

# Brief Encounters

THE QUARTERLY MARTIN KAYE  
SOLICITORS NEWSLETTER

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# Leading the way in the West Midlands

As Martin Kaye Solicitors reaches its fortieth birthday in 2025, the firm will continue to do what it has always done and that is to put the client first.

With offices in Shrewsbury, Telford and Wolverhampton, the ever-growing law firm which has expertise in a variety of different areas can offer their services in all three of its locations across the West Midlands. The firm has specialised solicitors in Employment, Family, Wills and Probate, Commercial Litigation, Commercial Property, Residential Property and Personal Injury, so no matter what area of law you need expert advice in, the firm will be happy to see you at an office location that is convenient for you.

## Free Drop-In Clinics

Martin Kaye Solicitors has launched free drop-in clinics for its services in Employment and Personal Injury.

The firm will run the free clinics at their Shrewsbury and Telford offices through September.

If you feel as if you have been treated unfairly, discriminated against, been the subject of unfair or constructive dismissal, had any issues with redundancy or had any unpaid holiday, then please head long to an Employment drop-in clinic with Employment Solicitor Mary Minns. If you have had an accident, such as an accident at work or in a public place that was not your fault, please speak to Legal Executive Sarah Mears at a Personal Injury drop-in clinic.

You can view when the clinics take place at [www.martinkaye.co.uk/drop-in-clinics-martin-kaye-solicitors](http://www.martinkaye.co.uk/drop-in-clinics-martin-kaye-solicitors)



Mary Minns



Sarah Mears



## Free HR Club

Martin Kaye Solicitors have launched a HR Club for local business owners and human resources professionals.

Martin Kaye Solicitors started the HR Club to provide ongoing HR training for HR professionals across Shropshire and the West Midlands. The first club, which took place at the end of April, was dedicated to 'Sickness Absence', with the second taking place in July, which was based around 'Discipline and Grievance'. The club allowed attendees to learn about the best practice of managing sickness absence and discipline and grievance in the workplace. The session was widely praised by the new club members, as they took time to heap positive feedback on the speakers.

The next HR Club will take place on Thursday 5th October, again at the Telford office and will focus on 'Bullying, Harassment and Discrimination'. The Employment Team are excited to welcome back attendees from the previous session and any new attendees that may be interested in learning more about this subject.

Attendees are able to register to attend the event by heading to this link here: [www.martinkaye.co.uk/register-for-hr-club](http://www.martinkaye.co.uk/register-for-hr-club)



# What am I entitled to in a divorce settlement?

One of the most frequently asked questions and a question that is asked early in the divorce process, is 'what am I entitled to in a divorce'?

The court follows the legal principles from legislation and case law in making its decision, although each judge has a discretion to do what they perceive to be appropriate on the evidence in each case. This means the precise outcome of financial court proceedings can be quite difficult to predict.

The statutory principles are set out in Section 25 of the Matrimonial Causes Act 1973 and Part 5 of Schedule 5 of the Civil Partnership Act 2004. The court's first consideration is the welfare of any children involved. Alongside that, when determining an appropriate division of resources, the court considers:

- Each person's income, earning capacity, property, and other financial resources, available now or in the foreseeable future.
- Each person's financial needs, obligations, and responsibilities, relevant now or in the foreseeable future.
- The standard of living enjoyed by the family before the breakdown of the marriage.
- Each person's age and the length of the marriage.
- Any physical or mental disability.
- Contributions made, or likely to be made in the foreseeable future, to the welfare of the family, including any non-economic contribution.
- The conduct of each of the parties; if that conduct is such that it would, in the opinion of the court, be inequitable to disregard it (although it is rare for conduct to be considered).
- The value of each of the parties to the marriage or civil partnership of any benefit which that party will lose the chance of acquiring.

The decision that the court makes must be fair and must consider each party's needs and the sharing of any wealth above that which fulfils each party's reasonable needs.

