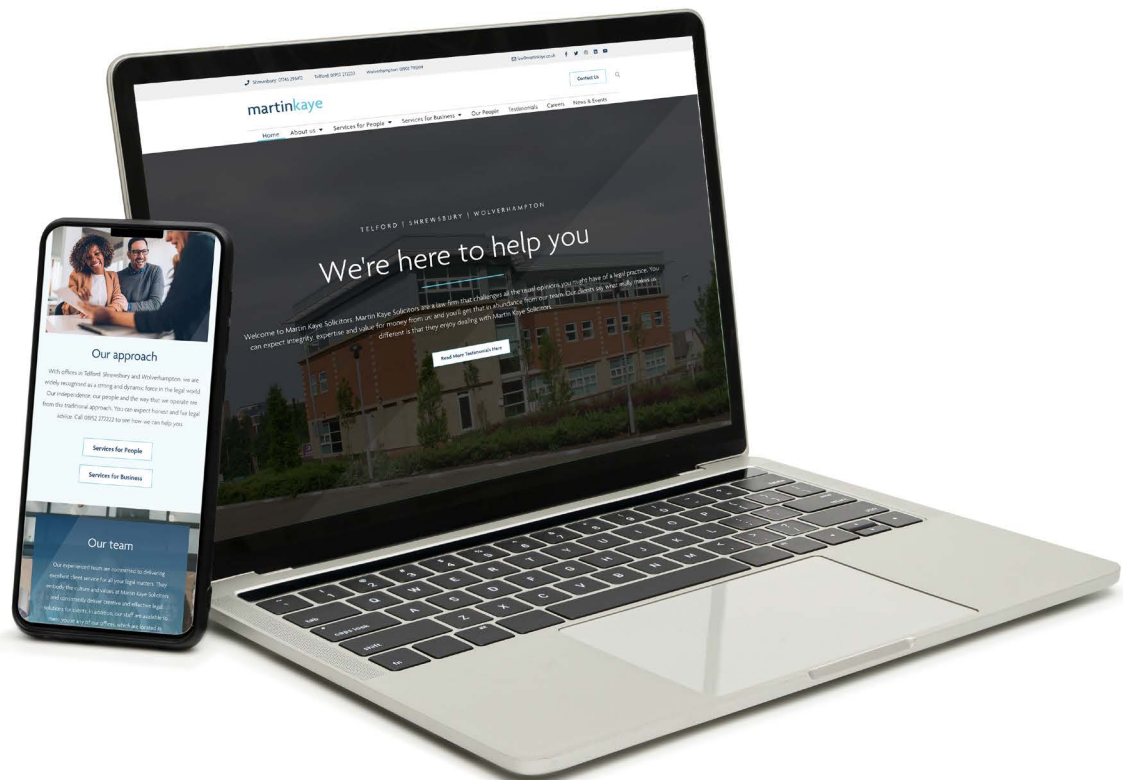
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[martinkaye.co.uk](https://martinkaye.co.uk)





## New website launched

The new Martin Kaye Solicitors website has been launched. The website was designed with the client in mind, and has much-improved functionality, navigation, photos, staff profiles and company news across the whole website.

It was launched during March, and the new website not only demonstrates professional expertise in the world of individual and commercial law, but also emphasises the individual services that are on offer, like Family, Wills, and Probate, Employment law advice for employees and employers, Private Property, Personal Injury, Commercial Property, Litigation, Intellectual Property and Disputes.

This new website marks an exciting milestone for Martin Kaye Solicitors. The website fully outlines the vast array of services that are on offer and new clients will be able to gain a better understanding of how Martin Kaye Solicitors can help them in a variety of legal areas.

As Martin Kaye Solicitors approaches its fortieth birthday in 2025, its founding principles have always remained the same: to be reassuringly different. This commitment has helped them become one of the leading law firms in the West Midlands and helped build long last partnerships and relationships with businesses and families alike.



*“We are overjoyed to finally have the new website up and running for our clients to use. We are delighted at how much more functional and improved it is in comparison to the previous one and the feedback that has been nothing but positive from both our clients and our staff already”.*

**John Mehtam**

Partner and Head of Commercial Services



# Drop-in clinics prove to be a success

Martin Kaye Solicitors were delighted to launch a series of free employee drop-in clinics through the early part of 2023.

