

McCormicks Briefing

Summer 2019



Building business
Shareholder agreements
Young Achievers



McCormicks
SOLICITORS

The head of our Family Law department has been elected President of Harrogate District Law Society (HDLS). Partner Stephen Hopwood takes over from outgoing President Andrew Gray in the role.

Presidential Role

HDLS is made up of lawyers from across the district and brings together the legal community to campaign on issues important to the public, such as access to justice, court funding and modernisation of laws.

It also represents an industry sector that has grown 30 per cent in the last few years and is an important part of the economy and job market in Harrogate and district.

The society is currently being incorporated, with a view to assisting with the growth of the legal sector in Harrogate and district and during his tenure, Stephen hopes to see this process finalised.

He said: "We also want to follow in the footsteps of our sister society in Leeds by setting up the district as an Area of Legal Excellence which should develop and grow both the economy and the job market.

"I also want to promote courtesy and kindness in the profession to help wellness and mental health in a pressured environment."

Stephen is a specialist Family lawyer who has expertise in all aspects of Family work, with a focus on finance and children. He has extensive experience in resolving normal family breakdowns and those with complex elements such as trusts and international elements.



The new President of Harrogate District Law Society Stephen Hopwood, left, receives the chain of office from outgoing president Andrew Gray

Senior Partner Peter McCormick has been named as the Leading Lawyer outside London for the Technology, Media and Telecoms (TMT) sector, which includes Sport.

Awards roll in



Peter McCormick OBE has been named as a Leading Lawyer in the Technology, Media and Telecoms sector

Peter received the Award from the UK Legal 500, one of the leading guides to the legal profession, at an event in London earlier this Spring.

The UK Legal 500 conducted 70,000 interviews with in-house counsel and law firms to pinpoint the most capable, expert practitioners and firms across a number of different business sectors.

Peter McCormick said: "Being singled out as Individual of the Year by my peers is a great honour, particularly in a sector which offers such complex legal challenges."

The firm's clients in the sector include the Premier League, Leeds United FC, Plantagenet Media, InTechnology PLC and P4 Software.

In addition, the practice has been recognised

in the SME News 2019 Legal Awards, taking the title of "Best Sports and Entertainment Lawyer 2019", as well as taking no fewer than four Awards in the ACQ Law Awards, namely Regional Commercial Litigation Law Firm of the Year; Regional Corporate and Commercial Law Firm of the Year; Regional Private Client Law Firm of the Year; and Regional Sport, Media and Entertainment Law Firm of the Year.

Blooming marvellous

Congratulations to our friends at Helen James Flowers on Station Parade, Harrogate, after Helen was named RHS Chelsea Florist of the Year 2019.

Many of our readers will have seen Helen's work as she has kindly provided the flowers for the Yorkshire Young Achievers Awards for many years now.

There was also another Gold Medal for the Welcome to Yorkshire garden at this year's Chelsea Flower Show.



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Joint owners of businesses are unlikely to see eye to eye every step of the way so having a legal framework in place ensures a sensible way to reach solutions and meet expectations.

Getting it right first time

A shareholders' agreement can help to set a clear path. Solicitor Emily Steed sets out below a number of provisions that shareholders should consider including in a shareholders' agreement.

Decide at the outset

What are the plans for the long term? If shareholders have different expectations about how long they intend to hold their shares it can create difficulties.

Plans for funding

How will future funding for the business be obtained? Whether by equity, shareholder loans or external bank debt, differing expectations, and differing levels of willingness to participate, can cause issues.

Share clauses and dividends

Define the nature of the different shares



that everyone will hold and what rights will be attached to them. Dividend policy is also important and should be established. Will the company pay out a percentage of its distributable profits each year or will it reinvest them for capital growth?

The Board

Decide on the composition of

the Board. Which shareholders will have the right to appoint directors? How often will meetings be held? Who will be chairman and will they have a casting vote?

Reserved matters

Are there any decisions that the company cannot take without shareholder approval, for example, changing the articles, restructuring

the share capital, taking bank loans or buying and selling significant assets?

Share transfers

A standard provision is to have pre-emption rights so that anyone looking to sell, has to offer their shares to existing shareholders first. Should there be exceptions to this rule (i.e. transfers to family members)?

Drag and tag rights

Drag rights allow a majority shareholder to "drag" minority shareholders into a transaction, while the "tag" allows minority shareholders to tag along with the majority when looking to sell shares.