When dividing assets, the court will measure the result against a benchmark of a 50/50 asset split to assess whether anything other than that is justified. In some cases, one person's (or the children's) needs will require a higher proportion of the capital assets, for example, for housing, or sometimes the court's order may reflect that one person came into the marriage with significantly greater assets than the other.

In certain circumstances, an agreement made before or during a marriage (a pre-nuptial or post-nuptial agreement), which can also have a significant effect on what the court decides.



## What can the court do?

The court can make financial orders to divide up the assets and income. The court's powers apply to all property in which either or both parties have an interest, (which may also, in certain circumstances, include assets in companies or trusts). Orders the court can make include:

- An order for the sale of a property, a transfer of a property to one person (or a child) or an order to put a property into a trust – in some cases it may be appropriate for one of the parties to receive their share of a property at a later date. For example, when any children have reached the age of eighteen, or completed their education.
- An order for a sum of money (a lump sum), payable in one sum or by instalments, or by a series of lump sums, for example, to pay off a mortgage.
- An order for one party to pay maintenance to the other party, either for the rest of their joint lives or until the recipient remarries, or enters a subsequent civil partnership, or for a fixed period (which can be for either a non-extendable or extendable term).
- Less commonly, an order for the educational expenses or special needs of a child, but not usually for general child maintenance, which will be dealt with via the Child Maintenance Service, unless agreed between parties, except at higher income levels where the court can make a 'top-up' order.
- An order that a pension be shared or attached. Pension sharing is where pension funds are transferred or split between the parties creating two separate pension schemes, and a pension attachment order is like maintenance direct from a pension but can be a lump sum.

In very few cases, the outcome will be an order that is made by the court at a final hearing as most parties will reach an agreement with the assistance of their family lawyer prior to that stage.

# Getting injured in a public place

Trips, slips and falls can happen anytime and anywhere. If you are injured through no fault of your own, then you may be able to make a claim for compensation.

There are a number of different scenarios, for example, accidents that take place in public places such as supermarkets, restaurants, shops, bars, or pubs can be caused for different reasons like spillages, freshly cleaned floors without signage, boxes being left on the floor, uneven or damaged walkways and damage to steps without adequate railings.

The occupier or owner of these premises has a duty to keep visitors reasonably safe. So, if you have been injured due to their negligence, then you may be able to claim for compensation. To do this and be successful with your claim, you will need to prove that the occupier or owner didn't take reasonable steps to keep you safe. To do this, you will need to consider the following points:

- Risk assessments to identify potential hazards
- Training of staff to look out for hazards
- Policies or procedures to regularly check for any hazards
- Regular cleaning and inspections to look out for hazards and clear them up

The law differs from privately owned premises which are open to the public to local authority owned land. Under the Highways Act, local authorities have a duty to ensure that they have taken reasonable steps to prevent users of the highway from getting injured.

We see a lot of injuries that have occurred after trips, slips or falls on public highways, which has been caused in a variety of ways, including:

- Uneven or raised ground and paving slabs
- Potholes
- Ironworks, including manhole covers, being left uncovered, or damaged covers not being repaired

Local authorities are required to have systems of inspection and must check for and fix hazards in a timely manner. The frequency of inspection will vary depending on the location of the roads and paths and how busy the area is. Some areas may only need to be checked annually but busier locations should be checked up to as often as once per month. The local authority will need to prove that checks have been carried out, and for a claim to be successful, it will need to be proved that the authorities haven't completed their duties of care. As well as this, it will need to be proved that the defect that caused the incident is sufficiently dangerous enough to have warranted repair by the local authority, if it was identified as being a hazard on inspection. The general rule is that the defect must be over one inch deep on the pavement and over two inches deep on the road, but circumstances may change on a case-by-case basis.

If you have been injured in a public place and would like to explore a personal injury claim on a no win, no fee basis, please get in touch with our Personal Injury team today on [pi@martinkaye.co.uk](mailto:pi@martinkaye.co.uk) or 0800 975 6066.



# Avoiding Employment Law Disputes

With employment tribunals having the potential to cost businesses over £100,000 per case, it pays to be legally compliant when it comes to employment law.

