

McCormicks Briefing

Spring 2023



McCormicks
SOLICITORS

Breach of contract?

New faces

Helping out

A new pilot scheme means that for the first time journalists will be able to report proceedings in Family courts, a move which has been welcomed by the Head of our Family team, Partner Stephen Hopwood.

Shining new light

The 12-month pilot covers Leeds, Cardiff and Carlisle and will allow reporting while maintaining the anonymity of families and at the discretion of the Judge.

Family courts have the power to make significant decisions such as ordering children to be taken into care, deciding where they should live and considering allegations of abuse. Their proceedings are believed to involve at least half a million people every year.

Since the end of January, accredited journalists have been allowed to report on proceedings,



subject to protecting the anonymity of the families.

Stephen Hopwood said: "I am all in favour of this as the public have their own beliefs about decisions and how they are made. The route to appealing those decisions is complex and not very transparent either. It would be helpful to have journalists who can hear

what we are saying, the responses we get and the reasons for the decisions.

"I also believe there are ingrained trends and beliefs but the only way such trends are spotlighted is if other people see it and report on them."

Journalists will be allowed to name local authorities in care

proceedings, although some have reportedly already chosen not to, as well as the lawyers involved and court-appointed experts, although not medical professionals treating any family member.

This will be enabled through transparency orders but Judges will retain the right to refuse to issue such orders and restrict reporting.

In addition, families will be able to talk to journalists, while maintaining their anonymity.

Once the pilot scheme has been evaluated by an external agency, it could be extended to every Family court in the country.



Head of Family, Stephen Hopwood

Two charities have benefited from the efforts of our Private Client team in providing their expertise in Wills.

Helping charities out

Elaine Lightfoot and Victoria Sly both took part in the Martin House Hospice Free Will month. Both Elaine and Victoria have been happy to support this long-established local charity by providing free straight-forward Wills for participants who wish to support Martin House by way of immediate donation or, in some instances, by including

cash legacies or residuary gifts in their Wills.

The scheme has provided McCormicks not only with the opportunity to support this local charity but also to provide legal assistance to people who have been meaning to make a Will for some time.

In addition, the firm has been approved as a

provider of Wills under the Alzheimer's Society nationwide scheme. This scheme is again aimed at supporters of the charity but, in this instance, the charity makes a payment towards our usual fees for a straight-forward Will and, again, leaves clients with the choice of making an immediate donation or gift in their Will in support of Alzheimer's Society.



Elaine Lightfoot



Victoria Sly

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We have welcomed two new faces to the team this spring.

New Faces

David Leuchars

joins as a Solicitor in the Corporate and Commercial department.

He has a degree in Sports Law and completed his training contract as part of an in-house legal team.

David assists the head of department, James Towler, in 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.

He spends a considerable amount of his time working on Sports matters, since many of the Department's clients operate in that sector.

We have also welcomed **Katy Maskell-Edwards** who joins as Senior Associate and will head up the Residential Property Department.

Having successfully completed her Solicitor exams at the College of Law in London many years ago, she has recently completed her Masters and now has the title MSc after her name.

She brings a wealth of experience in property, working primarily in private practice on behalf of individuals and companies.



David Leuchars



Katy Maskell-Edwards

I hope that by the time you read this the warmer weather is upon us and you are looking forward to the rest of 2023 with optimism and positivity.

Brighter days ahead

It has been a challenging winter for many, with economic uncertainty casting something of a cloud over the prospects for growth and progression thanks to the continuing issues of inflation, including energy costs, and wage claims both at home and abroad.

I believe, however, we can hope for the situation to ease in coming months and warmer weather should certainly help!

As always at McCormicks, we are anticipating a summer of continued growth and development. We have welcomed some new

faces to the team, about whom you can read more in these pages, and we are looking forward to a number of events, including the launch of the 2023 Yorkshire Young Achievers Awards, the 20th Old Peculier Crime Writing Festival and Harrogate Festival, of which we are a Major Supporter, and the Great Yorkshire Show. The nation will also be celebrating the coronation of King Charles III which should also be a bright spot in the year.

As always, sport will not be far from our thoughts and we are keeping everything crossed that both Leeds United

and Harrogate Town can remain outside the relegation zones in their respective leagues and we hope the Lionesses can retain their sparkling form in the World Cup.

Whatever your hopes and aspirations for this year, I wish you fair winds and calm seas.

