

LEGAL ■ voice

**Know your rights
when buying a car**

**Making Headway for
brain injuries**

**Foster carers challenge
council transport decision**



Hello

Welcome to the latest issue of Legal Voice.

Have you seen our website? Take a look - www.athertongodfrey.co.uk

I am pleased to say that Atherton Godfrey has received Legal 500 recommendations for both our clinical negligence and personal injury work again this year. In addition, several members of staff also received individual recognition for their work in these specialist fields.

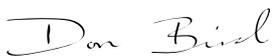
Our firm has grown substantially over the years and has operated as a traditional partnership since its formation in April 1979. We feel that it is now time to make some changes.

With effect from 1 December 2017 Atherton Godfrey will convert to a limited liability partnership. This is a more modern corporate structure, and one that a very large number of legal practices have already converted to.

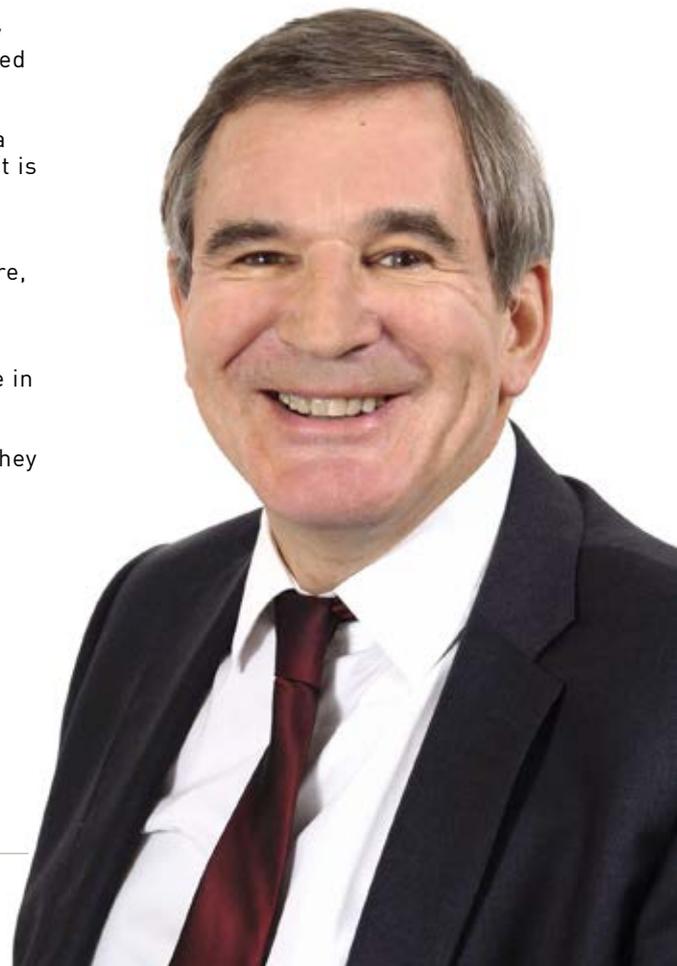
Operating as an LLP gives more flexibility, making it far more suitable in today's business environment than the traditional partnership model.

As far as clients are concerned, the business will operate as before; they will still have the same contact and can expect the same high quality services.

I hope you enjoy reading this issue.



Don Bird
Senior Partner



Dispute Resolution

Resolving disputes can be time-consuming, costly and stressful, whether they involve personal issues or conflicts in a business situation.

Our specialist dispute resolution lawyers have years of experience in helping to resolve a wide range of disputes and their experience can help to significantly reduce the pressure of legal proceedings.



Do you know your rights when buying from a car dealership?

Buying a car from a dealer only to find that it constantly breaks down is a far more common problem that you might think and many people in this situation are unaware of their legal rights.

Under the Consumer Rights Act (the Act) you are legally entitled to receive a car that is of satisfactory quality (taking into account the age, price, make and model of the car), is fit for purpose and is as described in any advertisements.

