

Summer 2020

  
GULLANDS  
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# InBrief

The Magazine of Gullands Solicitors



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# Welcome to InBrief

Looking ahead to the next few months as we emerge fully from the lockdown there will have been and will continue to be a number of changes for many business owners and individuals and our team is here to guide you through all of the legal challenges this may bring.

We have picked a number of subjects to cover in this edition of In Brief, which we think will be of interest to and possibly will affect many people. As well as the reminders for keeping your personal interests looked after and up to date with Wills and LPA's, we also take a look at some of the other issues that families might be considering at this time.

Child residency is usually a matter decided between both parents but the lockdown might have changed how parents want to structure residence in the future, or young people might want to make the decision for themselves. Partner Julie Hobson takes a look at this issue on page 3.

Many people might also be reviewing where they live with a reported increase in the number of town and city dwellers looking to make a move to a more rural location. On page 9 we look at the cost of Stamp Duty on rural homes / missed use land and property and how the previous use of land or buildings can make a significant difference to the amount payable.

There has also been a reported increase in the sales of alcohol during the three month lock down, good news for English wine producers who have benefited from an increase in direct sales to consumers and we take a look at the growth of the viticulture sector here in Kent and its projections to increase significantly over the next 20 years.

There has been some good news during the lock down period and we highlight the fundraising success of the RBLI Tommy in the Window campaign for the 75<sup>th</sup> anniversary of VE Day in May. There is further good news to look forward to in 2021 and the Elmer the Elephant Parade which will take place across Maidstone bringing thousands of visitors to the town centre.

With much to look forward to I hope you enjoy reading this edition and we look forward to seeing our clients and friends very soon in person. Our offices in Maidstone and Ebbsfleet are fully open and if you would like to make an appointment contact our team today.



**John Roberts**  
Managing Partner

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# Child residency changes

For many reasons parents who are separated or divorced may seek to change the living arrangements for their child and if this is a decision which can be reached amicably between both parents then there is no need to go to court to formalise it. It can however be beneficial to discuss the situation with a family solicitor so that you are aware of all of the options and implications.



It may be that a parent is looking to relocate overseas, has a very demanding job and is struggling with childcare, is remarrying or goes on to have more children with a new partner... circumstances and relationships change over time, and the recent lockdown may have led some parents and their children to question the arrangements they have in place.

If an agreement cannot be reached or if there has been a change in circumstances which means a parent wants to challenge the existing arrangements and if mediation has not been successful, then an application for a Child Arrangements Order will determine arrangements for the child. The order will bring stability to the child's situation and this will be the priority of the Court.

The court can make an order as to where the child shall live, and also with whom the child shall spend time. These terms replace the previous ones of residence and contact.

The resident parent will have the responsibility for the day to day decisions which are about the upbringing of the child and there should be limited interference from the other parent. This will include decision making about their daily routine such as what they eat or wear etc. However, the emphasis should be very much on co-parenting, and working together for the best interests and welfare of the child.

There can be differences over elements of the child's upbringing, the court can step in to help resolve these issues, referred to as a Specific Issue Order. Typically, these are about holidays or education, but could be about anything including religious issues or gender identification.

It can also be necessary to take action to stop a particular action taking place, this would be a Prohibited Steps Order typically concerning the removal of the child from the country or from moving far from the other parent.

As the child ages, the court will take their views into account more and more. However, with younger children the court may well ask a court welfare officer to investigate the situation and make a recommendation taking into account the views of all parties.

Typically, most of these cases involve the biological parents of the child but there are some instances where it might concern a parent who isn't the biological parent. For example, the grandparents or other relatives of a child might decide to apply for a child arrangement order if one or both of the child's parents have passed away or are believed to be an unfit parent. A person who does not have parental responsibility for a child will require the consent of the court to make an application.

At all times it is sensible to remember that the best interests and welfare needs of the child will be the court's overriding priority and the courts want parents to resolve issues without their involvement wherever possible.