Peter McCormick OBE



Peter McCormick

The Head of our Corporate and Commercial Department, James Towler, has been named winner of a Finance Monthly Deal Maker Award in recognition of a deal he completed on behalf of Norwich City FC.

The deal resulted in a group led by Mark Attanasio successfully acquiring shares from a variety of holders, including long-serving club director Michael Foulger's holding.

The McCormicks team, led by James, acted on behalf of both the club and current joint majority shareholders Delia Smith and Michael Wynn Jones.

The Finance Monthly Deal Maker awards were established 13 years ago and recognise the bankers, venture

More awards

capitalists, lawyers and accountants who initiate, structure and negotiate deals for growing organisations. The awards are based on deals completed in the fiscal year 2021/22.

McCormicks has also been named Best Sport & Media Legal Service Provider 2023 – Yorkshire by SME News in its fifth annual UK Legal Awards.

SME News is a quarterly digital publication aimed

at those who own, run or assist in the running of small and medium-sized businesses within the UK.



Partner James Towler

David Birks is Head of our Commercial Disputes and Sports Litigation Team. Here, he takes a look at breaches of contract, what they mean and the five questions you need to ask.

Breach of contract

Contracts form the basis of legal agreements in all areas of life. They do not have to be in writing, although most are, particularly when dealing with business matters.

Every valid contract must have four key elements: offer, acceptance, consideration (ie. something of value such as payment) and intention.

What is breach of contract?

Once two or more parties have entered into a valid contract, they are legally bound to comply with its terms. These may stipulate payments to be made, goods or services to be provided or actions to be taken. If a party to a contract fails to do what they have agreed to do under the contract terms, then they are in breach of the contract.

This can include doing work that is defective, not paying for something within the agreed time limit or being late in carrying out a service.

When problems arise, it is vital that you have a

well-drafted contract to rely on. In fact, a good contract often prevents disputes from arising in the first place, as the parties will be clear from the outset what is expected of them and what will happen if they breach the agreed terms.

There are a number of different types of breach, including minor, material, anticipatory and repudiatory.

Minor breach of contract

Where part of the contract is not adhered to, for example where a small change is made to part of the goods or services being provided, a minor or partial breach of contract occurs.

An example would be where a builder uses substitute materials which are of similar quality but were not what was stipulated in the contract.

The contract can still be fulfilled, although it may be possible to seek damages if one party has acted to the detriment of the other. If a number of minor breaches have occurred, they may together be significant enough to constitute a material breach.

Material breach of contract

A material breach is the failure to fulfil an important part of the contract. The effect of a material breach

will be serious enough that it has a substantial detrimental effect on the benefit that the innocent party should have received.

The parties to a contract may well disagree over whether a breach is material or not. Sometimes a contract will define certain actions as a material breach. If it is less clear, a court may have to decide what is fair.

Anticipatory breach of contract

This occurs when one party clearly does not intend to fulfil their contractual obligations. They may communicate their intention, or it may be obvious from their

actions, for example by failing to start work.

While the contract has not yet been breached, it can be anticipated that a breach will occur.

Repudiatory breach of contract

A repudiatory or fundamental breach is so serious that the injured party can choose to terminate the contract. An example might be if a builder stopped turning up so that no progress was being made on the agreed work. Damages may be payable, along with the ending of the contract.

To qualify as repudiatory, the breach must go to the root of the contract, be substantially inconsistent with the contract terms, deprive one party of the expected benefit or be unfair to the injured party to the extent that they could not be expected to continue with the contract.

This is the only breach of contract that releases both parties from their obligations. Other types of breach still require the innocent party to adhere to the contract terms, even if they are successful in obtaining damages. For example, if a builder's work required modifications by a new contractor, the injured

Partner David Birks is the Head of our Commercial Disputes and Sports Litigation Team. The team offers a wide range of litigation services to both individuals and businesses, which incorporates Corporate and Commercial Recovery and Insolvency.

Before becoming a solicitor David headed up the North Yorkshire Trading Standards Consumer Advice Team and Special Investigations Team dealing with

Regulatory matters and specialising in anti-counterfeiting matters.

David has also spent time working for the Department of Trade and Industry specialising in Directors Disqualification and Insolvency. David is a member of R3.

David has significant experience with matters involving: breach of contract, unfair prejudice claims, partnership disputes, professional negligence (claimant and defendant), landlord and tenant, dilapidations

claims, HM Land Registry and matters with multi-jurisdictional elements, sports disputes (arbitrations, tribunals and FA, Premier League and EFL regulatory matters). His specialisms are in insolvency (individual and corporate) and Directors Disqualification Act Proceedings.