Therefore, you have the legal right to reject the car within the first 30 days of ownership if it falls short on any of these points, and the trader has a duty to give you a refund.

Sometimes, a problem might not surface until after the 30 day period, in which case you are entitled to have the car repaired if the trader is responsible for the fault. If the repair doesn't resolve the problem, or another problem develops, then you do not have to accept a second repair, you can reject the car and ask for a refund.

If you exercise your right to reject then any refund is likely to be reduced to take account of the fact that you have had at least some use of the vehicle while you owned it.

Did you know? Your rights are protected for a period of 6 years under the Act. A word of caution though, the longer you have had the car the harder it is to prove that the problem was there when you bought it from the dealer.



What our clients say -

“ I am extremely satisfied with the service given. I most definitely would recommend the services of Atherton Godfrey for whatever legal advice was needed ”



Medical Negligence

Urgent improvements in maternity care reporting needed

A report by the Royal College of Obstetricians and Gynaecologists (RCOG) called for urgent improvements in maternity care reporting, after research found that inconsistencies are leaving babies vulnerable.

The report was based on more than 2,500 assessments that were prepared following brain injuries, neonatal deaths and stillbirths that occurred during full-term labour in 2015.

Alarming, as much as a quarter of local reporting was found to be inadequate and some reviews had not even been started. Even more concerning was that some of the incidents had not been investigated at all and where assessments had been carried out, over one third of them had not involved the parents.

John McQuater, partner and head of litigation, commented: "These findings are very concerning. Investigations must be robust and consistent so that proper conclusions can be drawn about the quality of care that the mothers and babies have received. Involving parents in the reviews is absolutely essential if the findings are to be accurate and meaningful."

If your family has been affected by medical negligence, call and speak to us in complete confidence. Our highly experienced team is on hand to give you the expert advice and support you need at this very difficult time. Call 01302 320621 or email info@athertongodfrey.co.uk

Personal Injury

Traumatic brain injuries

Traumatic brain injury is the leading cause of death and disability worldwide. In the UK alone, there are around 500,000* adults living with a long-term disability as a result of suffering a brain injury.

Only around 5% of brain injuries are classed as severe but even then the life expectancy is normal, thanks to the advances in medicine and technology.

Because of this, it is important that any compensation claimed properly meets the ongoing needs of the injured person. It must be accurately calculated to include both the known and also the likely needs for what could be many years to come.

However, recovering the correct amount of compensation is only part of the service we offer. Our specialist team has a vast amount of experience in managing brain injury claims and handle cases where injury has resulted from a wide range of accidents, from birthing injuries to road traffic accidents.

*Headway statistic



We have access to excellent rehabilitation and support services and tailor these to meet the needs of the individual.

As compensation awards are often high value, we can also help with financial matters by setting up Personal Injury Trusts or by appointing financial advisers where appropriate.



Robert's Story

Robert lived at home with his family at the time of the accident that caused his brain injury. After a lengthy legal battle, we recovered a significant amount of compensation for him. We then worked with Robert to set up a Personal Injury Trust so that the money was secure.

Robert's injuries made him prone to bursts of anger, which his mum naturally found distressing. As the problem escalated it put a tremendous strain on the family and ended up causing a serious rift.

How we helped - We appointed a case manager to carry out an independent living trial to see if Robert, who was now 21, would be able to move into his own home. Once a suitable and affordable property had been found, we helped to buy furniture, electrical goods and everyday items such as crockery and bedding. We found that Robert still needed help with shopping and paying bills, so a support worker was appointed to help him. Robert now lives as independently as possible.

Making headway for brain injury survivors

Headway is the UK's leading brain injury charity. They provide a range of specialist information and support to help people rebuild their lives after a brain injury.

In an innovative move, Headway has introduced a Brain Injury ID card that acts as a simple yet effective way of making sure that brain injury survivors are given the help and understanding that they need, when they need it most.

