

When is it time to go to court?

We have previously looked at using mediation as a way to deal with non-payment for services and disputes – to avoid the possible cost and time involved in going to court. But sometimes parties reach an impasse and there is no alternative but to take court action.

Parties may not be willing or ready to mediate for various reasons, such as not having sought advice on the costs involved or their position in the matter. There are occasions when they change their tune as soon as the cost, time and hassle of a lengthy dispute become apparent.

The act of issuing a court claim in itself can sometimes be enough to prompt a settlement.

Those withholding payment tend not to want to risk time, money – and even their reputation.

And if a judgment is awarded against a non-payer it is registered against them unless paid off quickly.

This is clearly not good for business. If you have to take a case to court, the initial steps are as follows:

1. Letter before action. Wherever possible parties must try to resolve their differences without court action.

2. Make a court claim (<https://www.gov.uk/make-court-claim-for-money/overview>). The claim form has to be completed in a clear and concise manner, with details of the claim. In some cases, for example when simply listing unpaid invoices for services rendered, this will be straightforward. In other cases, the factual background and contractual basis for the claim will need to be explained in more detail.

3. Pay a fee when the claim is submitted to court for issue. The size of the fee will depend on the value of the claim.

4. On issue of the claim, the court gives a case reference, sending a copy of the claim and a response pack to the other party (known as the defendant). The defendant has a deadline by which

to respond, usually **14 days** from the date of receipt of the paperwork.

5. The defendant can admit the claim and ask for time to make payment. Or they can deny it, sometimes requesting more time to put in a written defence.

6. If the defendant fails to respond in time, the claimant can write to the court asking for **default judgment** to be entered against the defendant for the claim, costs and interest.

7. If the defendant puts in a written defence to the claim, the claim will proceed on a contested basis and the court will set out a timetable to take the case to a final hearing.

If the defendant files a written defence, the case will be allocated to a track within the court system. It is set according to the value of the claim and the processes may vary according to the track.

The three different tracks within the court system:

If the defendant files a written defence, the case will be allocated to a track within the court system. It is set according to the value of the claim. The tracks are generally the following:

- Claims for £10,000 or less are allocated to the small claims track;
- Claims for more than £10,000 up to £25,000 are allocated to the fast track;
- Claims over £25,000 are allocated to the multi-track.

If the claim involves a sum of £10,000 or less and is allocated to the small claims track, parties are

encouraged to represent themselves rather than go through a lawyer. The use of lawyers in small claims is actively discouraged because usually it is not possible to recover any legal fees other than court fees as part of the process. Often it is not cost-effective to use lawyers in small claims.

The very act of bringing a matter to court can open up talks. The other party, seeing the cost and risks involved, may be more amenable to settling. But if they see it as a matter of principle, or firmly believe in the merits of their case, they may remain willing to fight on, to a hearing before a judge.



Ross Burkitt is an Associate solicitor with Kerseys. Part of the litigation department, he specialises in contractual disputes and contentious property matters. He is experienced in High Court and County Court litigation practice and procedure, as well as Alternative Dispute Resolution techniques. For more information, email: ross.burkitt@kerseys.co.uk or call **01473 407181**.



Sun Dog, by Anthony Wooding

Kerseys Charity Auction

Kerseys managing partner and artist Anthony Wooding put one of his paintings up for auction in aid of charity.

The married-father-of-two, who regularly exhibits his work locally, took part in the annual auction of works of art by Fine Art students – with works donated by outside artists.

The evening raised over a record amount at over £5,000.

The event took place at the Waterfront to raise funds for the University Campus Suffolk (UCS) artist end of year show.

Work was also put up for auction by art world 'stars,' including Maggi Hambling, Ryan Gander, Norman Ackroyd, Graham Crowley, Billy Childish and Sarah Lucas.

Are there any legal concerns you would like covered? Let us know and email your suggestions to info@kerseys.co.uk

Breaking up is expensive to do: Marks and Spencer's costly break clause dispute

Marks and Spencer paid out hundreds of thousands after it failed to get a refund following a break in its commercial lease. This high profile case shows the need to make break clauses clear so rent will be apportioned – or risk paying out a fortune.

A standard break condition is payment of all rent up to date. Where the rent is payable quarterly in advance, this includes payment of the entire quarter, even if the break takes effect earlier. If the break clause states that the rent is apportioned, you would only be liable to pay rent at a daily rate up until the date of the break; if it is not apportioned, you could be liable for the full quarter's rent.

M&S wanted to stop leasing part of a building before their lease was due to end. They exercised their break clause and the lease ended on January 24, 2012.

It paid a quarter's rent in advance on Christmas Day, 2011. It then demanded a refund of the rent paid for the period January 25 to March 24, 2012, on the basis of an implied term.

Landlord BNP Paribas, however, refused a refund and M&S issued legal proceedings.

The Supreme Court rejected M&S's claim to a refund. It confirmed the well-established principle

that rent payable in advance could not be apportioned on a time basis and no term apportioning the rent could be implied.

This case serves as a timely reminder to both landlords and tenants that when negotiating a break clause in a lease, the position regarding the payment of rent needs to be considered specifically.

If the tenant wants to ensure that the rent will be apportioned, the lease should say so expressly. A tenant wishing to exercise a break clause needs to consider whether there is a specific provision dealing with apportionment. If there is not and the break clause date falls between two quarter days, then the tenant has little choice but to pay the whole quarter's rent to ensure that the break clause is exercised successfully.

A tenant may ask for a refund, but in most cases the landlord is unlikely to agree. Each case will turn on its own facts and even the Supreme Court acknowledged that there could be "very exceptional circumstances" where a term may be

implied. For this reason, it is worth taking legal advice on the point before serving the break clause notice.



