

# McCormicks Briefing

Christmas 2021



**Merry Christmas**

**More praise**

**Rent arrears**



**McCormicks**  
SOLICITORS

Some business-related issues crop up with increasing frequency. Our Head of Corporate and Commercial, Partner James Towler, highlights two of those he has recently encountered.

## Share Buybacks

We are frequently asked to document the buyback of shares by company clients, often when a shareholder is leaving the company and the continuing shareholders want the company to buy the leaver's shares, rather than find the money from their own resources.

Shares can be purchased by the company either out of reserves or capital. The former is the preferred route, as it is simpler and so costs less in professional fees.

Unless the buyback is done by the book, it will be invalid, with unforeseen and expensive consequences for the continuing shareholders.

The first point to note is that, unless the company has enough distributable reserves on its balance sheet to fund the purchase, it will not be able to use this procedure.

The second is that the shares must be paid for in cash at completion. If the company fails to observe this requirement, the buyback will be invalid and the selling shareholder will still be regarded as being the owner of the shares. This is an easy one to get wrong. Unless correctly advised, continuing shareholders may believe that they can pay for the shares by instalments.

This is awkward for the continuing shareholders if they are selling the company to a third party

several months or years later, since the buyer will not complete unless the sellers can show they have title to 100 per cent of the shares, which will be impossible if the share buyback has not been done by the book.

Unfortunately, the continuing shareholders are unable to ratify the invalid buyback whether as directors or shareholders, but will have to redo the buyback.

They could find themselves having to go back to the retiring shareholder and redo the share buyback from scratch, which is likely to mean paying a premium for the retiring shareholder's shares. This assumes that the retiring shareholder is still alive. If not, they would probably have to negotiate new terms with the retiring shareholder's children, who may be more hard-

nosed over the price of the shares.

## Virtual Meetings for Private Companies

Private companies formed after 2006 which adopted the model articles are entitled to hold virtual meetings of the members.

This has been particularly useful during the pandemic if companies have had to hold general meetings during lockdown.

Some companies have articles which require meetings of shareholders to be held in person. These might include charitable organisations and clubs. Temporary regulations introduced to allow all companies to hold virtual general meetings during lockdowns, even if not permitted by their articles, expired at the end of April 2021. These temporary regulations

Partner James Towler is Head of our Corporate and Commercial Department.

He routinely advises companies, LLPs and partnerships, on both corporate and commercial matters. Regular instructions include buying and selling businesses and companies, restructuring companies and groups, joint ventures, shareholder and partnership agreements. James drafts and advises on commercial agreements for his clients, such as terms and conditions, asset sale and lease agreements and

private loans.

James has acted for a broad range of both domestic and international clients including football clubs, motor retailers, national estate agents, racecourse operators, manufacturers, publishers, online service providers, retailers and farmers.



James Towler

were particularly aimed at public companies to allow them to hold an annual general meeting for their shareholders,

but they were also helpful for private charitable organisations and clubs with the same requirement.

We advise all private companies with articles of association which do not currently permit electronic meetings of members to consider amending their articles to allow them to do so, to enable them to continue to function if the Government introduces restrictions on face-to-face meetings in the future. Those amendments should include provisions to address the quorum for a meeting and what happens if the technology being used to connect members fails during the meeting.



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When I wrote my traditional Christmas greeting in the Briefing in 2019, I do not think any of us could have foreseen the challenges the next two years would bring. It has certainly been a very difficult period for many, and our thoughts are with all those who have suffered losses.

# Merry Christmas and a Happy New Year!

Even as I write now, the emergence of a new variant has caused concern and, while we have been certainly enjoying more freedom both in business and outside, it looks increasingly likely that these will be curtailed as we go deeper into winter.

Despite this, there have been some events to celebrate in the last 12 months and I hope that you have been able to enjoy them. As you would expect from

a practice so rooted in sport, we particularly enjoyed the promotion of our friends and clients, Leeds United, to the Premier League and England's progress in the Euros. I am now coming toward the end of my time as Interim Chairman of the FA and, while I have had plenty of matters to deal with, it has been a great pleasure to be able to share in the successes we have seen over the year. I shall be reverting to my role as Vice

Chairman, on behalf of the Professional Game, so there will remain plenty to do!