A great thing about the card is that it is bespoke so that it only lists the effects that the individual card carrier suffers from. This invaluable information means that everyone is immediately aware of how best to help.

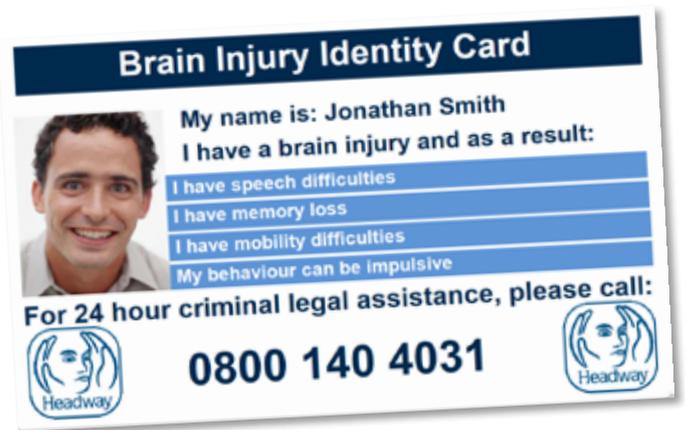
Raymond Lovelock, a brain injury survivor commented: "I've used mine at times of confusion when my speech is slurred and people think I'm drunk; on the bus, in shops and in the bank. People's attitudes change from being impatient and intolerant to caring and helpful in a flash."

The card also ensures that people are quickly identified as survivors in situations where they need medical help or if they become involved with the police.

Headway chief executive, Peter McCabe, said: "The Headway Brain Injury Identity Card is designed to help the police to identify survivors at the earliest opportunity, ensuring they receive suitable support and are diverted away from the criminal justice system where appropriate."

The ID card is available to all UK residents over 18 with a verifiable brain injury and is free of charge.

For more information about the support available from Headway, please visit their website at www.headway.org.uk



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Atherton Godfrey is proud to be included in the Headway Solicitors Directory.

The directory lists only those solicitors with the necessary skills and experience to be able to handle complex brain injury cases. Anyone using the directory can be confident that their chosen firm will be able to fully meet their particular needs.

Brain injury legal specialist for South Yorkshire



John McQuater, a partner and the head of litigation at Atherton Godfrey, has been accredited as a Brain Injury Specialist. He is one of only 46 solicitors in England, and the only one in South Yorkshire, to receive this accolade.

The accreditation is awarded by the Association of Personal Injury Lawyers (APIL), after a rigorous assessment of the solicitors' knowledge, experience and success in managing traumatic brain injury compensation claims.

Mr McQuater has also been accredited as an assessor and will use his expertise to assess the capabilities of other personal injury lawyers who are aiming to specialise in this highly complex and specialist field.

What our clients say -

“ Very helpful and whenever I needed to speak to someone there was always someone there ”

Legal 500 leading firm

Atherton Godfrey has been successful in retaining Legal 500 recommendations for both Personal Injury and Clinical Negligence.

In addition to the recommendations for the firm, a number of individual lawyers also receive personal recommendations for their work.

John McQuater

- Leading Individual
- Recommended Lawyer – personal injury
- Recommended Lawyer – clinical negligence

