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Spring Clean



Written by Claire Morrissey

Now that warmer weather has arrived and summer is just around the corner this is traditionally the time of year when people set about spring-cleaning. This inevitably results in a trip to the local tip, or Community Recycling Centre, as they are now called. Such facilities are designed to deal with waste from domestic homes with separate sites allocated for business or commercial waste. But what happens if there is just too much for you to take to the tip yourself?

It is at this point that many people make use of their local 'man with a van' who will happily charge around £50 or less to take away your old refrigerator, carpet off cuts and cardboard boxes left over from Christmas. Or what if a neighbour asks you to take their grass clippings to the tip for them and pays you £20 for your trouble? You may be forgiven for thinking that this is a socially responsible thing to do. However, you could be breaking the law without even realising.

The Waste (Household Waste) Duty of Care (England & Wales) Regulations 2005 provide that an individual disposing of household waste has a duty of care to ensure that it is disposed of in accordance with legislation. The party transporting the waste, for the purposes of environmental legislation, becomes a waste carrier. They therefore require a waste carrier's licence. These are obtained from the Environment Agency for a fee. In addition, if an individual wishes, for example, to pass their old refrigerator on to a company or individual who may sell it on or further dispose of it they are required by law (under the Environmental Protection (Duty of Care) Regulations 1991) to ensure that they complete a document called a waste transfer note. This should include a description of the waste being dealt with and be kept by both parties for a period of two years. The purpose behind this document is to allow waste to be traced should it end up somewhere it is not supposed to be.

Therefore, if you take up your neighbour's offer to take their waste to the tip and you


accept money for that purpose and you don't have a waste carrier's licence or complete a waste transfer note (if it is necessary) you could be breaking the law. The Local Authority has the ability to issue a fixed penalty notice for these offences of £300 (reduced to £200 if paid within 7 days of issue), which do not amount to criminal convictions. However, they also have the power to instigate criminal proceedings if the breach is serious enough or when the fixed penalty remains unpaid. In these circumstances the maximum penalty is up to £5,000 on conviction in the Magistrates' Court or an unlimited fine if the individual is convicted in the Crown Court.

The Local Authority also has the ability to prosecute individuals who fail to ensure that they take reasonable steps to check that people removing waste from their premises are authorised to do so. This means that if you don't take steps to check whether or not the individual collecting your waste has a waste carrier's licence you could be prosecuted. This often happens in circumstances when the waste is later discovered by Environmental Health Officers illegally deposited and is then traced back to the original owners. A breach of the household duty of care may attract a penalty of up to £5,000 on conviction in the Magistrates' Court or an unlimited fine if the individual is convicted in the Crown Court.

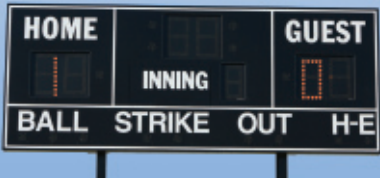
In some cases, where the individual or individuals who deposited the waste cannot be found, the Local Authority may decide



to prosecute the original owner of the waste for fly tipping, i.e. illegally depositing waste, under section 33 (1) (a) of the Environmental Protection Act 1990. Generally speaking, the Local Authority will invite you to an interview under caution to give you the opportunity to explain what has happened. Defending such a charge can be costly and time consuming and the penalty is severe: a maximum fine of £50,000 fine should the individual be found guilty in the Magistrates' Court or an unlimited fine if convicted in the Crown Court.

This is a complex and little known area of law and one of which many members of the general public fall foul. So, what can you do to ensure that you comply with your duty of care as a householder? Firstly and most importantly, you must ensure that you take the contact details of the individual or company you employ to take your waste away. Then you must satisfy yourself that they have a valid waste carrier's licence. This can be done by contacting the Environment Agency directly and asking for a free instant Waste Carrier Validation Check or checking online on the Environment Agency website. Only then should you let them take your waste away. 

