



anthony gold

S O L I C I T O R S

annual review 2011

Introduction



David Marshall is the Managing Partner of Anthony Gold.

Welcome to our 2011 annual review which gives a brief introduction to the varied work of the firm for both individuals and businesses. The next twelve months will present us with new challenges. The government has recently consulted on far-reaching cuts to legal aid and other major reforms to civil litigation funding. In particular, the coalition government proposes to legislate to make claimants pay the costs of funding their claims out of their own compensation. Members of this firm have been heavily involved in lobbying on behalf of client groups but, if the proposals reach the statute book, we are confident that our expertise in funding will enable us to find creative and practical solutions to preserve access to justice for our clients.

And on 6 October 2011 we will see the legal sector's 'big bang' with 'alternative business structures', such as supermarkets and insurance companies, being allowed to provide legal services direct to the public. Rather than seeing this new competition simply as a threat, we see it as an opportunity to further distinguish ourselves by redoubling our efforts to achieve our goal to provide a quality, value for money and a personal, professional service to our clients.

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Who we are

Anthony Gold has three London locations with its main office situated in the thriving London Bridge City area. We have 120 staff who are committed to providing a specialist service that is personal, professional and value for money. Our lawyers are exceptional and many have been recognised by Chambers and the Legal 500 as leading experts in their fields.

We can help and advise you in many areas of law and this broad practice allows us to be supportive and cost effective as we can rely on the expertise of other departments, if this is necessary for your case.

Our focus is to maintain the loyalty of our clients by thoroughly understanding their specific requirements whether they are individuals or businesses.

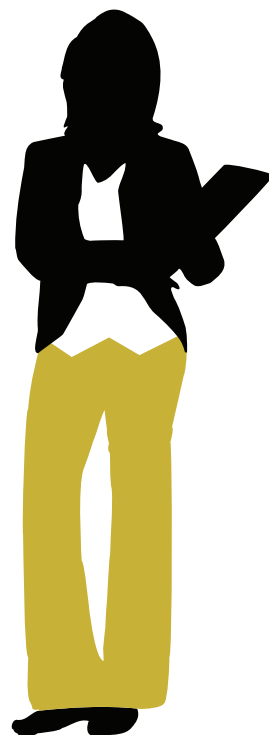
We are all committed to providing a personal, quality service and straightforward, practical and creative solutions to your legal problems.

For Businesses

- Business Sales and Acquisitions
- Commercial Agreements
- Commercial Dispute Resolution
- Commercial Property
- Employment
- Notary Public Services
- Professional Negligence
- Property Dispute Resolution

For Individuals

- Catastrophic Injury
- Clinical Negligence
- Contentious Probate & Trusts
- Employment
- Family & Divorce Law
- Housing & Public Law
- Notary Public Services
- Power of Attorney and Court of Protection
- Personal Injury
- Professional Negligence
- Property Dispute Resolution
- Residential Property
- Wills, Trusts & Probate



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Read articles written by our experts on the areas of law that interest you most.

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Keep up-to date with our forthcoming events and register to attend.

Find out about our fundraising initiatives, discover what charities and good causes we support and learn about how we support them.

Contact us in total confidence.

01

Commercial and Property

Our Commercial teams have extensive experience as business people and this, combined with our commercial knowledge, means we can provide specialist legal advice together with practical solutions.

We offer expertise in Business sales and acquisitions, commercial agreements and commercial dispute resolution, commercial property, employment law, leasehold services, professional negligence, property dispute resolution and notary public services.



Our People



Clare Kelly

Clare is a Partner and litigator in the Commercial and Employment Law team. She has substantial experience in court proceedings, as well as in alternative dispute resolution including mediation and arbitration.

What are your most recent challenges?

I am currently working on a large fee collection matter for a professional firm, where the defendants are based in Italy and the USA. Procedurally the case has been complicated, involving several urgent applications in the High Court to ensure that the judgments themselves could not be challenged at a later date because of a legal technicality. We now have judgments, but are faced with the challenge of actually getting money from the defendants from out of the jurisdiction.