Diane Parker

- Recommended Lawyer – personal injury

Christopher Noble

- Recommended Lawyer – clinical negligence

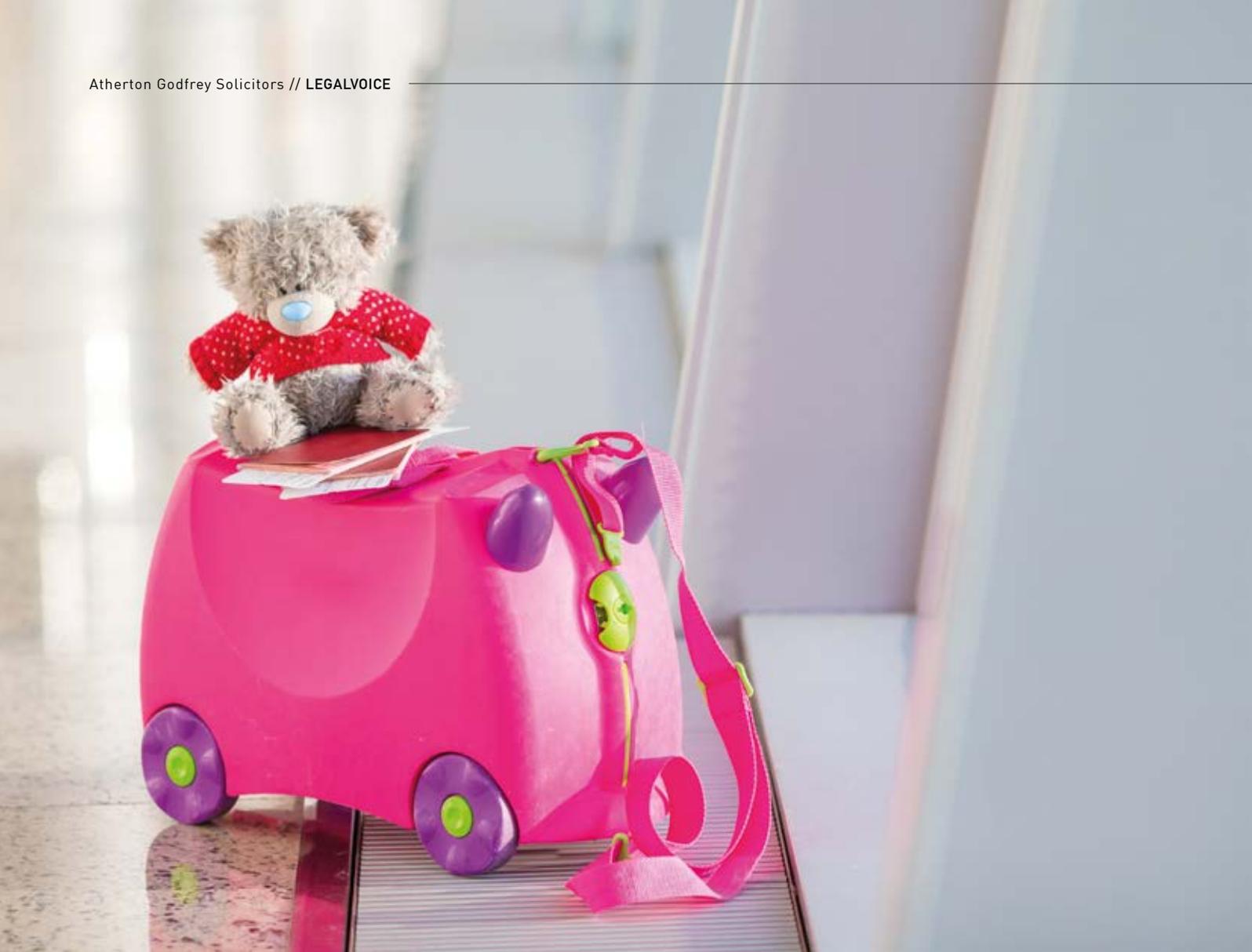


Security warning

Cybercrime is on the increase and is now extremely common. Unfortunately, solicitors and their clients are frequently targeted and there have been many incidents around the UK where emails have been intercepted and altered so that money was transferred to bogus bank accounts. Please do not rely on any bank account details sent to you by e-mail, even if the message looks genuine - always verify them by calling us on 01302 320621 to check that you are using the correct bank details.

Should we need to make changes to our banking details we will ALWAYS notify you in writing.





Family

Where should a child's passport live?

When parents separate the issues that usually involve the courts are who the child will live with and how much time the child will spend with each parent. One question that is on the rise though is where should a child's passport live?

When one parent wants to take their child abroad the consent of the other parent, if they have parental responsibility, is needed, and this should not be unreasonably withheld. However, giving consent is one thing being given the child's passport is something else.