If you would like to discuss issues around where a child lives contact [Julie Hobson j.hobson@gullands.com](mailto:j.hobson@gullands.com)





# Return to the High Street

After over 100 days of lock down for most businesses, Maidstone Town Centre is now open to all non-essential retailers and further restrictions are being lifted from early July to see most remaining businesses such as hairdressers reopen. Many people might feel a little trepidation about returning to the High Street, but the One Maidstone Team have been working hard at Maidstone Borough Council to make sure it is safe to return.

There are a number of changes to the town centre to make it safe for all. This includes:

- Social distancing rules apply and new signage is in place to reinforce it.
- Queues outside shops will be limited to the length of the shop front only.
- Shoppers will be asked to keep left when walking down narrow streets.
- One Maidstone Ambassadors will be available to offer information and advice to shoppers and visitors.
- Kent Police will continue to have a visible presence in the town centre.
- Public toilets are now available in The Mall shopping centre and Fremlin Walk.
- Some street furniture has been moved to allow more space and what remains will be cleaned daily.
- Car parks are all open and there is the RingGo cashless payment options. Payment machines are being cleaned regularly.
- Restaurants, pubs and cafés will now begin to reopen.
- Public transport is still running and a face covering should be used when travelling on it.

Maidstone Borough Council received £1.4m in funding from the Government to support businesses at the beginning of the pandemic, with most awards being made of £10k. It is hoped that businesses will have been able to weather this storm and that with the return of visitors to the town centre, they will begin to recover financially over the coming months.

Ilsa Butler, BID Manager at One Maidstone commented: "The past few months have been the most unusual and difficult times we have all had to face and our town centre businesses have suffered immeasurably. We want to welcome back people to our town centre and support our business community through what is uncharted territory for us all."

As a business in the heart of the town we are also delighted to be back and we are once again now open to visitors and have a number of measures in place to protect those who need to visit our office in person. Our team are on hand to deal with all of your legal queries. If you would like to arrange a face to face appointment, contact us today.

# Reviewing Terms & Conditions



Following all of the restrictions and changes to how businesses of all types could operate during the Covid-19 pandemic and now as they reopen, changes to how your business provides goods and services for your clients and customers may have changed, therefore it is advisable to review your Terms & Conditions and update them if necessary.

No matter what type of business you run or service you offer, it is important to make sure your terms and conditions are still relevant and up to date and also cover you and your staff.

Here at Gullands we are happy to review your existing terms and conditions and to update them if necessary, to reflect any changes you have made to your business practices now or will make in the future.

It is important to make sure you have thought about every eventuality and to make sure you are covered as far as is possible. For example, this could include changes to opening times, the delivery and payment terms for goods and services, the specification of goods and services, changes to costs, the validity of estimates for goods and services, changes which will affect the redemption of gift vouchers, changes to booking dates and deposits paid...the list is endless.

Over recent weeks there has been a lot of 'goodwill' generated but as business owners get back to business, they need to make sure their business interests are protected for the future.

If you would like to discuss your changing business operations and terms and conditions get in touch with **Sarah Astley** [s.astley@gullands.com](mailto:s.astley@gullands.com)

## Commercial leases and rent reviews

**If you own or rent commercial property and a rent review is approaching, or was due to take place during the lockdown, how should you now deal with the review at this time?**

The purpose of a rent review is to allow for the adjustment of rent to the current market level at the date of the review and if there is a break clause, to allow the tenant to terminate the lease early. However, with there being so much uncertainty within the business community as it emerges from the lock down, there is an argument that rent shouldn't be increased and in some instances, rent might be decreased or a rent holiday offered if it hasn't been already, especially to those sectors struggling such as retail.

There are certainly concerns about what many high streets, shopping centres and business parks will look like over the next 12 months. Issues such as whether there will be an over-supply of space and whether many tenants will look to make significant changes to the amount of space they lease, perhaps seeking to reduce it to allow more staff to work from home.

There are clearly many questions to be answered and the starting point within the lease is the rent review clause which sets out when the review will take place, how it will be conducted and also assumptions and disregards to be made when a surveyor is valuing the premises for the purpose of the review. It will also set out the procedures to be followed and also provisions for dealing with any disputes.

If the new rent cannot be agreed then the rent review clause should have a procedure for a third-party dispute resolution.