The clinics have been designed so that employees can attend to discuss their own employment issues with Employment Solicitor, Mary Minns. The clinics are taking place in two of the three of Martin Kaye Solicitors offices; in Shrewsbury and Telford. They were launched to assist employees with any issues that they may have, including dismissal from their job, being threatened with dismissal, being the subject of discrimination, redundancy and any unpaid wages or holiday pay.

Emma Palmer, Associate and Head of Employment at Martin Kaye Solicitors, commented: *"We were delighted to open our doors to members of the public to discuss their employment issues with them. The clinics were designed to help employees with any cases of misconduct by employers unfair or wrongful dismissal."*



The clinics will continue at the Martin Kaye Solicitors offices in Shrewsbury and Telford. Head to the Martin Kaye Solicitors social media pages to find out where and when the clinics will be taking place.



## Unfair dismissal explained

Unfair dismissal is when an employer does not have a fair reason or has not followed a fair procedure to dismiss you.

Your employer cannot dismiss you without good reason. The law recognises that there are five potentially fair reasons for dismissal:

- Your conduct (i.e. you've continually been late, not turned up for work or demonstrated poor discipline).
- Your capability (i.e. you cannot do your job properly).
- The result of redundancy.
- Illegality (i.e. your employment breaches a legal obligation).
- Another substantial reason.

Not only does your employer need to establish a fair reason for dismissal, but they also need to follow a fair procedure. If your employer can establish a fair reason for dismissal but have failed to follow a fair procedure, this may still amount to unfair dismissal. Unless you have been dismissed due to gross misconduct, then your employer should give you the minimum amount of notice that is stated within your contract. Should you be successful in your claim for unfair dismissal, then you

can expect to receive either compensation or reinstatement to your previous job. However, the most likely result would be compensation. Compensation is based upon a basic award which is calculated in accordance with your age, length of service and weekly salary. In addition, you may be entitled to recover any losses incurred up to a maximum of one year's salary or £93,878, (whichever is the lesser sum).

The Tribunal will deduct any earnings you have received from any new employment since your dismissal. In order to claim for unfair dismissal, you would need to have worked for at least two years continuously and must make a claim within three months of your dismissal.

Please note that this does not constitute to legal advice. If you feel that you have been unfairly dismissed then do not hesitate to contact us for specific advice relating to your particular situation.





## No fault divorce

Last year, the Divorce, Dissolution and Separation Act 2020 came into force and it has completely reformed the way in which couples can obtain a divorce.

Prior to the new legislation being introduced, the divorce petition needed to be issued on the grounds that the marriage had broken down irretrievably and one party had to take the blame for one of the following reasons: adultery, unreasonable behaviour or desertation. Once two years had passed, the consent of the other party would be needed before a divorce petition could be issued. It wasn't until five years had passed that a party could apply for a divorce without another party's permission. Going through a breakdown of a relationship is stressful enough, with plenty of tension, anxiety and sometimes animosity involved, which will only be increased with the requirement to have blame.

The new legislation removes the need of evidence to blame one party. One of the facts discussed above, though maintaining the principle that the only grounds for divorce is the irretrievable breakdown of marriage. This is often referred to as the 'no fault' divorce process. The reform is designed to relieve some of the stresses that will be faced by couples, and, in turn, the children in the family. With one party taking the blame, the resulting animosity and tension causes problems in negotiations regarding the division of assets and arrangements for children. The introduction of the new legislation should make the resolution of these issues much less problematic. The following key changes were made when the Act was introduced:

- No fault divorce - irretrievable breakdown of the marriage is still required, but the need to provide evidence of one of the five statements is no longer required. Replacing this will be a 'Statement of Irretrievable Breakdown', which allows couples to separate amicably, instead of putting the blame on one or the other.
- Joint applications - despite individuals being able to apply on their own, the new law allows couples the opportunity to make joint applications, providing that they have both agreed that the relationship has broken down irreversibly.