Despite this, the law as it stands does not provide for where a child's passport should live when parent's separate. The consequence of this is that some children are being prevented from travelling, often at the very last minute, because of issues over their passport.

Parents may find themselves desperate to resolve the situation and make all kinds of concessions about arrangements that have already been agreed, such as who the child will be with over Christmas or on birthdays. They may even give in to financial demands.

Jayne Kirtley, family lawyer, comments: "My advice to parents who find themselves in such a situation or fear that one is likely to crop up, is to get legal advice as soon as possible. Planning ahead is essential so that children are not left disappointed and you don't miss out on last minute deals through having to negotiate with a former partner."

Parental responsibility

If the father is named on a child's birth certificate, whether the parents were married or not, he automatically acquires parental responsibility.

When is a final settlement really final?

A recent case demonstrates how couples can be financially liable to their spouse long after divorce.

Mr and Mrs Briers married in 1984 and divorced in 2005. Over the following few years Mr Briers paid a £150,000 lump sum to his ex-wife and later also transferred his share of the marital home to her. She in return transferred her share of their sportswear business to her ex-husband.

You may well think that concluded financial matters between them. However, the sportswear business became very successful after the divorce and in 2013 Mrs Briers applied to the court for an accurate settlement.

Mr Briers argued that they had already settled the matter back in 2005 when they divided assets as they had both agreed.

Unfortunately for Mr Briers, the judge ruled that there could not have been a 'full and final settlement' at the time of divorce because Mrs Briers had accepted the offer on the financial information that Mr Briers had given her, which was in fact false. As there had not been 'full and frank disclosure' at the time, Mr Briers was ordered to pay his ex-wife a 30% share of the assets as they had actually been, which resulted in a further £1.65m payment and 25% of his pension policies and shares.

An appeal by Mr Briers was dismissed by the Court of Appeal.

Sharon McKie, specialist divorce solicitor commented: "The case highlights the importance of full and frank disclosure at the time of separation. It is also worth noting that any delay in dealing with financial matters may also have an impact on the division of assets.

Handshake agreements are never advisable in these situations we would always recommend having a Financial Order in place to properly conclude financial obligations."



Did you know? You can challenge any decision made by a public body, including local authorities, government, police and NHS, where it affects you. Legal aid may be available in some cases – contact us for more details 01302 320621

Foster carers challenge council's transport decision

A Warwickshire foster couple have challenged their local authority complaining that the information they were given when they agreed to foster a child was incorrect.

The council had told the couple that they would have to drive the child to school each day, a round trip journey of more than 9 miles each time, and that the cost of the journey was covered by their fostering allowance.

A Local Government and Social Care Ombudsman criticised the decision and has asked councils across England to check their approach does not mirror that taken by Warwickshire Council.

Charlotte Bradbury, specialist children's lawyer, advises: "Foster children are in fact entitled to free school transport if they have to attend a school outside the statutory walking distance. The local authority is legally obliged to provide transport in these circumstances and carers should not be expected to bear the cost themselves."

Property

Keen to get rid of a problem property?

Houses are sold for a variety of reasons – upsizing, downsizing, relocating, cashing in equity or maybe even because there are problems with it.

Whatever the reason, it is essential that sellers are honest about any issues there may be.

Form TA6 in the Home Information Pack asks a series of questions – the answers to these form a crucial part of the contract between the buyer and seller and deliberately misleading the buyer will amount to fraud.

One couple who claimed that they were unaware of any disputes about the property they were selling were landed with a compensation bill for £67,000 after they were found to have deliberately lied to cover a long standing dispute they had with their neighbour.

Claiming compensation is not the only course of action for buyers who find themselves in the midst of a fraudulent property sale.

When businessman Paul Edwards and his wife Hazel bought their dream home, a particular selling point of the £750,000 property was the stunning garden. Despite being assured by the seller that the property had never flooded, less than a year later Mr and Mrs Edwards were horrified



to find their garden had “turned into a lake”. A few months later it flooded again and on the third occasion, the flooding was so bad that it also affected the basement of the house.