David acts for a broad range of clients, including insurers, national and international corporates, entrepreneurs, large family

estates, insolvency practitioners (and those facing claims by them), charities, the Premier League, Leeds United FC and professional players and managers.



David Birks

party might receive damages, but would still be liable to pay for the work done.

If the work was so poor that it was considered to be a repudiatory breach of contract, then the ending of the contract would mean that neither party had any further obligations, unless ordered by the court.

What happens when a contract is breached.

If one party can show that a valid contract has been breached and that they have suffered loss as a result, they will be entitled to a remedy. If the matter cannot be settled by mediation, then the court can be asked to make a decision.

There are three different courses of action available to the court.

- a) Firstly, damages may be awarded to put the claimant in the position they should have been in, had the contract terms been carried out correctly.
- b) Secondly, where the breach is repudiatory, the contract can be terminated. Damages may also be payable.
- c) Thirdly, the court may make an order for 'specific performance', requiring the party at fault to complete their contractual obligations.

Once you are aware of a breach of contract, it is advisable to seek legal advice. Involving a lawyer at an early stage can often help deal with the problem quickly and efficiently. As well as ensuring that the other party understands that the matter is being taken seriously, an experienced solicitor will also be able to suggest the best way forward. Finding a solution that is acceptable to everyone early on not only means that costs are kept as low as possible, but also enables business to carry on without disruption or delay.

The five questions you need to ask when a contract is breached.

A well-drafted contract will clearly explain the circumstances in which the contract can be voided. It can also include a right to end the contract if its terms are breached.

If the contract does not include specific provision for ending it when the terms are breached, then caution is needed. Even if one party has failed to properly meet their contractual obligations, the other party needs to make sure that they do not also breach the contract. The contract is not automatically terminated in the case of a breach, so until you are certain that it has ended, you must proceed in accordance with its terms.

The following five points will explain the dangers that might be encountered.

1. Is the breach serious enough to justify terminating the contract?

It is not always obvious whether a breach is repudiatory, and therefore serious enough to end the contract. Failure to pay or provide a service may not be considered sufficient, although repeated failures may together amount to a repudiatory breach.

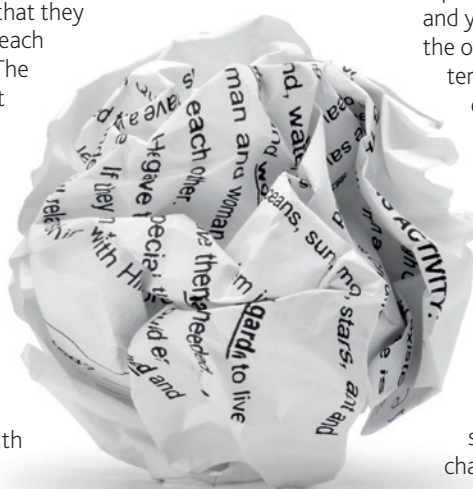
Before assuming that a contract has been ended, you should seek legal advice, to avoid breaching contract terms yourself.

2. Should you provide the other party with an opportunity to remedy the breach?

The contract may

specify that the party in breach is to be given the chance to remedy the situation. Even if this is not set out, the reasonable course of action would be to contact the other party and ask for their proposals or suggest mediation. If you intend to pursue termination of the contract, you should serve notice of this.

Note that failing to give the other party the stipulated notice or chance to remedy the



situation may mean that the termination is unlawful.

3. Does the contract contain a 'no waiver' clause?

Some contracts contain a 'no waiver' clause, intended to prevent accidental waiver of a party's rights. The clause will usually specify that contractual rights can only be waived in writing.

If the contract does not contain a 'no waiver' clause, then care must be taken not to accidentally waive rights, for example by allowing a delay in exercising rights or seeking a remedy.

4. Should the injured party terminate the contract, and do they have the right to do so?

Where there is a

repudiatory breach of contract, a decision needs to be taken as to whether or not it is preferable to terminate the contract. You have the option to continue with the contract, reserving the right to claim damages, or you can try and renegotiate the terms of the contract.

If you do not terminate the contract, it could be construed that you have accepted the repudiatory breach and you may lose the opportunity to

terminate. It may even be held that a new contract has been created, with terms that you may find unfavourable. If you decide to terminate the contract, be aware that you cannot subsequently change your mind.