Compulsory transfer

Under some circumstances, such as when a shareholder has done something wrong or left the business, the remaining shareholders may wish to have the right to compel them to sell their shares. There are different mechanisms to set the price at which they have to sell in those circumstances.

Restraint of trade

Shareholders are usually party to sensitive information and it is a perfectly reasonable expectation of shareholders to guard against any shareholder running a competing business, both while they continue to hold shares and for a period of time afterwards.

Deadlock

Even if all the above steps are taken, there may come a time when there is a fundamental disagreement between shareholders which could affect the continuation of the business. Including a mechanism to cover this eventuality can be key to finding a positive resolution.

Emily Steed is a Solicitor in our Corporate and Commercial department.

Emily graduated from Durham University before completing the Legal Practice Course at the University of Law in York.



Emily Steed

Emily has experience in the following matters:

Acting for individuals and companies on corporate transactions for the sale or purchase of businesses or shares;

- Reviewing and advising on company and business structure including drafting partnership and shareholders' agreements and articles of association;
- Assisting with incorporations,

re-structuring and general company administration;

- Negotiating and reviewing a wide range of commercial contracts, including agency and sub-contractor agreements; and
- Updating terms and conditions and privacy policies.

Emily also has a keen interest in IP law and regularly deals with trademark applications and assignments.

Show Time!

McCormicks has once again sponsored the bandstand at the Great Yorkshire Show.

England's biggest agricultural show celebrates its 161st anniversary this year from Tuesday 9 – Thursday 11 July and we

look forward to seeing many of the practice's friends during the event.

July also sees the 16th Theakston Old Peculier Crime Writing Festival, of which McCormicks is a sponsor, from Thursday 18 – Sunday 21.

Among the headliners are Jed Mercurio, Jeffrey Deaver, Ian Rankin, Harlan Coben and Val McDermid.

Involvement in a construction project of any size? Our Head of Commercial Litigation, Partner Philip Edmondson says it is essential to have the right documents and comply with them to avoid something worse than rough justice.

Build business the right way

Whenever you are getting involved in a construction project, however large or small, it is critically important that you have your ducks in a row by way of proper contracts and a good team of professional advisers. The pitfalls for the unwary are as numerous as they are nasty.

Whether you are the developer, the builder, the architect or the subcontractor, you run a very serious risk if you do not deploy the right contractual documentation and ensure that adherence to it is monitored and updated throughout the construction process.

More and more, our litigation team is seeing parties to development projects fall out and quite often we are finding that their contractual documentation is either defective or has not been referred to when seeking to resolve the disputes. Failure to adhere strictly to the terms of a contract in construction scenarios can lead to very "rough justice". By rough justice I mean, where a party might be in the



Whether you are the developer, the builder, the architect or the subcontractor, you run a very serious risk if you do not deploy the right contractual documentation and ensure that adherence to it is monitored...

right with a chance at redress in many other scenarios, the terms of a construction contract are often so prescriptive and the timeframes so tight, they may be denied a remedy. This is why having someone to advise you on the right construction contract to use and how to comply with it and what to do if things go wrong, can be absolutely critical.

One useful suite of industry-recognised construction contracts which the parties can choose are JCT Contracts (in the spirit of balance I must note that other standard

contract suppliers are available!). JCT was established in 1939 by the Royal Institute of British Architects and the National Federation of Building Trades Employers. JCT have devised contracts for most forms of construction project ranging from a single dwelling or extension to a huge commercial skyscraper.

JCT contracts explained

First of all, you must make sure that you receive advice from an experienced person on what to include and, just

as importantly to delete, in a JCT Contract. JCTs use a standard form to minimise the cost of entering into a contract and provide benchmark provisions so that few things are left out and unnecessary things are not included. This is very useful, but you should still seek expert help in deciding what should be in there.

JCT contracts facilitate the process of delivering a building project. In simple terms they set out the responsibilities of all the parties within the process and their obligations to each other. In this way it is then clear

what work needs to be done, who is doing it, when they are doing it by and for how much.

Under the JCT, if you are property owner and/or developer you are defined as the employer within the contract and the contractor as the contractor. The other entity which will need to be a party to the contract will be the architect or project manager.

The JCT approach clearly defines the parties' responsibilities and apportions risk in a way that is appropriate for the project they are supporting. This apportionment will differ between a minor single residential development and a large-scale commercial build. It allocates risk in a fair and rational way and reflects the benefits that have been accrued through both legal and best practice precedent over the years.

JCT contracts will be well recognised by the professional team such as the lawyers, architects and building contractors involved in a project. It therefore reduces enormously the amount of time and resources required to get

to the start point of your project.