Mediation 1 - Courts 0



Written by
Andrea Thompson

Over the last 20-30 years there have been significant changes in the way that children and financial matters are dealt with upon separation and divorce.

Traditionally these were dealt with through either Solicitors or the Courts. However in 2000 if you wanted Legal Aid, you were obliged to


consider Mediation by attending a meeting with a Mediator or you would not be able to progress matters with the benefit of Legal Aid. A few years later in children cases, at the first Court appointment, a Mediator was available to help resolve or to narrow the issues, to avoid protracted and messy Court proceedings.

The current situation is that as from the 6th April 2011, an applicant is not able to issue a Court Application, apart from a few exceptions, without attending a Mediation Information Assessment Meeting (MIAM) to consider whether Mediation can help. This is when the Family Mediation Protocol came into force.

Mediation is a process which separating couples may use to settle their differences in a co-operative and non-confrontational way, assisted by an impartial Mediator to help the couple reach their own decisions.

Alternative Dispute Resolution is becoming increasingly seen as the way forward for people to resolve their differences upon separation. In addition to Mediation, there is also the option of using Family Collaborative Law.

This allows separating couples to agree to opt out of the Court system and resolve matters in a Collaborative way for the sake of the family; each being supported by their own solicitor. This is particularly beneficial when there are children in the family given that it is helpful for the children that parents cooperate with each other.

In my experience as a Mediator I have been able to assist couples to resolve a number of issues. Couples may need to discuss with whom the children will live and how much time they will spend with each parent. Once that has been decided they will often need to settle housing issues, how much income each of them will have, including welfare benefits available to them and also pension settlements. As a Mediator I can provide the couple with extensive information about their issues and help them to come to a resolution which is acceptable and that they feel is fair in all the circumstances. In the last edition of The Word, John Leadbeater described the current situation in relation to Pre-Nuptial Agreements. The Family Collaborative process lends itself very well to negotiating an appropriate Pre-Nuptial Agreement. 

Bribery Act 2010 - Basic Guidance



Written by
Neil Gibbs

That guidance has now been issued and is available at:

www.justice.gov.uk/guidance/bribery.htm

The effect of that guidance is that the Act will now be brought into force on 1 July 2011.

The guide is expressed to be intended to ***“help commercial organisations of all sizes and sectors understand what sorts of procedures they can put in place to prevent bribery”***.

The guidance is not exhaustive. It is generic in nature and built around six guiding principles. Those principles are:

Principle 1: Proportionate Procedures

The guidance acknowledges that an organisation has to have in place procedures to prevent bribery which are proportionate to the risks it faces as to the nature, scale and complexity of its activities.

Recommendation

It is therefore necessary for any organisation to actively assess the risks it faces so that it

can introduce appropriate policies and take appropriate steps.

Principle 2: Top Level Commitment

It sets out an expectation that the top level management of a commercial organisation whether it is the Board of Directors, the owners or equivalent body or person must be committed to prevent bribery by persons associated with it.

Recommendation

It is recommended there must be clear communication of the organisation's anti-bribery stance and an appropriate degree of involvement in developing bribery prevention procedures by the management team.

Principle 3: Risk Assessment

Commercial organisations must assess the nature and extent of the organisation's exposure to potential external and internal risks of bribery on its behalf or by persons associated with it. This assessment must be periodic, informed and must be documented.

Recommendation

Reviews must also take place and be documented generally and when new markets are being developed, particularly in new countries where there are high

levels of risk, new sectors where there is a different kind of risk, or even in a particular transaction where it is perceived there might be a high risk (e.g. public procurement).

Principle 4: Due Diligence

It is anticipated that all commercial organisations will apply a due diligence process in assessing the risks presented by persons or organisations which perform or will perform services for them in order to mitigate any risk of impropriety.

Recommendation

It is therefore necessary to review how and with whom you conduct business.

Principle 5: Communication (including Training)

It is anticipated that organisations will communicate their bribery prevention policies and procedures both internally and externally and thereby embed them throughout the organisation.