- Removal of 'defended divorce' - individuals can no longer defend divorce proceedings issued against them, instead they can 'dispute' the divorce under very limited grounds.
- Terminology - the 'petitioner' is now called the 'applicant', the 'Decree Nisi' is now called the 'Conditional Order' and the 'Decree Absolute' is now called the 'Final Order'.
- Period of Reflection - although the requirement of a minimum period of separation has been removed, the new legislation introduces a period of twenty weeks from the start of proceedings before a Conditional Order can be applied for. This period of meaningful reflection is designed to allow the parties to attempt reconciliation where appropriate, or to resolve matters relating to children or finances. The six weeks from the making of the 'Conditional Order' to the making of the 'Final Order' has been maintained. Therefore, even the smoothest of divorces will take at least seven months.

Despite the introduction of the new legislation, Martin Kaye Solicitors advise that you seek expert legal advice before taking any action. The procedure of divorce may be relatively straightforward, but the divorce process does not address financial issues or any matters regarding children, both of which require careful consideration.

At Martin Kaye Solicitors, our helpful, friendly and experienced team are here to help you decide on the best possible solution. We have specialist expertise in dealing with the complexities of the division of assets after a relationship has broken down, especially where businesses, pensions, trusts and investments are involved. As well as being experts in the legalities of divorce, we have vast experience in cohabitation agreements, unmarried relationship breakdown, child disputes, financial disputes and domestic violence. It is our approach to explore all avenues in order to resolve disputes quickly, amicably and cost-effectively.

# Claiming for personal injury after tripping

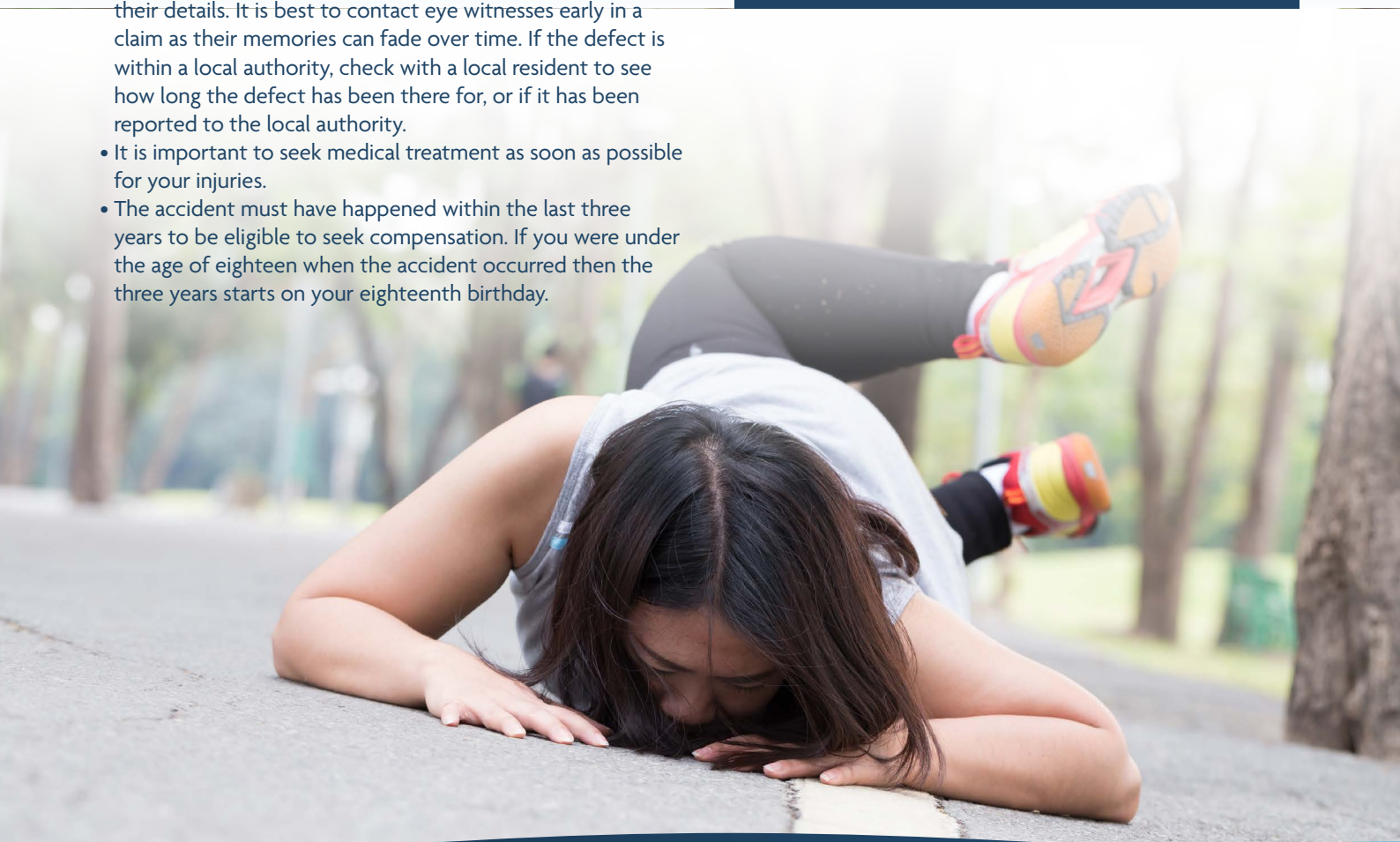
The Personal Injury Team at Martin Kaye Solicitors have decades of experience and have won millions for thousands of clients. At Martin Kaye Solicitors, we regularly deal with claims where people have fallen as a result of a defective pavement, roads or defects on private land.