Upon the determination of a successful Unfair Dismissal claim, the Tribunal Judge can award a financial sum. The financial sum is made up of two awards, a basic award and a compensatory award. The basic award is calculated in accordance with age and length of service of the individual, similarly to that of statutory redundancy pay. **The maximum basic award for unfair dismissal is £19,920.** A compensatory award can be awarded with the maximum compensatory award for unfair dismissal being £105,707 or 12 months' salary, whichever is the lesser amount. **In cases that do not comply with the ACAS code of practice, there is also the ability for the Tribunal to increase any award by up to 25%.**

In a discrimination matter, compensation is uncapped and therefore this can give rise to very high valued claims.

A monetary award in a discrimination claim consists of loss of earnings which does not have the same limit as unfair dismissal cases and an injury to feelings payment. Injury to feelings is measured by way of a Vento band and the current rates for this are £1,100 - £11,200 for low band, £11,201 - £33,700 for mid band and £33,701 - £56,200 for the most serious cases. For the most exceptional cases they are capable of exceeding the £56,200 threshold.

As you can see, a claim can cost your business a large amount of money and therefore it is so important to take steps to eliminate any risk. To ensure that your business is legally compliant, we have listed some top tips to ensure that these sorts of claims are prevented before they occur:

## RECRUIT CORRECTLY.

Find the right person for the right position. Some tribunal cases are brought by people who don't make it past the interview stage, so don't ask discriminatory questions, such as questions to female interviewees about starting a family. Our best advice is to limit small talk to as little as possible. Small talk will place you at a risk without you even realising.

## INDUCTIONS ARE REQUIRED.

It's important to start off on the right footing. Induct your new staff into the company and the position. Best practice is to allow them to meet people around the business, encourage them to go to someone senior for advice, encourage them to bring their own ideas to the table and tell them what the policies and procedures are.

## ENSURE THAT THE CORRECT POLICIES AND PROCEDURES ARE IN PLACE.

A new member of staff should have their contract of employment either before they commence work or one their first day of employment. Make sure that they

know their rights and responsibilities and keep policies up to date by reviewing them regularly.

## KNOW YOUR OWN PROCEDURES.

It is important to make sure that you know your own procedures and follow them accordingly. Failure to follow your own procedures won't sit well in Tribunal.

## KEEP STAFF TRAINED.

Ensure that staff are kept up to date with procedures within the Company and aware of the expectations placed upon them.

## HOLD APPRAISALS.

This is a good opportunity to discuss your employee's development and/or any issues affecting their performance or that of the team. It is a genuine opportunity to spend time appraising them and to keep records of any actions agreed in the meeting for both the employee and their manager. Employees who are appraised tend to be more productive and have higher morale. An appraisal is positive for both parties as it gives the opportunity for issues to be raised at an early stage without the need for them to escalate further.

## BE APPROACHABLE AND PROACTIVE.

Ensure that your managers are approachable so that staff feel that they can raise issues with their manager. If a manager sees an issue whether that be bullying, victimisation, discrimination etc – don't wait for it to escalate. Nip it in the bud as soon as you can.

## EXIT INTERVIEWS.

Do not allow it to get to the stage where an employee leaves and you don't know why. Carry out exit interviews with anyone who leaves the business; these meetings are frank discussions about the reasons why the employee is leaving. Use the feedback gained to make positive changes around the business if there are any areas for concern and act upon any issues that arise as a result of this particular individual leaving.

## SEEK LEGAL ADVICE.

At Martin Kaye Solicitors, there is a team of dedicated employment law specialists who can help you prevent claims before they occur. If you would like to discuss further, please contact **0845 450 1561**.

## Exposing Company Directors

During 2016, the law relating to the disqualification of company directors was extended to allow for a 'compensation order' to be made.

A compensation order cannot be made unless the company of which the individual was a director is formally insolvent (usually administration or liquidation). The director must either have been disqualified by the court or agreed to be disqualified. Disqualification will only take place where the director has been involved in some sort of misconduct, has committed an unlawful act, or is found to be unfit to manage a company. Therefore, responsible directors that comply with their duties need not to be concerned.

