



**WHISKERS**  
SOLICITORS &  
NOTARIES

## consumer law gives protection in standard form contracts

**When you have an extension or other building work done, it is common for the builder to use a standard form contract such as the JCT (Joint Contracts Tribunal) Minor Works Building Contract.**

In a recent case, a builder who entered into a standard JCT minor works contract with a residential occupier sought to enforce the decision of the adjudicator that he should receive interim payments which had been withheld by the customer. The payments were withheld because of disputes about delays in the work and the quality of some of the workmanship. The withholding of the interim payments was not accompanied by the issuing of withholding notices, which are required under the JCT agreement. The adjudicator therefore ruled that the interim payments were due to be made, because the customer had not complied with the terms of the contract as regards the withholding of payments.

This decision was challenged, using EU consumer law, on the grounds that the contract entered into took away normal standard consumer rights and thereby created an imbalance of rights between the builder and his customer. To rely on the provisions of the contract, it would be necessary for the builder to have specifically drawn the



attention of the customer to the relevant terms of the contract. The court ruled that because this was not done, the stage payments were not payable.

This case is important for residential property owners, as disputes with builders in similar circumstances are not uncommon. It confirms that a business that relies on standard contracts and whose customers are private individuals must make sure that where the contract contains clauses limiting the usual consumer rights, these are brought to the customer's attention and agreement to them is specifically evidenced. If this is not done, then ordinary consumer protection legislation can be used in court to have the relevant clauses made void.

If you are having problems with a building contract, contact us for advice.

WHISKERS SOLICITORS  
6 Mitre Buildings, Kitson Way  
Harlow, Essex. CM20 1DR  
Tel 01279 439439 Fax 01279 439100

e-mail: [enquiries@whiskers.co.uk](mailto:enquiries@whiskers.co.uk)  
[www.whiskers.co.uk](http://www.whiskers.co.uk)

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## service charge challenge successful

A sub-tenant was recently successful in court in challenging the service charges paid by his landlord to the owner of the freehold.

It is common for buildings to be of mixed residential and commercial use and for the different parts to have separate management arrangements. In this case, the building was made up of flats and commercial premises. The flats were held under a head-lease and the landlord's service charges were recharged to the sub-tenants.

One of the sub-tenants decided to challenge the reasonableness of the charges and did this by directly challenging the charge levied by the freeholder on the head-tenant. The court allowed the legal challenge, confirming that in such cases charges can be challenged by the head-tenant or a sub-tenant.

Contact us for advice on any landlord and tenant matter.

### In brief

#### HIPs commencement

The much-delayed and amended Home Information Pack is now upon us and although the Government maintains full implementation of the proposals will come in due course, that claim is met with scepticism. The current state of play can be found on the HIPs website at: [www.homeinformationpacks.gov.uk/](http://www.homeinformationpacks.gov.uk/).

#### house prices

Despite recent increases in the mortgage rate, according to the Nationwide Building Society house prices are on the march again, rising 1.1

per cent in May. The increase brings the annual house price inflation rate up to 11.1 per cent nationally. The average house price is now over £184,000.

#### planning inspector must give reasons

Planning inspectors must give sufficient reasons for their decisions, which includes commenting on the earlier decisions of another inspector.

The Court of Appeal recently overturned a refusal to grant planning permission for a first-floor extension to a property in a conservation area on such grounds.

## wall ownership dispute costs loser £1/4m



A dispute, which went to the Court of Appeal, concerning the ownership of a boundary wall has left the losers with more than a quarter of a million pounds in legal costs.

The dispute arose when a couple applied for planning permission which would mean raising the height of the wall, reducing the light for their neighbour, a Mr Palfrey.

The title deeds were not clear, and the couple successfully claimed ownership under the law of 'adverse possession' (uncontested use for a long period of time) as they and their predecessors had maintained the wall for many years.

### rights of access

A recent House of Lords case has confirmed how critical it is to make sure that nothing is left to chance when purchasing a property.

It confirmed the 2006 decision of the Court of Appeal that when a piece of land is landlocked (i.e. has no right of access over adjoining land so cannot be lawfully accessed by its owner), there is no automatic right to have a right of way 'of necessity' over adjoining land.

The case involved land purchased from a landowner who had originally retained it when he sold adjoining land to the council. The landowner had failed to negotiate any right of access across the land sold, leaving the retained land landlocked.

Since at the time of the original sale there had been no common intention that there should be a right of access over the land sold, the Lords declined to grant a right of way.