When things go wrong - Adjudication

A JCT Contract will always be very clear and prescriptive about deadlines for payments, attempts to pay less than is sought, notifications to be provided by the architect or the employer and all other payment-related items.

The timescales for corresponding with the other parties with regard to monetary issues are generally tight and strict. In many instances failure to comply with a timescale will lead to the loss of important rights and financial prejudice. Accordingly, it is critical that you seek advice from your professional team the moment there are signs of trouble or you disagree with another party to the contract's position on a monetary issue.

If matters are not resolved then the parties have a right to submit their grievances to an adjudication. This is a statutory scheme prescribed by and

detailed in the Housing Grants, Construction and Regeneration Act 1996, commonly known as the Construction Act. Adjudication is a process whereby an experienced surveyor or lawyer will review the parties' evidence within a swift 28-day timeframe and reach a decision. The decision is usually determinative of the dispute between the parties as the courts are very reluctant to look behind an Adjudication Award.

Adjudication is itself a "rough justice" approach to dispute resolution which contains tight timescales and potential draconian punishments for not engaging with it in a swift and professional manner.

McCormicks can assist with any dispute relating to construction projects whether by Adjudication, court proceedings or (hopefully) before it has reached either of those points. We are also well connected to other professionals who can assist with the non-contentious aspects of any construction project.

Partner Philip Edmondson is Head of our Commercial Litigation team and has received personal recommendations in the independent UK Legal 500 and Chambers guides.

He has a wide range of experience across a large spectrum of commercial litigation work, including claims involving breach of contract, sports disputes, insolvency, professional negligence, partnership disputes, landlord and tenant, dilapidations claims, HM Land Registry and matters with multi-jurisdictional elements.

Philip has worked for

a large variety of clients ranging from PLCs and large private companies to family businesses and individuals. He is also experienced in using appropriate forms of alternative dispute resolution to try to resolve disputes quickly and cost effectively, wherever possible.



Philip Edmondson

Clients and friends of the firm gathered at Harrogate's RedHouse Originals Gallery for the latest in our series of Out of Office events this spring.

Picture this

A Tracey Emin print, "The Kiss" proved a hot topic of conversation for the evening which was organised by Emily Steed of the Corporate and Commercial department. She said: "Our warmest thanks to Richard McTague for allowing us to enjoy the gallery again and to Sarah Lancaster for her assistance and hospitality on the night."

Places are limited and anyone interested in attending should email Emily at e.steed@mccormicks-solicitors.com for more details.



Sandra Doherty and Paul Varley



Fiona Conway and Peter Johns

The next Out of Office event will be a wine tasting and barbecue at the award-winning Yorkshire Heart Vineyard at Nun Monkton at 4pm on Thursday 13 June. Transport from Harrogate and back will be available and is expected to leave town at 3.20pm, returning at 8.40pm.



From left are Simon Armitage, Matt Manakee and Lee Rycraft

The practice now has a third Duty Solicitor who can appear for those facing Magistrates' Court proceedings following the qualification of lawyer Brian Nuttney to the Criminal Litigation Accreditation Scheme (CLAS).

Duty calls

Duty Solicitors represent people who do not have a solicitor but require legal representation, both at the police station and in court.

Brian, part of our Corporate Crime, Fraud and Risk team, joined the firm five years ago. He was awarded a degree in Law from the University of Law in 2013, having successfully completed

the Graduate Diploma in Law and Legal Practice Course at its York centre, gaining commendations in both.

Before switching to law, Brian enjoyed a successful career in journalism and was the Deputy Editor of the Yorkshire Evening Post and, prior to that, the Bradford Telegraph & Argus.

Partner Peter Minnikin, who heads the Crime team, said: "Brian's qualification means that we will be able to help even more people who need legal representation, often under stressful circumstances at the

police station or in court."

McCormicks has been recommended for its work in Crime, Fraud and Licensing in the latest edition of the UK Legal 500, a leading guide to the legal profession.



Solicitor Brian Nuttney

Our Yorkshire Young Achievers Foundation grant recipient and Award winner Jessica Mayho has made another major step forward in her hammer-throwing career by representing Great Britain in the European Throwing Cup.

She did it!



A proud walk through the airport in team GB kit for Jess

Jess travelled to Samorin in Slovakia in March, resplendent in her team GB kit, to join 330 athletes taking part in the event. She threw a personal best to end up rising up the European rankings.