However, in cases where the company is insolvent and a director has been disqualified, they will be exposed to the risk of a compensation order where their conduct has caused loss to the company's creditors.

In the case of *BIS vs Eagling*, prior to its liquidation, Mr. Eagling caused his company, Noble Vintners Limited, to pay almost £560,000 to another company owned by him, without any justification. The court found that to have caused loss to the company's creditors. Mr. Eagling had not taken any steps to try and repay the money and the liquidator did not have any funds

to try to recoup any moneys from him. Therefore, the Department for Business, Industry and Skills (BIS) applied for Mr Eagling's disqualification and a compensation order. The court found that "Mr. Eagling's misconduct was of the most serious sort", disqualified him for fifteen years and ordered him to pay the entire amount back to make good of the loss to the creditors.

Prior to the introduction of compensation orders, Mr. Eagling may not have faced action. However, this case makes clear that in cases where directors misconduct themselves at the expense of creditors, the court will be only too willing to impose personal liability on directors when the circumstances demand it, even if a liquidator or administrator does not bring a claim. Traditionally, claims against directors of insolvent companies have been based on the loss suffered by the insolvent company. Here, the test is loss to the creditors which may impose a significantly greater liability.



## Martin Lewis and Martin Kaye are advising the same thing

Having watched Martin Lewis on the Money Show Live recently, we found that aside from the name Martin, we have more in common.

On the ITV show, Money Saving Expert founder, Martin Lewis, explained how you have no control over where your money and assets go after you die, unless you have a will in place.

This is something that we at Martin Kaye Solicitors have been trying to instil in our clients for a long time. You do not want to be in a position where your estate is in limbo, because no one has a legal power to deal with that estate.

On the show, Martin Lewis explained how under current rules in England and Wales, known as intestacy rules, if you are married, or in a civil partnership and you don't have a will, if your estate is worth

less than £270,000, then everything will automatically go to your spouse. But if the estate is worth more than £270,000 and there are children involved, the spouse would then inherit half of the remaining assets and have a life interest in the other half, which would then be ultimately divided equally between the children, no matter how many of them there are. However, if you make a legal will, you can decide who deals with the matters, who inherits and how much.

Martin Lewis explained that it is "especially important" to consider a will if you're not married or in a civil partnership. In the eyes of the law, it doesn't matter if you have lived together for many years

and had several children together, legally a partner would not get anything without a will in place.

Our advice at Martin Kaye Solicitors is don't take this chance, protect what you have or are working so hard for in life. Our basic single will is £240 + VAT, which you may feel is expensive, but you can't put a monetary value on piece of mind and protection for loved ones at a difficult time. If you need any advice when it comes to Wills, Probate and Administration of Estates, Lasting Powers of Attorney, Court of Protection or Family Disputes, please get in touch with our expert team on **0845 644 6359**.



# The Process of Buying a Home

Buying a home can be perceived to be an intimidating process, but when it is broken down, it doesn't have to be.

## STEP ONE: PREPARING TO SELL YOUR HOME

If you're not a first-time buyer, selling your home before you start searching for your next property will put you in a stronger and better position as a buyer.

## STEP TWO: SAVING FOR A DEPOSIT

Saving for a budget is made easier if you aim to save a regular sum each month. To do this, it is helpful to plan your monthly spending budget. Tax-efficient saving accounts like ISAs and LISAs can maximise your returns and you can get decent bonuses if you're a first-time buyer. You need to be between eighteen and forty to open a LISA.

## STEP THREE: GETTING MORTGAGE READY

You will need to get a credit report in great shape before a lender looks at it. Credit reports provide an insight into your payment behaviour and lenders will use them as part of their decision-making process. It's a good idea to check your credit record, just in case there are any errors which could affect your credit score. Checking your own rating is viewed as a 'soft check' and won't impact your score. You will need a lot of paperwork to back up a mortgage application, which includes a passport, three months of bank statements and pay slips. You will also need to have at least one utility bill in your name at your current address and you should be on the Electoral Roll.