On a wider platform, we have also seen the return of some of the events we support every year, including the Theakstons Old Peculier Crime Writing Festival and the Great Yorkshire Show, although after much thought we did not feel able to hold the Yorkshire Young Achievers Awards this year due to the increased vulnerability

of many of our potential winners. We have, however, continued with our grants programme which helps young people across the region and about which you can read more in these pages.

I am not going to even attempt to forecast what 2022 may bring but, whatever it does, my colleagues and I wish you a merry Christmas and a happy, healthy and successful New Year!

**Peter McCormick OBE**



## Investing in sport

Senior Partner Peter McCormick was a speaker at the London Family Office and High Net Worth Conference in November.

Around 200 delegates attended to hear about investment in sport as an option for wealthy family offices and high net worth individuals

and Peter shared the platform with Paraag Marathe, the Executive Vice President of Football Operations of the San Francisco 49ers, the legendary American Football club and President of 49ers Enterprises which is now the owner of 44 per cent of Leeds United FC.



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We have welcomed two new faces to the team since the last edition of the Briefing.

## Welcome Kate and Hollie

Kate Develly joins the Crime and Fraud department as a Criminal Law Executive. She assists Partner Peter Minnikin and Associate Solicitor Brian Nuttney in all aspects of criminal work and client care.

Kate graduated from the University of Lincoln with a joint honours degree in Criminology and English before embarking on a nine-year career with the police. She then helped her husband to establish his own business. Kate completed the Graduate Diploma of

Law followed by the Legal Practice Course with Masters, in which she gained a distinction, at the University of Law in Leeds.

Hollie Jackson has joined the practice as a Trainee Accounts Assistant, working with Finance Executive Mathew Chaplin who has responsibility for the firm's financial accounting procedures and general office administration.

Hollie went to school in Harrogate and worked at Sainsburys before joining McCormicks.



Criminal Executive Kate Develly



Trainee Accounts Assistant Hollie Jackson

The advent of Covid has meant all sorts of unforeseen circumstances for businesses. Here Litigation Executive Hayley Carr looks at what happens when rent arrears are one of the headaches to deal with.

As with most sectors in the current uncertain economic climate, commercial real estate has faced considerable challenges. According to the British Property Federation, as of 30 June 2021, it is estimated that £7.5 billion of commercial rent was in arrears. The Government recognised the challenges facing the industry and through the implementation of the Coronavirus Act 2020, a new Code of Practice and the Commercial Rent (Coronavirus) Bill, aims to provide support to those within the sector by striking a balance between the parties based on their financial circumstances. The hope is that landlords and tenants work together to protect viable businesses.

#### A recap

Commercial landlords and tenants have struggled to avoid incurring financial difficulties as a result of the pandemic. Consequentially, some tenants have failed to meet repayments, with landlords unable to enforce arrears. Previously utilised statutory procedures which allow landlords to recover rent arrears such as forfeiture, winding up or through enforcement

# A way through rent arrears



agents such as CRAR, (Commercial Rent Arrears Recovery) have been restricted.

Without the protection afforded to commercial tenants through the enactment of the Coronavirus Act 2020, many businesses that had their usual operations restricted due to Covid related regulations, might have suffered irreparable damage.

#### The new Commercial Rents Code of Practice

The new Code of Practice provides guidance on how parties should negotiate rent arrears. The Code encourages landlords and tenants to work together to share the burden caused by the pandemic. It is hoped that landlords and tenants will be able to negotiate and agree

over authority liabilities. If a tenant is unable to meet repayments, the new Code suggests that tenants should negotiate with their landlords in good faith, using the principles set out in the Code in the expectation that landlords waive some or all the rent arrears, where they are able to do so.

This should only happen where tenants have

been genuinely affected by closures or other restrictions so that they are considered without means to pay, thereby offering some protection to landlords. Both parties should seek to agree mutually beneficial solutions. The implementation of these principles aims to provide balance to the sector in a fair and reasonable manner.

Whilst the new Code has been developed with leaders from hospitality, retail and property sectors, as it is voluntary in nature and non-binding, many landlords and tenants are not currently utilising it to structure negotiations.