5. Has the contract been terminated correctly?

If the contract contains instructions for terminating a contract, these must be strictly adhered to. They are likely to include details regarding service of notice to terminate. There may also be a requirement for the party at fault to be given the opportunity to rectify the situation. In this case, as much information as possible should be given, including the action steps required.

The party in receipt of the notice to terminate will want to check the contract to see if they have any grounds to reject the notice. This would allow them to request that the contract be carried out or, if not, they may themselves be able to claim repudiatory

breach and apply for damages.

If the contract does not include any information about termination, then a court would usually require 'reasonable' notice to be given. This would be decided by looking at details such as the length of the contract and the parties' relationship.

It is always advisable to take expert advice when terminating a contract. An experienced contract lawyer will be able to draft the notice in terms that retain your rights as far as possible, and also advise on what will be considered a 'reasonable' notice period. If mistakes are made, they can be costly and far-reaching. Here at McCormicks we are always happy to discuss how we can help you end a contract that has become problematic, while safeguarding your position.

Summary

Dealing with a breach of contract can be a complicated process, as parties dispute the severity of a breach and whether it constitutes a repudiatory breach. There is a risk in proceeding on the assumption that a breach is repudiatory; if a court finds to the contrary, then the party initially at fault may try to make a claim themselves, alleging a breach.

A carefully drafted contract is the best starting place for an open and clear business relationship. Once problems arise, communication and mediation are always recommended to try and find an acceptable way forward.

Contract law is a complicated area and far-reaching mistakes can easily and inadvertently be made. It often saves time, effort and money in the long run to seek expert legal advice on the best way to proceed.

Following a series of instructions to transfer assets from members' clubs to companies, Head of Corporate and Commercial James Towler takes a look at why this can be a good idea.

Transferring assets

We have recently been advising on a number of transfers of assets from members' clubs to companies limited by guarantee.

While this note is not intended to be advice, since every case is specific to its own facts, these transfers generally make sense for a number of reasons since after completion:

- The club and its directors will have the protection of limited liability whereas before completion the members and Trustees (if applicable) are exposed to full liability to the extent of their

own personal assets, if the assets of the club are insufficient to meet its liabilities. The liability of each member is typically limited to no more than £10 if the new company is unable to

meet its liabilities;

- The club will be able to borrow and enter into contracts in its own name, rather than in the personal names of a few members or Trustees. This will feel more comfortable for

those individuals;

- Real property will be transferred into and remain in the name of the new company at completion, without the need to file notice of change of the Trustees at the Land Registry upon them joining or retiring from the club;

can be achieved with no or minimal external advice.

In most cases neither Capital Gains Tax nor Stamp Duty Land Tax will be payable at completion. Any accumulated capital gain on assets will be rolled over into the new company. No SDLT will be payable, provided no money is paid for the transfer of real property to the new company and the shares in the new company have no material value, which is generally the case with a members' club incorporated as a company limited by guarantee.

Each case is different and tax advice should be taken before acting.

For further information, please contact James Towler or David Leuchars at McCormicks.

- This has the added benefit of not having to find and appoint new Trustees of real property when the current Trustees retire or die – new Trustees do not just grow on trees!

Following completion, the new company will have annual reporting obligations, such as filing accounts and a confirmation statement at Companies House, but these obligations are neither onerous nor costly and in most cases

James Towler is Head of the Corporate and Commercial Department at McCormicks.

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.



Partner James Towler

Family lawyer Lucy Harbron is one of the founders of a new Harrogate and North Yorkshire organisation.

Leading role for Lucy

Lucy, who is currently completing her training contract, has been appointed Vice Chair and National Representative of the newly-formed Harrogate and North Yorkshire Junior Lawyer Division which was

launched in February.

She will represent the Junior Lawyer Division on a national level by attending meetings throughout the year with other representatives of divisions across the country.

Colleague Kate Develly, part of the Crime and Fraud department, is also part of the Committee as the Equality, Diversity and Wellbeing Officer.

Lucy said: "It is an exciting opportunity

to network with junior lawyers. I am particularly looking forward to attending the autumn meeting which is to take place at The Law Society in London."

The organisation aims to provide junior lawyers



Lucy Harbron

in the region with an opportunity to engage and network with other members in the legal profession through a variety of events.

Our busy Crime and Fraud department has boosted its team again.

Crime Team boost

Kate Develly has been offered a training contract to reflect her dedication and commitment since joining the team around a year ago. She recently gained fully accredited status to advise clients at the police station and has proved an asset to the department.