Recommendation

It will be necessary for organisations to introduce regular training on such issues and to document such training.

Conveyancing Quality Scheme



Written by
David Webster

Evidence of the present malaise in the Property Market is splashed over the media for all to see. Stagnant prices, shortage of mortgage lending - the list goes on!

In the face of a slow and fragile recovery, Woodfines is taking the opportunity to be part of the Law Society's Transaction Conveyancing Quality Scheme.

I was at the launch of this exciting initiative, which is a quality standard only awarded to law firms which can demonstrate high standards of service and advice in the field of Conveyancing. The aim is to give potential clients an instantly recognisable kitemark demonstrating our commitment to provide such a high quality service.

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Principle 6: Monitoring and Review


It will be necessary that all organisations monitor and review their procedures on a regular basis and for those reviews to be documented.

Recommendation

DOCUMENT AS A GENERAL RULE.

What the guidance doesn't require.

The guidance does not specifically require that there is any kind of external verification or assurances of the effectiveness of your anti-bribery procedures. Even with external verification of your procedures, it may well still be deemed that your procedures are not adequate and that an offence under Section 7 of the Act will still have occurred.

At Woodfines we have prepared a tool kit of procedures covering not only consideration within your organisation of your activities but also the documentary side of recording the procedures and introducing them into your working regimes which with proper use and application should present a major argument that adequate procedures are in place providing they are implemented and applied throughout the organisation. The commercial department will be happy to assist you with any enquiries that you may have. 



Database Purchases and Email Marketing



Written by
Emma Trew

Now that over 90% of the UK use e-mails regularly, marketing via e-mail is a well utilised advertising tool. Unsurprisingly, there is a mass of legislation which governs e-mail marketing. Whether you plan to buy a list of e-mail addresses, e-mail your customers or appoint an agent to e-mail on your behalf; there is a risk of liability. Penalties for breaches of any regulations include enforcement notices, fines or even criminal liability.

When considering using e-mail marketing or purchasing a database you should consider the following points:

● Opt-in

If you are e-mailing individuals (including sole traders and unincorporated partnerships) about products and services that they have not requested information about, you must hold an express opt-in granting you authority to contact them. An opt-in is some form of communication where consent is indicated i.e. a signed acknowledgement or if the customer subscribes to a service via a website. Consequently, you should consider obtaining appropriate consent from your customers when they first contact you to ensure you can contact them in the future about alternative products and services.

● Opt-out


Individuals may complain to the Information Commissioner or the Advertising Standards Agency about unwanted marketing material and may be entitled to compensation for any damage caused by a breach. All marketing e-mails should disclose the identity of the sender and contain

an opt-out or option to unsubscribe to further e-mails.

● Database Collation

Under the Data Protection Act 1998 an individual must consent to any processing of their personal data or the sale of it. If you purchase an e-mail database from a third party you need to ensure that the information can be sold and used for the purposes you require.

● Change of Control

When you purchase a database from a third party you will need to obtain fresh consent from the individuals before contacting them. This applies even if the third party used the e-mail addresses in the same way you propose to i.e. to advertise the same products. The Advertising Standards Agency has ruled that it is the responsibility of the purchaser of the database to acquire the explicit consent of individuals. 

If you require any advice or assistance on this subject or would like to ensure you are following the correct procedures, please contact Emma Trew at the Milton Keynes office on 01908 202 150.

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Home Run

Niall Quinn QC scored another home run last week when his client, a respectable 50ish businessman, was acquitted of assault. He was accused by two witnesses of threatening them with a baseball bat which he had concealed up his jacket sleeve. Under cross-examination they insisted that the item in question was a full size Louisville Slugger. In the local shops at short notice Niall could only lay hands on the children's version (which should perhaps be called the Louisville Slug) but the impossibility of concealing even this cut-down item up a sleeve was enough to win the day for a relieved client. 🏏

Conveyancing Quality Scheme

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The scheme is based on four principles that participating firms must observe and follow. These are:

- 1. Probity** – The membership application focuses on identity and status checks for staff carrying out your work.
- 2. Practice Quality Standard** – consistent processes and standards are core elements of the scheme.
- 3. Client Service** – A Client Charter must be observed to ensure quality of delivery.
- 4. Quality Assurance** – robust monitoring, spot checks and audits are carried out by

the Law Society to ensure high standards are maintained.