#### The Commercial Rent (Coronavirus) Bill

The Government introduced the new draft Commercial Rent (Coronavirus) Bill on 9 November 2021. The Bill

Hayley Carr is a Litigation Executive within the Sport and Commercial Litigation team. She assists Head of Commercial Litigation services, Philip Edmondson and Senior Associate, Will Bates in providing Commercial Litigation and Sports Disputes services to a broad array of clients, including insurers,

charities, insolvency practitioners, the Premier League, Leeds United FC, Harrogate Town AFC, the Bostik League and a number of other sporting bodies and clubs.

Hayley has experience advising on a range of sports law matters including selection bias, doping in sport and age discrimination. She supported counsel in

preparing for hearings at the Court of Arbitration for Sport in Lausanne, Switzerland and Sports Resolution, London. Hayley assisted in successfully defending an Olympic athlete against a tampering claim brought by UK Anti-Doping. She recently assisted a team that was appointed to provide Pro Bono legal services to athletes

caught doping at the Tokyo Olympics and Paralympics.

Hayley has a first-class law degree and a masters in international Sports Law. She has worked in Chicago, Illinois reviewing miscarriages of justice and preparing subsequent civil rights claims. She also assisted in a wrongful police shooting trial at Cook

County Court. Hayley recently completed her LPC at BPP University prior to joining the litigation team.



Hayley Carr

aims to prevent further debt actions and focus efforts on resolving rent arrear disputes between commercial landlords and tenants, in line with the Code and arbitration process. Either party can unilaterally commence the process, which will result in a binding agreement that landlords and tenants must adhere to. The intention is to assist the sector and those in it regain financial stability. This unprecedented dispute resolution mechanism should assist arbitrators in determining whether rent, which would otherwise be unquestionably due, should be discounted or deferred based on evidence put forward by both parties. Such evidence should allow the arbitrator to balance the tenant's viability with the landlord's insolvency with the aim of achieving amicable, reasonable and workable solutions.

The arbitration process is split into stages, affording one final opportunity to the parties to resolve their dispute without external interference. Either party can commence the process with a pre-application letter of notification containing a proposal for settlement. The other party can accept or counter the proposal. If this exchange does not achieve a workable agreement, the parties can apply for arbitration and will have the option to request a public hearing.

The Bill applies to all commercial leases held by businesses which have built up rent arrears, insurance and service charges as a result of Covid, regardless of the sector. Notably however, pharmacies are expressly excluded from the arbitration process. Whilst

there is a different legal framework for agricultural tenancies, the agricultural sector may still wish to consider the new Code.

### The Practicalities

The new arbitration scheme is anticipated to come into force on 25 March 2022. The parties will have six months from the date of the Bill's Royal Assent to refer the dispute to arbitration. If the parties fail to apply within the six-month period, the usual remedies to pursue arrears will become available to the landlord.

It is both a responsibility and duty of the parties to make proposals and engage in meaningful negotiations. Failure to do so may not be beneficial, as if both parties cannot reach an agreement, considering one another's financial positions, the decision, if referred to arbitration would be taken out of their hands. However, in some instances this may be necessary if parties cannot come to a resolution on their own. The arbitration will follow the guidance set out in the Commercial Rent (Coronavirus) Bill (specifically the principles outlined in clause 16) to produce a final, binding resolution.

Parties attending arbitration should gather supporting evidence in accordance with the criteria outlined above to demonstrate how their business has been affected by the pandemic in advance of the arbitration. The parties share the arbitrator's fees and are expected to pay their own legal expenses.

### Considerations for the Tenant

With respect to tenants, the arbitrator must, so far as known, have regard to the assets and liabilities of the tenant, including any other tenancies to which

the tenant is a party; the previous rental payments made under the business tenancy from the tenant to the landlord; the impact of the pandemic on the business of the tenant, and finally, any other information relating to the financial position of the tenant that the arbitrator considers appropriate.

Notably, this final aspect is open to wide interpretation and may produce inconsistent results dependent on what the relevant arbitrator considers appropriate. It may be a better approach to outline criteria that will be used by arbitrators to determine what "other information" may be considered. This in turn, will allow parties to adjust their expectations and arrive at the arbitration prepared.

### Considerations for the Landlord

With respect to landlords, the arbitrator must similarly have regard to the assets and liabilities of the landlord, including other tenancies to which the landlord is party and any other information relating to the landlord's financial position that the arbitrator considers appropriate. In making an assessment, the arbitrator must disregard the possibility of the tenant borrowing money or re-structuring its business in order to make repayments.