Landlords should be aware of the high number of Company Voluntary Arrangements (CVAs) which have been used recently to reduce lease liabilities.

Where both parties are keen to maintain a good relationship and to work through the difficulties it may be preferable to reach a flexible agreement. However it is important that both parties fully understand their legal responsibilities and that any agreement is fully documented to reflect the understanding and the intentions of all parties.

Marianne Webb can be contacted at [m.webb@gullands.com](mailto:m.webb@gullands.com)





# Lasting Powers of Attorney Update

The Office of the Public Guardian which oversees Lasting Powers of Attorney has provided updated advice for deputies and attorneys to enable them to carry on their duties during the Covid-19 pandemic.

Over recent weeks there will have been many instances where deputies and attorneys have not been able to visit or speak to the person whose interests they look after due to social distancing or self-isolation. They may have had issues dealing with the person's health care providers or have had difficulties accessing and managing their finances.

Whilst some of the practical difficulties at the moment should be starting to ease as the lockdown lifts, it still may be difficult to carry out instructions to the letter on behalf of some people.

The lockdown may have raised a number of issues for the person with the LPA and their deputies and attorneys and there may be some people who want to review or change their LPA to avoid the same difficulties in the future. There may be some people who no longer want the responsibility of being a deputy or attorney or want to bring in the help of younger family members to help with the care of older relatives. There may also be further issues for everyone if they need to self-isolate as the track and trace system is implemented or due to the new quarantine rules on entering the UK.

If you are a deputy or attorney you cannot delegate decision making to someone else unless you have been authorised by the LPA

or the Court. If permission hasn't been given to delegate, attorneys can ask for assistance in their duties.

Attorneys who are only in contact with a person by phone might have difficulties in deciding if they are making a decision in the best interest of the person and they might need to seek professional guidance to discuss their duties, responsibilities and the authority they have under the LPA.

When considering finances, deputies and attorneys may have limited powers to make gifts including loans to some people who might be facing financial difficulties and they might need to seek advice from the Court of Protection where much larger sums are involved, for example if they wanted to make a gift to help a younger relative get onto the property ladder.

There may be many individuals and families who because of the pandemic have decided to review their future health and welfare and financial interests and have now decided it is a good time to make an LPA.

We are here to provide advice and support on both new and existing LPA's, to help give you and your family the peace of mind for the future.

**Alex Astley** is a partner at Gullands and can be contacted at [a.astley@gullands.com](mailto:a.astley@gullands.com)

# Will warning

If you have used a Will writer to prepare a Will for you, you should be aware that an Independent review of legal service regulation has recommended accreditation for all Will writers. Reviewing your Will with a solicitor is now advisable to make sure it is comprehensive and covers all of your current and future requirements.

The Independent Review of Legal Services Regulation was commissioned by the Centre for Ethics and Law in the UCL Faculty of Laws and it was published on 11 June 2020.

The report has highlighted a number of concerns about the quality of Will writing and it found that, "as the issue of Wills of questionable validity and quality was prevalent amongst both regulated and unregulated Will writers, the current regulation and its supervision and enforcement did not provide adequate protection".

This isn't a new issue and unfortunately for many people the failures in estate planning or Will drafting may not be known for many years. The report also found that as modern life has changed and with it issues

such as increasingly complex family relationships, often combined with increased longevity and associated questions about mental capacity (to make a Will) were raising the risk profile still further.

The report is proposing that there should be a single regulator for all legal services in the future, and that the regulator should require appropriate accreditation for every Will writer, even those who are otherwise fully qualified lawyers. In the short term, it suggests the registration of unregulated Will writers.

The report also encourages both newly registered and existing practitioners whose practice includes the preparation of Wills, powers of Attorney and estate administration to join one of the voluntary specialist accreditation schemes, such as the Law Society's Wills and Inheritance Quality Scheme and STEP schemes.

All adults should have a Will and we recommend reviewing it every five years or on major events in life such as marriage, divorce, the birth of a child or grandchild, buying a property etc.