Another recent challenge has been defending a client in an arbitration at the International Chamber of Commerce. The process is slightly different to Court proceedings, and everything is being done for the moment via Paris. We will eventually have a UK based arbitration, with a UK based arbitrator. Arbitration is private, and so is usually used where the parties desire confidentiality or hope to try to protect their professional relationship.

What are the main developments in your area of practice this year?

Employment law is always changing, and this year has seen the coming into force of most of the Equality Act 2010 which replaces the earlier discrimination laws. There are some obvious and some subtle changes in the law as a result, and it will be interesting to see how it affects employment law over the next few years. The next big thing which everyone is interested in, is the Bribery Act, which eventually comes into force on 1 July 2011 and which will affect all companies doing business in the UK.

What is your most rewarding experience as a lawyer?

In my experience, most businesses want to grow and prosper without having to spend inordinate amounts of time on legal and regulatory matters. They want to ensure that they comply with relevant laws, but the majority of their time should be spent on developing their business. It is always rewarding when you are able to resolve a problem for a company with the minimum of disruption, allowing them to concentrate their time and energy more effectively.

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Bonuses and an employer's discretion

Mark Cornish - Partner, Employment Team

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Contractual bonuses for amounts often far in excess of basic salary have been used for some time to incentivise employees in the city. But in the last decade there has been a flurry of cases concerned with the legal nature of bonuses. **Mark Cornish**, looks at bonuses and the true extent to which employers have discretion when giving them.

In an ideal world express contractual terms should set out the extent to which an employee is entitled to a bonus. The ideal contract should explain:

1. Whether there is a contractual right to an actual payment or simply a contractual right to participate in a bonus scheme, with discretion in the actual amount awarded.
2. How the scheme will work, making it clear what the performance criteria are, and what will be received for meeting them, or at least having a written explanation of the criteria that will be used in the exercise of any discretion.
3. What happens with employees who leave or are dismissed, or are working notice shortly before the decision about a bonus is made. Contracts often include an explanation as to what happens to the bonus if someone is dismissed with or without good grounds - "good leaver"/ "bad leaver" arrangements.

A well drafted bonus scheme gives both sides certainty and avoids disputes or resentment. It will make a position more attractive to an employee and give them a basis on which to plan their performance.

But the reality is that employers don't normally want to commit to contractual rights or give figures even where employees meet certain levels of performance. Employers will often ask their lawyers to prepare clauses which ensure that an employee has no legal right to a bonus and that it can

be withdrawn or changed at any time. At the same time, a new employee, anxious to start work and impress his new employers may not have the foresight, negotiating power, or courage to negotiate and fine tune the terms of their bonus scheme.

Bonus clauses are often ambiguous, so a well advised employee can argue that they create a contractual right to the bonus, or at least to participate in a scheme. A stray phrase in a handbook giving the handbook contractual effect, could easily turn what an employer thought to be a discretionary scheme in that book, into a contractual one.

Established custom and practice over the course of several years, can also serve to create a legitimate contractual expectation to a bonus. This is particularly so in City employees' contracts, where employees often legitimately expect their bonus to exceed their base salary. As such there have been many cases where employees have successfully been able to establish that a bonus was a contractual right.

In recent years, practice has moved on, so that well advised employers often prefer to acknowledge a contractual right to participate in a bonus scheme. But they then keep control over the amount that is awarded by making the manner in which it is exercised as discretionary as possible.

However, the courts have refused to allow employers a free reign in exercising discretion which ought properly to be exercised reasonably. Clearly an employer who exercises their discretion by deciding not to pay a bonus to its female employees or by paying them less than male employees would not be exercising reasonable discretion. The courts are likely to step in to find such obvious examples of discrimination unlawful, through the operation of discrimination legislation. Of course, proving the facts of discrimination is fraught with

Case Notes

3. We acted for a small business threatened with Court action by a multi-national corporation for using the business name as a domain name on the Internet. Legal proceedings were avoided and our client's costs reimbursed

4. We obtained compensation from a computer designer and supplier for installing a system which was not fit for purpose

its own difficulties, as the rationale behind decisions is rarely overtly discriminatory. Often employees are left to try and rely on more subtle principles of law to protect their position.