This final aspect affords additional protection to the tenant, as it prevents landlords seeking to enforce arrears through unethical means.

### Conclusion

It is unlikely that landlords will welcome the scheme in the same way tenants will, as it will limit a landlord's ability to recover rent arrears. However, given that the scheme aims to provide support to

commercial parties during this financially unclear and uncertain time, it should therefore only apply for that limited period, thereby alleviating some concerns from a landlord's perspective. That is, provided the scheme is confined to that period, in order to meet those aims. There is, however, potential that if the scheme is an

effective form of dispute resolution for the sector, the government may choose to keep it in place on a more permanent basis.

**If your business has been affected by Covid related restrictions and has left you unclear as to what your position is in respect of rent arrears, please contact us for advice.**

McCormicks has won three further awards in the last month.

# Global awards

Managing Partner Peter McCormick has been recommended for his expertise in Sports law in the latest edition of the Global Law Experts Handbook.

The handbook is seen by an international audience of company directors, lawyers, accountants, in-house counsel and financial advisors and features lawyers from more than 50 practice areas in more than 100 countries.

Inclusion is based on internal research by Global Law Experts on thousands of recommendations received during the year.

He has also been named Entertainment Lawyer of the Year in a second global guide, taking the title in the Corporate LiveWire Global Awards 2021/22.

Corporate LiveWire invited more than 90,000 businesses and corporate professionals, magazine contributors

and its subscribers to nominate companies and individuals based on factors such as quality of service, innovation, experience, sustainability and other areas.

Award winners will be featured in the Global Awards Guide 2021/22, which will be distributed to businesses and professionals around the world.

The third award, Best Practice for Agriculture and Estates work in the UK, comes from the Gamechangers™ Country Best Practice Awards 2022.

Launched in 2006, the Gamechangers™ Country Best Practice Awards are presented to those professional sector organisations and individuals who are demonstrating consistent excellence and quality in their fields, and those deemed to have continually made the greatest contribution to their country's economic growth.

McCormicks has become the only practice in North Yorkshire to be ranked for its expertise in UK-wide Sports law in the latest guide to the legal profession.

# More praise for McCormicks

The practice is also the only firm in Harrogate to be recognised for its Crime work in the latest edition of Chambers UK 2022.

Senior Partner Peter McCormick is named as an Eminent Practitioner, being described as “the godfather of Sports law”. Partner Philip Edmondson also wins mention as a Notable Practitioner, being called “a very bright and energetic lawyer who is great to work with.”

The firm is also ranked for its expertise in Agriculture and Rural Affairs and for Mediators.

Earlier in the year, Chambers published its High Net Worth Guide, which saw Partner Elaine Lightfoot ranked for her Private Client work.

The McCormicks entries are as follows:

## Agriculture and Rural Affairs

Well-regarded agricultural practice based in Harrogate, providing clients with

full rural property and tax planning services. Acts for a number of large landed estates on a wide range of matters including acquisition, disposal, voluntary registration, residential property development and diversification. Also represents clients in disputes. Key specialism in work involving shooting estates. Peter McCormick advises rural clients on estate planning, lease negotiations and shooting rights. A client notes: “Peter’s strength is his ability to grasp a commercial problem and helping to resolve it in the best possible manner.”

## Mediators

Former Partner and current Consultant Neil Goodrum is ranked for Mediation.

Neil Goodrum of CEDR Chambers is a sought-after mediator for a wide range of commercial and contractual disputes. His areas of strength include professional negligence,



Senior Partner Peter McCormick



Partner Elaine Lightfoot



Partner Philip Edmondson

contractual and sport-related disputes.

“He is an excellent mediator who is patient and understanding but firm when required.”

“Neil helped the parties to focus on the critical issues of the dispute and had a calming influence, which helped to achieve a settlement.”

## Sport

Yorkshire practice providing expertise in a range of matters including contentious and non-contentious football work, continuing to be a principal adviser to the Premier League as well as being involved in grassroots

football development. Advises on a broad range of corporate and commercial issues, including sponsorship, governance issues and insolvency. Continued recent activity in shooting, advising shoot proprietors on regulatory and employment matters. “They make you feel like their most important client,” one interviewee reveals, adding: “They are always available to bounce things off and provide a great sounding board.” Advised Leeds United Football Club in relation to a range of disciplinary cases concerning both management and

players at the club. Peter McCormick remains at the forefront of sports law, with market-leading expertise in commercial and regulatory football work. “He is the godfather of sports law - his football credentials are unshakeable.” Philip Edmondson is a sports lawyer with significant experience handling commercial disputes in relation to the football industry. He primarily assists the Premier League and sports clubs with sponsorship and supplier disputes, as well as regulatory investigations. “He is a very bright and energetic lawyer who is great to work with.”