Gullands' Partner **Alex Astley** is a member of STEP and to arrange to review an existing Will or make a new Will contact [a.astley@gullands.com](mailto:a.astley@gullands.com)





# Rent arrears reprieve for thousands of tenants

The Government announced in June that it is extending the ban on evictions for social housing and private tenants in England and Wales until 23 August 2020.

Tenants who are in rent arrears due to losing their jobs or having to self-isolate during the Covid-19 pandemic faced the prospect of court action beginning from 25<sup>th</sup> June.

The Government has said it wants court action to be a last resort and for landlords to exhaust all possible options, which could include negotiating flexible rent payment plans with tenants.

Whilst many private landlords with a mortgage on their rental property may have been able to take advantage of a 3-month mortgage payment break, there is no guarantee that this will also be extended for a further two months into August and there is little comfort for those landlords who themselves rely on the income from rental properties as their own main source of income.

Social housing providers will be left in a more difficult position in the longer term and it has been reported that a number of housing associations qualify for and have accessed The Covid Corporate Finance facility and Coronavirus Business Interruption Loan Scheme.

Marianne Webb at Gullands comments: "Whilst this pandemic is unprecedented and no one wants to see anyone homeless, the issue for many landlords is that they will be left with a significant income shortfall and they may still have to deal with tenants who are unable to pay once the revised deadline expires in August. The Government will inevitably have to look again at how it can support both landlords and tenants at the end of August."

**Marianne Webb** is a Partner at Gullands Solicitors and can be reached at [m.webb@gullands.com](mailto:m.webb@gullands.com)





# Stamp Duty Land Tax on rural properties

There is a reported upsurge in the number of buyers looking to buy a property in rural locations now that restrictions on the property market have been eased post Covid-19. For those buying property with additional land there may be some confusion regarding the amount of Stamp Duty Land Tax (SDLT) that is due to be paid.

In the recent case of Myles-Till v Revenue & Customs Commissioners the homebuyer bought a residential cottage with a garden and an adjoining paddock measuring 1.1 acres. At the time of the purchase the paddock was separated from the garden with a hedge and fence but it was not being used for grazing at the time of the purchase. It had previously been owned and used for grazing by a local farmer until it was sold to form part of the property.

The question which the tribunal considered was if the paddock was used for agriculture which was evidenced by the estate agent's particulars and a statement from a rural planning consultant describing it as agricultural.

The paddock was not in commercial use at the time of the purchase and the paddock's size was comparable with the grounds of other similar residential properties in the local area. The tribunal therefore concluded that the



paddock should have been treated as part of the grounds of the dwelling which meant the homeowner had to pay additional SDLT of £20,875 plus interest.

Understanding what you are buying and the rate at which you will have to pay SDLT is

crucial as there is clearly a very big difference between the various bands.

Here at Gullands we can put you in touch with SDLT experts for advice in relation to purchasing your new property.

## Courts Update

Across the country Criminal Courts, which were effectively closed during the lockdown, are re-opening for business.

For more than two months the Criminal Justice system effectively came to a halt with no Jury trials and with Magistrates Courts restricted to only dealing with cases involving people held in custody. Even police investigations were affected with the police keen to restrict the number of people coming to police stations to be interviewed.

As the system moves towards business as normal, the Courts and the CPS are left

with a huge backlog of cases. We are seeing Crown Court cases that were listed for trial over the lockdown period now being put off to 2021 and Magistrates Courts having to re-list trials for further case management.

There will be huge pressure to try to resolve cases as effectively as possible to help clear the backlog. If defendants have put off instructing a solicitor for their cases, now might be the time to do this as this would enable proper



dialogue with the Prosecution and the Courts which may be to everyone's benefit.

Where a person qualifies, we can apply for legal aid on their behalf. In all other cases we offer an initial consultation for £75 + Vat at which prospects and costs can be discussed.

Please contact the Head of our Criminal team, **John Roberts**, at [j.roberts@gullands.com](mailto:j.roberts@gullands.com) or by phone on 01622 689740 or 07855 375184.





# Virtual Viti-Culture

Another event this summer which we were due to attend in person, but due to Covid-19 it evolved into an online event, was Viti-Culture (9 July).