The seller, Robert Corson had apparently been well aware of the flood risk. Some 2-years before the sale, he had posted photos of his flooded garden on Facebook, with one friend commenting on the post “perhaps it’s time to pull the plug.”

The Edwards’ have now applied to the High Court for a ‘rescission on the sale contract’, which will force the seller to take back the property and refund the full amount paid. In addition, the couple are also claiming a refund of their mortgage payments and compensation for mental distress and inconvenience.



Weeds and the law

Over the years there have been a number of pernicious weeds that have caused problems for property owners, developers and gardeners. The most well-known is probably Japanese Knotweed, one of the world’s most invasive plants. It can grow up to 3 metres and rapidly spreads over a wide area, causing damage to foundations, drains, walls and paving and is extremely difficult to get rid of. The only effective solutions are extensive excavation or treatment with herbicides over a number of years.

Two neighbours from South Wales recently won a case against Network Rail for failing to eradicate a 600sqm clump of knotweed along the railway embankment behind their homes.

The lack of action had allowed the knotweed to spread into their back gardens and work its way into the foundations, blighting the sale of their properties.

The Knotweed has since been eradicated but the case sets a precedent where the owner of one property wants to get the owner of another to remove invasive plants or weeds.

We have experience in dealing with both sides of the Knotweed problem. If this is an issue affecting you, call for a confidential chat about your options – 01302 320621.

Is stamp duty about to switch from buyers to sellers?

An MP has tabled the idea that stamp duty should be paid by property sellers as opposed to buyers. He believes the move would help first-time buyers to get on the property ladder and help growing families to move up the property ladder.

According to recent research by the Halifax, around half the properties bought with a mortgage are by first time buyers. So, when you consider that buyers in Yorkshire and the Humber already face the stark reality that, on average, they will need a deposit of over £19,800, removing the additional burden of stamp duty costs would certainly be welcomed by them.

Employment

Parental Bereavement Leave

A new law is to be introduced to provide vital support for grieving parents.

At the moment, employees have a day one right to take a 'reasonable' amount of time off work to deal with any emergency involving a dependent, including making funeral arrangements. What is 'reasonable' would of course depend on circumstances and would generally be agreed between the employer and employee.

What our clients say -

“Everything from start to finish was handled extremely well by friendly and approachable staff”

However, employers are under no legal obligation to provide paid leave.

The Parental Bereavement (Pay and Leave) Bill that is currently making its way through parliament aims to give employed parents statutory rights to paid leave to allow them to grieve for the loss of a child.

Kevin Hollinrake MP said: “Losing a child is the most harrowing experience that could ever happen to any parent.

This is such an important Bill for parents going through the most terrible of times. There is little any of us can do to help, but at least we can make sure that every employer will give them time to grieve.”



Did you know? Fees for Employment Tribunal claims are no longer payable

Women forced out of jobs for being pregnant

The true scale of maternity discrimination is being masked by confidentiality agreements and out of court settlements that some women are forced to accept.

It appears that in some cases, mothers-to-be have been treated so badly they felt they had no option but to leave their jobs, while for others pregnancy has led to dismissal or redundancy.

Employment law specialist, Sarah Naylor, comments: “This issue continues to be a very real problem in the workplace. I echo the government’s views in that there should be a zero tolerance to pregnancy and maternity discrimination.

Most legal disputes over this type of discrimination end in agreements where there is a binding confidentiality clause attached. However, the need for confidentiality on legal disputes must be balanced with the need to have businesses held accountable for discriminatory practices. The knowledge that such practices may become public could act as a deterrent; consider the approach of failure to pay minimum wage – name and shame policy.”



Atherton
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'Partner' is used to refer to a member of the LLP, or an employee or consultant who is a lawyer with equivalent standing and qualifications.

A list of the members of the LLP is displayed at the above address, together with a list of those non-members who are designated as partners.