...a principal adviser to the Premier League as well as being involved in grassroots football development.

November should have seen our annual Yorkshire Young Achievers Awards but as many of you know, we felt unable to hold the event this year due to Covid and the vulnerability of many of our potential winners.

# Yorkshire Young Achievers

We plan to be back next year, however, so please put **Thursday 17 November 2022** in your diaries now! Although we were unable to continue with the Awards this year, we have been keeping up with the news from previous winners, including: Congratulations to **Lizzie Jones MBE** who collected an MBE for her charity work.

A massive well done to **Kevin Sinfield** who ran 101 miles to raise funds for Motor Neurone Disease research in support of his former Leeds Rhinos teammate Rob Burrow and has now achieved a whopping total of £4.7m. Huge congratulations, too, to para rower **Ellen Buttrick** who took a gold at the Tokyo Olympics and to Steve Bate and Adam

Duggleby who took cycling silver. A big well done to **Katie Mountain** who now runs six nurseries in Yorkshire, two of which have just received "outstanding" ratings from Ofsted Giggles Day Nurseries. Another pat on the back for hammer thrower **Jessica Mayho** who continued training hard throughout the various

lockdowns to retain her British title. We have also been able to continue our grants programme, with grants to a variety of causes, some of whom have become long-term beneficiaries, including Downs Syndrome North Yorkshire Family Support Group who will again be able to take members on their annual day out and Support Dogs with whom we are funding

the training of another dog. We have also been able to support Whitby Hidden Impairments Support and Help (WHISH) and YMAV Youth Movement Against Violence in Leeds. **We look forward to seeing you at the Awards next year!**



Lizzie Jones



Ellen Buttrick



Katie Mountain



Kevin Sinfield



## Yorkshire Young Achievers - We will be back!

Please put Thursday 17 November 2022 in your diaries!





Tiffany Jackson assists the Head of Commercial Property, Heather Roberts, in acting for a broad range of clients, dealing primarily with commercial landlord and tenant matters, asset management and sales and purchases across a variety of sectors, and Conveyancing



Tiffany Jackson

**Executive Kim Stockburn across all residential property matters. When she is not in the office, however, cheese and fish seem to be key desires!**

**Other than the law, what would your dream career be?**

I had always had an interest in law; however I attended university open days with the view of studying to become a drama teacher. I was with my mum and we missed a bus back to the city centre campus and saw there was a lecture regarding the law course taking place. We decided to sit in on the

lecture and I decided to withdraw my application for the drama teacher course and apply for law instead. I have not looked back since.

**If you could win any sporting trophy or title, what would it be and why?**

Cheese rolling. I have read this is a real thing! Purely because I am not great at proper sports and cheese rolling looks like such a fun day out. I also love cheese.

**Where is your favourite place in Yorkshire and why?**

My favourite place would be The Deep in Hull, although if you ask

someone from Yorkshire if Hull is Yorkshire or Humberside they will say it is Humberside, so it is open to debate! I am fascinated with the fact that there is a whole other world in our oceans and it is great to be able to see a small snippet of this.

**If you could choose your last meal in advance, what would it be?**

I feel like I would need to taste pizza one last time...

**What is the best piece of advice you have ever been given?**

Do not worry what other people think. Be unique. Be memorable. Be confident. Be proud.

**If you suddenly came into a significant amount of money, what would your first five purchases be?**

- 1 Not so much a purchase but I would pay my mortgage off.
- 2 A long holiday to Barbados with my loved ones.

- 3 The wedding of my dreams.
- 4 Invest wisely in stocks and shares.
- 5 My own theme park. No queues!

**What do you do to wind down after a busy day in the office?**

I am a bit of a Sims fan, so either play the Sims on my PC or veg out on the sofa with my boyfriend watching films or a series.

**What is your favourite season of the year and why?**

My favourite season is summer. Nothing beats sitting in the garden with a nice cold drink and reading a book.



## 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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