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Newsletter for the outplacement industry

Issue 23/August 2016

Failure to enter into mediation could be costly

One of the key recommendations in the Jackson Report, which has undertaken a wide scale review into the way that civil litigation is conducted, is that alternative dispute resolution (ADR) should be explored wherever possible in a bid to settle legal battles.

In his report, Lord Justice Jackson stated: “ADR, particularly mediation, has a vital role to play in reducing the costs of civil disputes, by fomenting the early settlement of cases. ADR is, however, under-used. Its potential benefits are not as widely known as they should be.”

There are now warnings from a senior judge that a refusal to mediate costs disputes may soon face the same consequences as a refusal to mediate in the original dispute.

There have already been two cases since December 2015 – both involving NHS Trusts – where the courts have taken a dim view of defendants failing to engage in ADR and have penalised them accordingly.

In the first case, involving Buckinghamshire Healthcare NHS Trust, sanctions were imposed on the unsuccessful paying party for refusing to engage in mediation.

The judge ordered the defendant to pay costs, saying: “If the party unwilling to mediate is the losing party, the normal sanction is an order to pay the winner’s costs on the indemnity basis, and that means that they will have to pay their opponent’s costs even if those costs are not proportionate to what was at stake. This penalty is imposed because a court wants to show its disapproval of their conduct.”

In the second case, involving The Princess Alexander Hospital NHS Trust, the defendants argued that they did not enter into the mediation because the parties were so far apart.

The judge took the view that this was an unreasonable refusal to mediate and stated: “The parties should be encouraged to enter into mediation and if one party fails to enter into a mediation and that failure is unreasonable then there should be a sanction.”

As both cases illustrate, a failure to enter into ADR can have serious financial consequences. The view of the courts is that a trial is a last resort and should only occur when all other routes to reach settlement have been exhausted.

Downsizing may not be the dream many imagine

Millions of home owners plan to use the proceeds from downsizing their property to top up their pension pots.

However, new research suggests that even with additional funding from downsizing, many may still find they will need to get by on just half their current salary when they retire.

A report by pension provider, Royal London, reveals that moving from an average detached house to an average semi-detached house would only raise enough money to buy a lifetime income worth £5,700 a year.

The figures are based on a detached home selling for £310,000, buying a semi-detached property for £197,000 and the individual then purchasing a standard annuity.

The proceeds from the downsizing income, when added to the full flat-rate state pension of around £8,000, would provide a pension of £13,700 a year, which equates to around half the average annual worker's salary.

Estimates by Royal London suggest that around three million home owners are deciding not to save for their retirement, instead relying on being able to downsize and use the proceeds to fund their later life. Research also suggests that the average person's pension pot is just £30,000.

The report warns that gambling on this strategy raises a number of issues which could undo their plans, such as continuing to pay off their mortgage into later life and grown up children refusing to leave the family home.

Steve Webb, director of policy at Royal London, said: "Hoping to live purely off the value of your home could be a 'downsizing delusion' for millions of people."

At Birchwood, we recognise that the pensions environment is complex and that it can be challenging to make decisions that will maximise future financial security. For more information on any aspect of pensions or retirement planning, please contact us.

BHS woes make tabloid headlines as Austin Reed bows out in a more dignified manner

The very public debacle following the collapse of high street retailer, BHS, has hardly been out of the media spotlight during the past few months.

Former owner, Arcadia, led by Sir Phillip Green, faced claims he was irresponsible in agreeing to sell BHS for a nominal sum last year to the consortium led by Dominic Chappell, a twice-bankrupt former racing driver with no retail experience.

Green and his fellow directors have also been criticised for taking as much as £580million out of a business that ended up with a pension scheme deficit to the tune of hundreds of millions of pounds.

The unedifying twists and turns of a business in turmoil were played out on the public stage. MPs sitting on the Business and Innovation select committee heard from current and past owners and directors who were quick to point the finger of blame at each other.

During the hearing, BHS former CEO Darren Topp claimed that owner Dominic Chappell threatened to kill him over a £1.5 million transfer; former owner Sir Phillip Green was dubbed a 'corporate crook' by SNP treasury spokesman Roger Mullin and Chappell was branded a 'premier league liar' by former BHS financial consultant Michael Hitchcock.

Amidst the name-calling, claims and counter-claims, the inescapable fact remains that 11,000 employees are set to lose their jobs and the pensions pot continues to face a massive black hole.

With so much media attention focussed on BHS, you might be forgiven for thinking that it is the only high street retailer in trouble, but spare a thought for the employees of Austin Reed who also lost their jobs at the end of June.

The collapse of the 116-year-old brand, which fell into administration in May, saw its owners blame a "challenging" retail market and cash flow issues.

As no viable offers were received for the business – with the exception of five concession outlets in Boundary Mills outlet villages, which have been transferred to new owners Edinburgh Woollen Mill – 120 Austin Reed stores shut their doors for the final time at the end of June, with the loss of 1,000 jobs.

As part of our comprehensive outplacement services, Birchwood can provide bespoke advice to employers. For more information, please contact us.

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