As always, she kept us informed so here, in her own words, is a look into the world of an up-and-coming athlete.

doing and sending their well wishes.

"The facilities in Samorin were incredible. I saw so many world-class athletes, that I have followed for the last few years through social media, but I had to keep my cool and not let that break my concentration when training.

"Competition day arrived and I felt really

felt really good and was marked as 64.36 metres, a big personal best, but the official said it was a foul throw because I touched the board. We protested this decision as on our video footage it didn't show the foot foul, however the decision was not over-ruled and it remained a foul. The following two throws I ended up fouling so the pressure was on and on my fourth throw I knew I just needed to keep my cool and believe. My fourth throw 63.69metres, another personal best! Phew!

"Initially post competition it was a bit of a bitter sweet moment, throwing a PB but knowing I had thrown a bigger PB on the first round. But after the initial emotions and time for reflection I am really chuffed with the result. I went into the competition ranked 30th out of 33 and I came 25th overall in Europe, but had the best experience I could have ever wished for on my Great Britain debut and it was so special having Mum and Dad come out to watch too.

"I left the competition having gained valuable competition experience, a taste of what I could have but most of all a healthy body ready to consolidate on this performance back in the UK. I got home on the Monday night and I was back in work at 7.30am on Tuesday morning – back to reality.

"Finally, I titled this email "we did it" because without the support from Yorkshire Young Achievers I really would have struggled

to be in this position to have achieved selection for Great Britain and go onto get a personal best. Thank you for always believing in me, it sounds cliched but competing for Great Britain has always been a dream of mine and with your help you've made my dreams come true!"



Enjoying the facilities in Samorin

"British Athletics requested we all travelled in team kit, which was amazing and made me feel so proud - especially going through the airport and people asking what competition we were

calm and ready. I was in pool B of the senior women's hammer (Pool A had Olympic competitors, previous World Champions and the majority had 70 metre upwards personal bests. My first-round competition throw



With dad and mum, Dennis and Helen

Congratulations



Warm congratulations to our friend, client and sponsor of the Yorkshire Young Achievers Awards, James Cundall, who was

awarded the MBE in the New Year's Honours. James, who is Chief Executive of Lunchbox Theatrical Productions,

was presented with the MBE for services to the entertainment industry by the Princess Royal in February.

James also created the Shakespeare's Rose "pop-up" theatre in York last summer.

Our grants programme has continued apace in 2019 and among the beneficiaries are youngsters at a Leeds special school.

New wheels and more!

John Jamieson School in Oakwood caters for more than 230 pupils aged from three to 19, all of who have special needs, including physical disabilities, sensory impairments, autism and degenerative medical conditions.

The grant will go towards providing outdoor trikes, bikes and ride-ons for primary school children.

Assistant Principal Vicky Fisher said: "We passionately believe that play is important for our children to enable them to build social relationships, speech and language and communications skills, motor development and for their social, emotional and mental well-being. We have limited but precious outdoor space and

are currently working hard to develop play provision in school."

The grant will provide 16 bikes or trikes, along with role play road safety accessories to help with work on road safety.

In addition, a series of play panels will be added to Jenny's Playground, a new play area at the school which opened last year.

There were also new wheels for a Harrogate youngster who relies on a buggy to get out and about with her family.

Isla Lakin, seven, can now go to the beach, thanks to a grant from the Yorkshire Young Achievers Foundation.

Isla has autism and has difficulty walking for long periods. Her family uses a buggy not only to get to school and back but also for family outings. She is terrified by loud sounds and traffic noises so the buggy also helps to keep her safe so that she does not bolt in to the road.

However, when she needed a new, bigger, buggy, it came without a bug net or all-terrain

wheels. Her mother, Fiona, said: "She loves being on the beach, especially remote beaches away from the hustle and bustle of lots of people and the sensory problems associated with crowds. But her buggy needed special wheels to cope with the sand, so we applied for a grant for these and for a 'bug net'.

"Thanks to the help of the Yorkshire Young Achievers Foundation, we have already been able to make a trip to Saltburn to test out her new equipment and she had a fantastic time."



Receiving the grant from Vice-Chairman Richard Stroud are, from left, Interim Assistant Principal Vicky Fisher, Grace Fu, Elijah Smith, Harvey Ballard, Neve Prince and Azure Jacobs



Isla Lakin enjoys a day on the beach at Saltburn with her adapted buggy

Save the date

Book your place at this year's Gala Awards Dinner on Thursday 7 November we can promise you won't be disappointed!

Every year we think our Young Achievers cannot be any better and every year we are proved wrong.