In *Mallone v BPB Industries plc [2002] EWCA* it became clear that the courts would be willing to recognise the expectations of employees faced with denial of a bonus under a discretionary bonus clauses. The Court of Appeal felt that an employer will effectively be in breach of contract if its bonus decision is one which 'no reasonable employer could have reached'. Introducing reasonableness to this issue might seem like a good idea, but it inevitably creates uncertainty.

In *Horkulak v Cantor Fitzgerald International (CFI) (2004, IRLR 942)* the issue was whether a bonus should be paid and how the employer should have exercised its discretion as to the amount. The issue was determined in the context of considering the value of a claim for breach of contract, following the unfair summary dismissal of an employee. His bonus would have been payable during the remainder of the term of a contract, had he not been dismissed. The Court of Appeal, in considering what would have happened had the employee not been dismissed, confirmed the principles set out in *Mallone* and concluded that employer must not exercise its discretion 'capriciously or irrationally'.

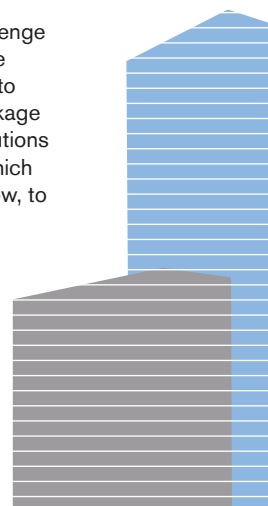
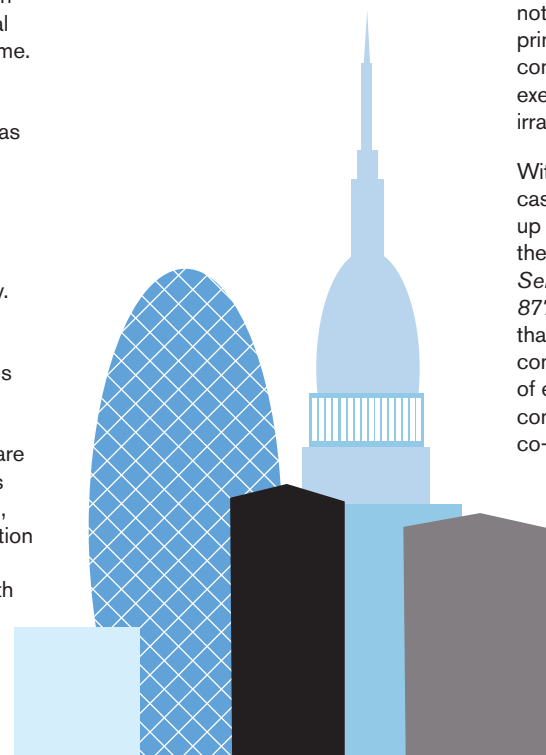
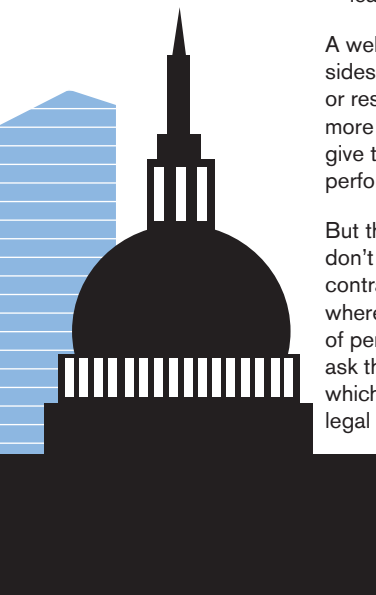
With the principles of the **Horkulak** case in mind, the High Court opened up another avenue of argument for the employee, in *Takacs v Barclays Services Jersey Ltd (2006 IRLR 877)*. Here the High Court decided that the implied term of "trust and confidence", implied into all contracts of employment, could also be construed to include implied terms of co-operation and anti-avoidance.

Hence an employer should not make it difficult or impossible for an employee to become entitled to benefits provided for by their contract.