These types of claims can be against the local council or private landowners. Local councils will rely on standard defences to deny liability for these types of claims. They will argue that they have regularly inspected the location and the defect was not present at their last inspection and they have not received any reports of the defect which would have made them aware of its presence. These claims are difficult for this reason, so it's vital to gain evidence to support your claim by doing the following:

- Take photographs of the defect and surrounding area. The photos should include some measurement with them; ideally with the length, width and depth shown. (It's useful to use a fifty pence piece to show how big the defect is). Take photographs close up and in its surrounding area so the location can be identified. Mark on the photograph the direction of travel.
- Ensure that you note the location of the accident. Are there any properties nearby? Make a note of the addresses near the location.
- If there is a witness, or more than one witness, take down their details. It is best to contact eye witnesses early in a claim as their memories can fade over time. If the defect is within a local authority, check with a local resident to see how long the defect has been there for, or if it has been reported to the local authority.
- It is important to seek medical treatment as soon as possible for your injuries.
- The accident must have happened within the last three years to be eligible to seek compensation. If you were under the age of eighteen when the accident occurred then the three years starts on your eighteenth birthday.

Remember that the more evidence that can be gained at the beginning of the claim in support, the better it will be for the claim to be successful. Martin Kaye Solicitors are happy to assist with any personal injury claim, whether that be in a road accident, an accident at work, a motorcycle accident, injuries to children or an accident in a public area. We will help you get the best possible result in the fastest possible time, with the minimum of fuss, disturbance and distress to you.

Please get in touch with the team for a free consultation and without obligation at [claims@martinkaye.co.uk](mailto:claims@martinkaye.co.uk) or 0845 644 6378.





# Blue Light Discount

Martin Kaye Solicitors is offering a Blue Light Discount for some of its individual client services.

Martin Kaye Solicitors is pleased to announce the launch of its Blue Light Discount scheme and we are offering discount off our services in Wills and Probate, Conveyancing and Family.

The Blue Light Discount is a national scheme to support individual workers from the emergency services, NHS, social care sector and the armed forces for the incredible work that they do in the face of adversity every single day.

Martin Kaye Solicitors will be offering a 10 percent discount for Martin Kaye Solicitors' services for new clients who are wishing to put together a Will or an LPA, buying or selling a property or utilising Family Services such as divorce, financial matters, cohabitation disputes and child arrangements.

John Mehtam, Partner and Head of Commercial Services at Martin Kaye Solicitors, commented: *"We are delighted to be able to offer a discount to individuals who work so hard to keep everybody safe. If you have a Blue Light Card and need assistance with a Will or an LPA, buying or selling a property or with a relationship breakdown or a divorce, please do get in touch and we will be happy to help you with our discounted services"*.

To use the Blue Light Discount at Martin Kaye Solicitors, simply present a valid Blue Light Card at an initial consultation with one of the team at any of the three office locations.



**BLUE LIGHT CARD™**

## Pop-Up Stand

Martin Kaye Solicitors have been bringing its services and the team to its clients every month throughout 2023.