Her former role has been filled with the promotion of Helen Ramsden to Criminal Law Executive. Helen is often the first point of contact for clients. Helen has more than 12 years' experience in criminal law and deals with all aspects

of client care within the department. Before joining the practice, Helen gained more than 10 years' experience in various fields of law and is adept at assisting on complex cases, securing legal aid funding and liaising with external agencies.



Kate Develly



Helen Ramsden

Red letter day for Richard

There was a very special day in February for the long-serving Vice Chairman of the Yorkshire Young Achievers Foundation, Richard Stroud, when he was presented with the MBE by King Charles III at Windsor Castle. Richard was awarded the MBE in the Jubilee Honours for services to the Interfaith Community in West Yorkshire and we send him our warmest congratulations.



King Charles III presents the MBE to Foundation Vice Chairman Richard Stroud

Ice Cool Nile

We always love to hear about the successes of previous winners so it was great to see Nile Wilson, our 2018 Personality of the Year, taking top place in ITV's Dancing on Ice with some stunning routines.



2018 Personality of the Year Nile Wilson has added winning Dancing on Ice to his list of successes!



Well done from all of us Nile!

Lauren's Royal date

There are exciting times ahead for our 2019 Unsung Hero Lauren Doherty who has been invited to the Coronation of King Charles in May.

Lauren has been a road safety campaigner since she was seriously

injured when she was hit by a van 15 years ago and she was awarded the British Empire Medal in last year's Queen's Birthday Honours.

She will be one of around 2,200 guests at the event at Westminster Abbey.



Unsung Hero Lauren Doherty will be a guest at the King's Coronation

New Trustee

Solicitor Alex Harrison has been appointed as a Trustee to the Yorkshire Young Achievers Foundation.

Alex works in McCormicks Solicitors' Commercial Litigation team and has experience of both event management and charity initiatives.



Alex Harrison

Save the Date

With preparations under way for the launch of the 29th annual Yorkshire Young Achievers Awards, please remember to save the date for this year's Gala Dinner.

The event takes place on Thursday 16 November at the Leeds United Centenary Pavilion at Elland Road, Leeds, and tickets can be reserved now by visiting the website at www.yorkshireyoungachievers.co.uk.

We can promise you an amazing event which will touch your heart and inspire you with the talent and fortitude displayed by Yorkshire's finest young people.

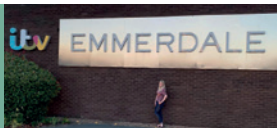


2022 Youngster of the Year Archie Flintoft had a great night



Leeds United Centenary Pavilion at Elland Road

Out of Hours



When our Accounts Manager is not busy keeping our finances on the straight and narrow, she plays another role – or several in fact. If you have not met her at our offices, you may have seen her on television!

What would your dream career be?

My dream career would be in the performance arts industry. I have enjoyed acting from a young age, and have been involved several



Hayley Firth

stage productions, some of which include "Are You Being Served", "The Merry Wives of Windsor, and "Celebration". I have often been a nurse on Emmerdale, and in April my first small speaking part is going to air which I am very excited about!

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

If I could win any sporting trophy or title, I would want to be an Olympic swimmer. As it's a non-contact sport, there's no risk of getting hurt or hurting others when being competitive. I also enjoy swimming too.

Where is your favourite place in Yorkshire and why?

My favourite place in Yorkshire has to be the

walk between Burnsall and Grassington. It is a beautiful walk which brings you to the stepping stones at Linton Falls. My grandparents met at Linton Camp boarding school during the war years, and this was a very special place for them. I was very close to my grandma and it brings back lovely memories for me, as I still do this walk with my grandad who was 90 on Christmas Day!

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

I am a bit of a chip fiend, so I think it would be good old egg and chips.

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

It will all be ok in the

end, and if it's not ok then it's not the end!

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

If I suddenly came into a significant amount of money, my first five purchases would be:

- A holiday – I would love to travel different states in America and run up the Rocky steps in Philadelphia like he did in the film.
- More meals out at lots of different restaurants
- A new kitchen (as I am happy with the house I have)
- Visit the Northern Lights
- Purchase every flavour hot chocolate

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

When I want to wind down after a busy day in the office, I find that

the best way for me to switch off is with either Netflix or a good dvd with pizza!



What is your favourite season of the year and why?

My favourite season is Spring because it feels like the world is renewing itself again as we gradually reach warmer temperatures. The whole year lies ahead and the days are getting longer again. It feels like there's plenty of hope and opportunities for the year ahead to make it a positive one.

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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