The event brings together growers and prospective growers, vineyards and wineries with a range of industry experts to provide advice and support. Here at Gullands we have been involved with the sale, purchase, business structuring and management of a number of vineyards in the South East and are happy to advise on a range of legal issues.

In and around Maidstone there are new vineyard plantings taking place this year and it feels exciting to be watching the growth of an innovative industry here on our doorstep.

According to Wines of Great Britain the sector will create 24,000 jobs in agriculture by 2040 (possibly earlier, but this factors in the Covid-19 Pandemic) and 7,300 of those jobs will be in Kent which is expected to be the largest wine producing county in the country. The organisation has also looked at the expansion of other New World wine regions and predicts production in the UK will increase to 40m bottles by 2040 with 45,000 acres under vines and 95% of wine production is expected to be in the South East (Kent, Sussex, Hampshire and Surrey).

Like many areas of horticulture, the UK wine industry is heavily reliant on non-UK labour, especially for seasonal work. The industry is working with education providers to encourage young people to consider a career in the sector.

Wine GB also launched a virtual English wine week this year (20th-28<sup>th</sup> June) which will engage directly with the public and encourage them to try a wider selection of wines. With over 500 vineyards there is now an incredible choice.

Vineyards have been reporting a rise in sales directly to consumers, whilst the shutdown of the hospitality sector has reduced b2b sales. The reopening of the hospitality sector in July will be universally welcomed and all producers will be hoping to maintain the interest of the public whose phenomenal support for shopping locally and buying directly from local producers has been a lifeline for many food and drink businesses.

For more information or advice about some of the legal issues in this sector contact **Paul Burbidge**, [p.burbidge@gullands.com](mailto:p.burbidge@gullands.com)



# Elmer's Big Heart of Kent Parade

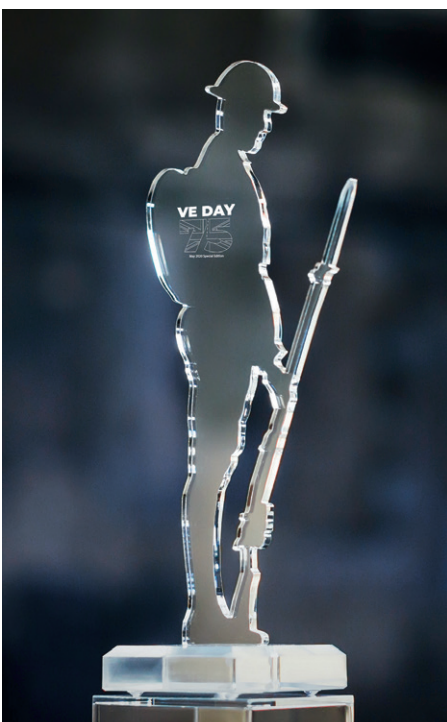
New dates have been announced by the Heart of Kent Hospice for Elmer's Big Heart of Kent Parade which had to be postponed this summer due to the Covid-19 pandemic.

Elmer and his friends will now be marching onto the streets of Maidstone to form the first-ever public sculpture trail on Saturday 19 June 2021 for nine weeks. Look out for the Gullands' Elmer as you make your way around the colourful and vibrant trail which will bring thousands of visitors to the town.

The Hospice, which during coronavirus has been at the front line of supporting terminally ill people and their families in Maidstone and the surrounding towns and villages, took the decision to postpone the trail back in March. The decision to delay was to ensure the safety of residents and tourists and to enable the Hospice to prioritise its patients and local people being diagnosed with a terminal illness and needing care and support during the pandemic.

Sarah Pugh, Chief Executive at Heart of Kent Hospice said: *"We are so happy to share this wonderful news with our local community. Our parade partners, sponsors and the learning programme schools are thrilled that we have been able to set the date, Saturday 19 June and they are as committed as we are to ensuring that Elmer's Big Heart of Kent Parade is even bigger and better in 2021."*

Blair Gulland comments: *"So many events have had to be postponed or cancelled this year, but given the circumstances this was absolutely the right thing to do and we look forward to the parade taking place in 2021 which will help bring many visitors to the town centre and it will provide a terrific boost for local businesses."*



## RBLI Tommy in the Window campaign success

Aylesford charity and Gullands' client Royal British Legion Industries held a successful fundraising campaign ahead of the 75<sup>th</sup> anniversary of VE Day on Friday 8 May called 'The VE Day Tommy in the Window campaign'. The campaign's success saw them raise over £1 million within a few days.