The kitemark will also demonstrate to mortgage lenders that we are well managed and dependable. It is likely that in the future, membership of the Scheme will be a pre-requisite of appearing on lenders panels of approved solicitors.

Woodfines will shortly be making an application to join the scheme. The Department is looking forward to offering this Quality Standard as a further step in providing an effective service for all conveyancing clients. 🏏

Firm News...



Peter Ranson

Conveyancer extraordinaire Peter Ranson retired from Woodfines' Sandy office at the end of May after chalking up almost 50 years loyal service with the firm in its various guises. Peter's expertise, diligence and sense of humour will be truly missed by all. Always a sportsman, the golf course beckons for him, and he is looking forward to spending more time with his grandchildren as well escaping for a much deserved holiday. Everybody at Woodfines wishes him all the best for a long and very happy retirement.

Young Farmers Rally

Woodfines' Agri-business team spent the day at the Beds Young Farmers Rally on 21st May, where they held a barbecue for guests with Frontier Agriculture. The bright but windy day was enjoyed by all. If you have any enquiries for our agricultural business team, please contact them on **01767 680 251**.

Woodfines Art Competition

Ten local schools across Bedford and Bedfordshire entered artworks, in any format, into the Woodfines Art Competition, which was exhibited and judged at Bedford College on Friday 20th May. The winner, 13-year old Olivia Randall from St Andrews School, was delighted with her prize, £100 in art vouchers. The judges said her painting, 'Riverbank Flowers', which was a mixture of dried flowers and paint, was 'original and showed true creative talent'. Her work will now go on display at our Bedford office. **Well done Olivia!**

Mock Employment Tribunal

Woodfines' Company department held a mock employment tribunal on Wednesday 11th May to demonstrate how an employment tribunal operates and the affects it can have on employees and employers. The event, which saw fictional employee 'John Eager' unfairly dismissed from his job as a software designer, was a fantastic opportunity for people to experience a tribunal without being part of one themselves. We will be holding a second Mock Tribunal later in the year.

If you would like to reserve a place, please contact Nicola on nadcock@woodfines.co.uk

Out of the Blue perform for Woodfines' Cambridge office

On Thursday 12th May, Woodfines were joined by all-male a cappella group, 'Out of the Blue', for a special performance for clients and contacts of the Cambridge office. The event raised over £1,800 for the office's Charity of the Year, CAMPOD (the Cambridge Fund for the Prevention of Disease), and was hugely enjoyed by everyone present.



Upcoming Events / Seminars

7th July

BIMBO – An Exit Strategy?

MacIntyre Hudson, 20 Grove Place, Bedford

Joint seminar with MacIntyre Hudson LLP and Natwest on Management Buy-In and Management Buy-Out. The seminar is free to attend but booking is essential.

8th July

Woodfines Annual Golf Day

John O'Gaunt Golf Club

Get your team together for the annual Woodfines Golf Day. Teams of four cost £300, and all proceeds will support the Alzheimer's Society. The day includes 18 holes of golf, bacon rolls on arrival, a delicious meal at the end of the day and more.

17th July

The NSPCC Milton Keynes Half Marathon

Woodfines' MK office are supporting the Team Challenge, along with Baker Tilly, for the annual half marathon. You and your business can also support the event by entering a team or by making a donation to the NSPCC on our Just Giving page. Three of the Woodfines Partners (Neil Gibbs, John Egan and Andrew Buckley) will be taking part, so why not put your own team together to challenge them?

For full details and to reserve places on these events, please contact Nicola on nadcock@woodfines.co.uk

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