We are pleased to say that we have held pop-up stands in Telford Town Centre every month since February and will continue to throughout the summer.

The purpose of the stand is to be more accessible to the public who are welcome to speak to the Martin Kaye Solicitors team to discuss the services in Wills and Probate, Personal Injury, Disputes, Family, Litigation, Commercial Property, Employment and Private Property.

Head to Martin Kaye Solicitors' social media channels to find out when the next pop-up stand will take place.




# Forfeiting a commercial lease for rent arrears

From time to time, we are asked by landlords or their agents whether they can forfeit a commercial lease for rent arrears.

The law in this area is very technical and it is easy to go wrong. Here are some key points to consider:

1. First of all, have a written lease in place with a right of re-entry / forfeiture in the events of (i) non-payment of rent; (ii) breach of a condition or covenant in the lease; or (iii) the insolvency of the tenant or a guarantor. All professionally prepared leases should contain this right. If there is no right of re-entry, it is unlikely that the landlord can forfeit the lease.
2. For most breaches the landlord, before forfeiting, must serve a 'section 146 notice' on the tenant requiring the tenant to remedy the breach. However, where the breach is non-payment of rent, a section 146 notice is not required.
3. Landlords must be careful not to waive their right to forfeit. Once the landlord has the ability to forfeit (e.g. rent is due but not paid) they must not do anything that acknowledges the continued existence of the lease. The most common example is demanding or accepting rent. Such acts may amount to a waiver of the right to forfeit for the breach in question. The right to forfeit can, however, arise again later on for fresh breaches.
4. If the decision is taken to forfeit, engage specialists to re-enter and secure the premises. The re-entry must take place peaceably and therefore it is probably best to effect it outside of the tenant's business hours.
5. Be aware that once a lease has been forfeit, the tenant can apply to the court for relief, i.e. a court order allowing the tenant to go back into the premises as if the forfeiture had never taken place. However the court will usually only grant relief if the tenant clears all the arrears and pays the landlord's costs. Sub-tenants and mortgagees can also apply for relief in some cases.



The key advantage of forfeiture is that it provides a much faster route to possession than obtaining a possession order from the court. However, forfeiture brings an end to the lease and in a poor climate the landlord might not want a vacant property. A landlord might forfeit tactically in the hope that the tenant applies for relief meaning that the arrears are likely to be cleared. However the tenant cannot be compelled to seek relief.

## Recouping the costs of debt recovery

It is bad enough when customers do not pay invoices, yet businesses then have to incur costs in pursuing bad-payers.

It is often thought that the costs of recovery action cannot be claimed. It is true that in most types of legal claim, legal costs cannot be recovered if the claim is resolved before court action becomes necessary; or where court action is started but the matter is allocated to the 'small claims' track (usually for claims below £10,000 in value). However, there are special rules that apply to business-to-business debts.

Under the Late Payment of Commercial Debts (Interest) Act 1998, a business is entitled to a fixed sum of between £40 and

£100 depending on the value of the debt claimed. If that fixed sum does not cover the actual costs that have been incurred, the business will be entitled to "the reasonable costs of the supplier in recovering the debt". This is the case whether or not court proceedings have been started, or if they have been allocated to the small claims track. This is an under-utilised provision meaning that the reasonable costs incurred by a business collecting in bad debts can be added to the debt, so as not to leave the business out of pocket.

# Areas of speciality

Martin Kaye Solicitors have long been established as one of the most reputable and helpful solicitors firms in Shropshire and the West Midlands. Whether you are an individual or a business, then the friendly and helpful specialist legal staff are here to help you.

## WILLS & PROBATE



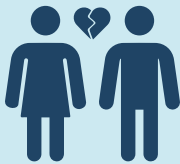
## PERSONAL INJURY



## DISPUTES



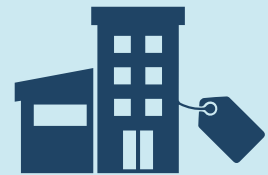
## FAMILY



## COMMERCIAL LITIGATION



## COMMERCIAL PROPERTY



## INTELLECTUAL PROPERTY



## EMPLOYMENT



## PRIVATE PROPERTY



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