Lisa Farmer, Director of Strategic Development at RBLI commented: "In a news agenda which was dominated by very distressing and stressful stories we were delighted that our campaign

helped to lift the public mood and gave people a chance to mark VE Day at home. We also had over 4,000 people engage with our live "sing along" on 4<sup>th</sup> May on Facebook - @Royalbritishlegionindustries!"

Blair Gulland who is also a Trustee of RBLI comments: *"Despite the lock down, the country celebrated the 75<sup>th</sup> VE Day as best it could and we are delighted the public also stepped up to support the work of RBLI at this time. The campaign has been a fantastic success and we are grateful for all of the work of the team at RBLI."*



## Bearsted and Thurnham Bowling Club

Gullands is delighted to be supporting Bearsted and Thurnham Bowling Club which is a community bowls and social club open to all across the Maidstone area.

Following the introduction of an artificial playing surface and flood lighting six years ago, individual visits to the club for bowling / recreational activity have increased significantly.

The club has benefited from a number of other improvements including a new bar and the kitchen is currently undergoing a major refurbishment. Further improvements are planned for the future including an extension, new loos, changing rooms and storage.

The club is now aiming to further expand both its playing and social membership to deliver a stronger recreational and social element throughout the year with facilities which are accessible all year round.

Age is no barrier to bowling and everyone is encouraged to give it a go. The club runs a number of social events and these and bowling will resume once social distancing measures are relaxed. For further information, for coaching enquiries or any details call **Mick Palmby 01622 630062/07908 860014**.

# Gullands Partner becomes new Under Sheriff of Kent

Over the last three months we have all got used to events taking place virtually and during the height of the lockdown, Gullands' Partner Catherine Lloyd was sworn in as the new Under Sheriff of Kent. It was the first time ever that the signing in ceremony, along with that of the new High Sheriff of Kent Remony Millwater took place online.

The ceremony would normally take place in the Parish Church of the incoming High Sheriff, however this year it took place online, watched by friends and family and witnessed and presided over in accordance with protocol.

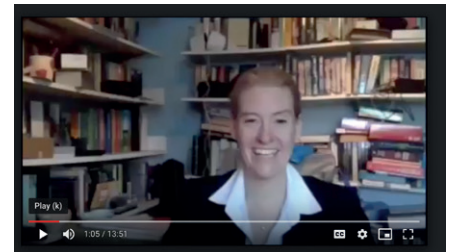
Catherine Lloyd has taken over from Robert Coombe who has retired after eight years in the role and it is typically a role carried out by a solicitor.

The Under Sheriff is there to offer support and guidance to the High Sheriff of Kent (who is the Monarch's representative for law and order and the emergency services in the County).

The High Sheriff is the oldest secular office in the UK after the Crown and dates back to Saxon times. The Under Sheriff assists with the organisation and delivery of key events, including the High Sheriff's Declaration Ceremony, Garden Party and Justice Service for Kent. The High Sheriff is also responsible for the entertainment and welfare of High Court Judges when on circuit in the County, which includes providing Court lunches and other hospitality.

The High Sheriff's role is now a ceremonial one, but no less important as it supports and unites a wide range of people within the communities they serve. The High Sheriff would also support the Lord Lieutenant when members of Royalty visit the County.

Catherine Lloyd comments: "It was certainly a different ceremony to any that have taken place before, but it was very important that we all followed Government advice to stay at home and technology made it perfectly possible to do this online. I'm really looking forward to taking on this role, I think it will be fascinating and will enable me to meet lots of interesting people, especially once all of the restrictions on movement are lifted. I'm really looking forward to serving the community in which I live and work for many years to come."



Catherine Lloyd, Undersheriff of Kent



Remony Millwater The High Sheriff of Kent