Guest writer **Amanda Eilledge** is barrister from Hardwicke, which is a set of chambers specialising in commercial, construction, insurance and property law. For more information, visit www.hardwicke.co.uk

Running for charity

A Kersey's legal secretary will run a marathon in aid of a charity which helped out when her grandson was in intensive care.

Karen Skene, 49, will run the Manchester Marathon to raise money for the Sick Children's Trust, which provides free accommodation to families with children in hospital.



The move comes after her daughter gave birth to Noah (pictured here with Karen), who suffered with Posterior Urethral Vales (PUV). The condition, only found in boys, may lead to kidney

damage because the urethra has a blockage in it near the bladder.

Karen, a mum-of-two from Capel St Mary, said: "It was a worrying time, but the accommodation was fantastic. It eased other worries, such as having

to commute. My main aim in raising money for SCT is to raise awareness, as they are a relatively small charity."

Karen's daughter, Bethany, had a traumatic time giving birth to Noah at Addenbrookes back in May 2014. Noah was taken to the Intensive Care Unit shortly after his birth and remained there for two weeks. But Bethany and her partner Ryan were able to stay in accommodation on site at Chestnut House at Addenbrooke's Hospital, Cambridge, which made the situation easier. The self-contained flats were directly under the ICU so Beth and Ryan could pop up to see Noah any time – day or night.

Today Noah is a healthy 20 month old boy.

Karen, who joined Kerseys in November of last year, has been overwhelmed by the team's support. She said: "I had set myself a target to raise £500 but it's already been surpassed. People at Kerseys have been really generous and I don't think I would have reached my target if it weren't for their support."



Karen, who only started running at the age of 40, took part in her first marathon just three years ago.

The Great Bentley Running Club member, who took part in the Colchester Half Marathon as part of her training, said: "I used to hate running until I joined the club.

I then got to socialise with other people and have made some good friends."

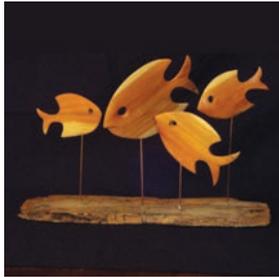
To sponsor Karen, visit https://mydonate.bt.com/fundraisers/karenskene1#.Vq3qyN_2dsl.facebook

To see Kerseys' latest videos and for advice on various legal matters, visit www.youtube.com/user/KerseysMediaTV

Popular artists exhibit at Kerseys



Autumn Begins by Colin Slee



Yew wood Fish by Paul Bruce



Direct plaster Handstand by Paul Bruce

Two popular Suffolk artists are displaying their work at Kerseys head office during the upcoming months.

Paul Bruce and **Colin Slee** have around 20 paintings and 10 sculptures on show at the site in Lloyds Avenue, Ipswich.

Paul, who studied at Ipswich School of Art and was later offered a place at the world leading centre for art, St Martin's College, has created work inspired by nature. He said: "It's a great opportunity to show our work to a cross section of the population, including people who wouldn't usually visit an art gallery. I think it's a slightly different approach to exhibiting and I believe it will make it more accessible to the wider public. We are grateful to Kerseys for their ongoing support. We hope the art will help brighten up people's day, as well as giving food for thought."

Paul has exhibited at a range of venues, from on board his boat, Windhaver, to the Mall Galleries in London, which is the national focal point for contemporary figurative art. His paintings reflect his interest in the atmosphere and light of the

Suffolk landscape. His sculptures reflect the line of nature, refined by investigative drawings. He is the co-author of the High Street Heyday: Memories of Ipswich School of Art, which was written to raise money to save the school five years ago.

Colin, who has worked as a graphic designer for advertising agencies in Exeter and Bristol, is one of Snape Maltings gallery's best selling artists. He ran his own design studio until 1996. He then moved to Suffolk with his wife to paint full time.

Colin explores the ever-changing effects of the elements on the sea, estuaries, skies, wide open spaces and forests. He portrays an atmospheric and emotional sense of place.

Kerseys managing partner Anthony Wooding said: "We have hosted art exhibitions at Kerseys for some years. To attract two established artists of the pedigree of Paul and Colin is a really coup for us."

People are welcome to pop into the offices and view the art, which is also available to buy. The display will run until May and visitors should report to reception.

Seven steps to moving house

Kerseys has been carrying out conveyancing for over one hundred years. Today, the team has a range of experience – from the first time buyer to re-mortgaging. Here they outline their seven steps involved in moving house:

1. First, be clear on the legal **costs** involved. This includes Land Registry fees, stamp duty and search fees.
2. Secondly, we would then **investigate** the property and carry out searches – including of the local authority, environmental and drainage.
3. Consider arranging a **survey** of the property. We recommend a RICS Homebuyer survey, rather just the valuation report from your mortgage lender.
4. We would then ask you to sign a **contract** once your mortgage offer has been received and any outstanding issues are resolved. There are various other documents to sign, such as the mortgage deed and a stamp duty land tax return.

5. We can **exchange** contracts and agree a completion date once everyone in the chain is ready. Completion is usually a week or two after exchange.

6. We then ask you to **transfer** money, ready for completion. We would carry out pre-completion searches with the Land Registry.

7. We would then transfer the money to the seller's solicitors on **completion** day. You can then collect your keys and move in.

It usually takes about six to eight weeks from your offer being accepted to completion. But this is only a guide, as it depends on everyone in the chain being ready.

Kerseys, offers a free quotation. For more information call **Brian Smith** on **01473 407111** or **Jane Riley** on **01473 407122**. To see more on the seven steps of moving, watch our video: <http://www.kerseys.co.uk/blog/solicitors-buy-house/>

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