Join us for a champagne reception, three-course dinner, some super prizes and an entertaining and inspiring evening at the Leeds United Centenary Pavilion.

Tickets are priced at £65 each or £600 for a table of ten and you can book now by downloading a booking form at www.yorkshireyoungachievers.co.uk/gala-dinner.html and sending it to: Sonia Jones, McCormicks Solicitors, 35-37 East Parade, Harrogate, HG1 5LQ.

Nominations for the 2019 Yorkshire Young Achievers Awards open very soon.

Pick a winner

If you know anyone aged 35 or under who was born, lives or works in Yorkshire and who is worthy of recognition for their achievements in whatever field, please let us know.

You can complete a short nomination form at www.yorkshireyoungachievers.co.uk/nominations

Following a successful stint chaperoning Team Roompot-Charles on previous Tours de Yorkshire, Commercial Property specialist Heather Roberts, who speaks three foreign languages, was back on duty this year, this time assigned to women's team WNT Rotor based in Germany (formerly Sheffield) and with an international team and crew. Here is her story.

On Tour



"Arriving at the hotel to meet my new team in drizzly Barnsley, I am thinking the micro puffa jacket and my TdY duffle was not such a bad idea! Weather forecast is not looking good. Get the lowdown on our timetable for the next two days' racing. Some very early starts! Like many of the women's teams, it's a lot leaner crew than the men's: one director, Dirk; one mechanic, Sebastian and one physio/soigneur, Megan, supplemented with local physio Dan from Sheffield.

"Stage 1 Barnsley – Bedale. It's going to be a grizzly day of pedalling and all the waterproofs are on. Scoot back to the hotel because Kathrin has left her winter bike shoes there. Luckily she has some others to start the race with which is just as well as by the time we get back to the hotel it has already started. Dan and I are to meet the team at the feedzone which amusingly is at Beckwithshaw, a road I know well, so we get the best parking spot! As the team comes past we've already

got one casualty, Lara, who is struggling with a shoulder injury. She needs to be fit for racing in China the following week so she's in the back of Meg's van. We whack the heat up (these athletes have no natural insulation on them!) and we're off to the finish line. Bedale is buzzing and the rain has cleared.

"Stage 2 Bridlington – Scarborough. It's 06:50

and it's actually snowing on Garrowby Hill! Brutal on the sea front and we're taping thin foam sheeting down the front and back of the team's bib shorts to keep out the chill. Warming cream on to keep everything working! Off they fly with us in hot pursuit trying to overtake the peloton to get the feedzone at Ellerby Bank but there's only one

road out of Brid but we manage the feed in rather windy conditions. Scarborough provides it's legendary welcome and the sun is out. Unfortunately end up calling an ambulance as Ana as a back problem. Gas and air seem to do the trick and will get her on a plane and home to rest. Literally do not know how they do it! Another great weekend with a fantastic team!"

OUR EXPERTISE



McCormicks offers the full portfolio of legal services to all forms of organisation including businesses, charities and sporting bodies, together with private individuals. The firm offers expertise in all areas of corporate and commercial work whilst maintaining a commitment to the personal client in areas such as rural property, tax, trusts, probate, family matters and crime.

Charities & Community

- Charities
- Not For Profit

Corporate & Commercial

- Acquisitions and Disposals
- Banking and Finance
- Commercial Agreements
- Competition and EU Law
- Corporate Crime, Fraud and Risk
- IT and Data Protection

- Insolvency and Bankruptcy
- Intellectual Property
- Partnership and Company Law
- Regulatory and Disciplinary

Crime

- General Crime
- Corporate Crime, Fraud and Risk
- Dispute Resolution and Litigation
- Commercial Disputes
- Mediation and Arbitration
- Partner/Shareholder Disputes
- Property and Construction
- Reputation Management

Employment

Family & Matrimonial

- Children
- Matrimonial

Insolvency & Bankruptcy

Mediation & Arbitration

Property

- Agriculture and Estates
- Commercial Property
- Development and Regeneration
- Residential Property

Sport, Media & Entertainment

- Employment
- IT and Data Protection

- Insolvency and Bankruptcy
- Intellectual Property
- Media and Entertainment
- Mediation and Arbitration
- Regulatory and Disciplinary
- Reputation Management
- Sponsorship
- Sport

Tax, Trusts, Wills & Estates

- Agriculture & Estates
- Care of the Elderly
- Tax and Trusts Disputes
- Trust and Tax Planning
- Wills and Probate

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