## STEP FOUR: WORK OUT YOUR BUDGET

Buying a property is a big step which involves a long-term financial commitment so think about what you can afford. You will need to consider your savings as well as the money that's coming in and going out.

## STEP FIVE: FINDING OUT HOW MUCH YOU CAN BORROW WITH A MORTGAGE

Every lender has different ways of calculating how much they will be able to lend you, or if they can lend to you at all. Your income, size of your deposit, regular

expenditure and credit rating are all taken into consideration.

## STEP SIX: APPLY FOR A MORTGAGE IN PRINCIPLE

A Mortgage in Principle is the next step that can make a difference when it comes to searching, viewing, and offering on a home. This is a personalised document confirming an amount of money which a lender believes that they would be able to lend you, based on the information that you have shared at this stage. This isn't a legal requirement, but a lot of estate agents will ask you to have one, which is only increasing.

## STEP SEVEN: RESEARCH WHERE YOU WANT TO LIVE

Do some research and get to know the area that you want to live in. Sometimes, it's good to have a walk around it and get a sense of what it would be like to live there.

## STEP EIGHT: START SEARCHING FOR YOUR HOME

Setup some property alerts so that you're the first to learn about new properties and price reductions. Keep visiting local estate agents in person to register your interest in the area. Agents will be more likely to remember you if you've met and will bear you in mind when they get new instructions.

## STEP NINE: MAKING AN OFFER

It's important to know your budget to decide on a maximum limit from the start. When you're ready to make an offer to the estate agent selling the home, it's a good idea to let them know your circumstances.

## STEP TEN: ARRANGING A MORTGAGE

This step of the process needs to be done quickly. The seller will want to see progress to avoid any unnecessary delays in getting the surveys and other legal work done. Complete the application form and send them the documents that they require, including proof of ID, evidence of earnings, proof of address over the last few months

and your bank statements.

## STEP ELEVEN: LENDER'S VALUATION AND SURVEYS

The lender will arrange for a qualified surveyor to inspect the property you're looking to buy and check its value.

## STEP TWELVE: HIRE A SOLICITOR OR CONVEYANCER

This is where Martin Kaye Solicitors comes in to assist. Conveyancing is the process undertaken by the buyer's or seller's solicitors of transferring the legal ownership of property or land from one person to another. Once you have had your offer accepted, inform your solicitor, so that we can request and review contract paperwork, order council searches and report to you upon your mortgages documents.

## STEP THIRTEEN: EXCHANGING CONTRACTS

Once the survey and searches have come through and your mortgage is approved, you will be ready to exchange contracts and put down your non-refundable deposit.

## STEP FOURTEEN: PREPARING TO MOVE

Some important things to remember include redirecting your post to your new home, informing your utility companies that you're leaving your current home and set up your landline and WiFi. You will also have stamp duty tax which is payable in England and Northern Ireland within two weeks of completing your sale. We will arrange this for you. There are equivalent taxes to pay in Scotland and Wales.

## STEP FIFTEEN: COMPLETING THE SALE

This part is where you anxiously wait for a phone call from your solicitor that will let you know that the funds have gone through and you can finally collect the keys to your new home and you're ready to move in!



## 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



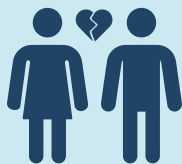
### PERSONAL INJURY



### DISPUTES



### FAMILY



### COMMERCIAL LITIGATION



### COMMERCIAL PROPERTY



### INTELLECTUAL PROPERTY



### EMPLOYMENT



### PRIVATE PROPERTY



### SHREWSBURY



**Martin Kaye Solicitors**  
3 - 4 St. John's Hill  
Shrewsbury  
Shropshire, SY1 1JD  
**01743 295412**

### TELFORD



**Martin Kaye Solicitors**  
The Foundry  
Euston Way  
Telford, TF3 4LY  
**01952 272222**

### WOLVERHAMPTON



**Martin Kaye Solicitors**  
Bredon House  
321 Tettenhall Road  
Wolverhampton, WV6 0JZ  
**01902 793399**