But *Takacs* may come to be viewed as the high watermark for employees because in November 2006, *Keen v Commerzbank AG: [2006] EWCA Civ 1536* was decided in favour of the employer. In this case the Court of Appeal held that the burden of establishing that the level of a discretionary bonus payment by the employer was irrational or perverse was very high. In this case, much depended on the employer's discretionary judgment having regard to fluctuating markets and labour conditions. This gave the bank very wide contractual discretion. Therefore the bonus could not be said to be irrational. The Court of Appeal also dismissed an attempt by the employee to use the Unfair Contract Terms Act 1977 to suggest parts of the contract were unfair, making it clear that Act could not apply as the employee was not "dealing as consumer", nor was the contract one containing standard terms of business.

It remains to be seen how these cases will be applied in practical terms. The limits imposed on Employers discretion are really only a safety net for relatively extreme instances of irrationality. Proving a test was irrational will be hard. It is likely to be even more difficult to demonstrate failings in an employers' exercise of their discretion if the employer has at least paid something under a bonus scheme.

These recent cases will give employees the scope to challenge the denial of a bonus and give advisers enough ammunition to negotiate any settlement package on offer. Major financial institutions are unlikely to want a case which suggests their bonuses are low, to become public knowledge.



Selling up? Welcome relief for many

Adam Dyl - Solicitor

There are many issues to consider before disposing of your business, or the assets within it. One issue is the amount of Capital Gains Tax which may be chargeable on the disposal. Entrepreneurs' Relief is now available to reduce Capital Gains Tax liability on the disposal of a business. This article is intended to give you a helpful overview of how Entrepreneurs' Relief works and explain how it might apply to you.

Capital Gains Tax is chargeable in accordance with the Taxation of Chargeable Gains Act (1992). Essentially, Capital Gains Tax is a tax on the gain or profit you make when you sell, give away or otherwise dispose of something that you own, such as shares or property. There is a tax-free annual allowance (£10,600 for 2011/2012) and some allowable losses which may also work to reduce your Capital Gains Tax bill further.

Entrepreneurs' Relief is the government's response to the outcry following the abolition of Taper Relief under the new regime brought in 2008. Entrepreneurs' Relief therefore offers a concession on business disposals which would otherwise attract no relief. Whatever your reasons for disposing of your business, it would be prudent to check whether or not you qualify for Entrepreneurs' Relief as it could mean that your liability to Capital Gains Tax reduces significantly.

This year, Capital Gains Tax will be charged at a flat rate of 18% or 28% depending on your circumstances.

Entrepreneurs' Relief reduces the gain chargeable to Capital Gains Tax, providing a 10% rate on business sales up to a maximum lifetime allowance of £10 Million (as of April 6th 2011).

Who does Entrepreneurs' Relief apply to?

Entrepreneurs' Relief potentially applies to any of the following:

Sole Traders - when concerning the sale of all or part of the business or the sale of assets which were used in the business, provided it ceased trading within the last three years.

Partnerships - where the sale of all or part of a partner's share of his or her interest generates a capital gain.

Shareholders - where the disposal of shares and other securities in limited companies generates a capital gain, subject to certain conditions.

Trustees of Settlements - who dispose of trust property that consists of either shares in, or securities of, a qualifying beneficiary's personal trading company or assets used in a qualifying beneficiary's business.

When will Entrepreneurs' Relief apply?

Entrepreneurs' Relief can be claimed in respect of any of the following:

- Gains made on the disposal of all or part of a business
- Gains made on disposals of assets following the cessation of a business
- Gains made by certain individuals who were involved in running the business

How much money does Entrepreneurs' Relief actually save?

The first £10 million of gains that qualify for relief throughout a person's lifetime will be charged at an effective rate of 10%, leaving the balance to be charged

at the flat rate, currently 18% or 28% depending on your circumstances.

How many times can Entrepreneurs' Relief be claimed?

Entrepreneurs' Relief can be claimed on an unlimited number of disposals, up to a maximum of £10 Million in value, throughout your lifetime. This is an important rule because once your lifetime allowance has been used, Entrepreneurs' Relief cannot be claimed further and any future gains, subject to deduction of any allowable losses and the annual exemption, will be charged at the flat rate of Capital Gains Tax applicable from time to time.

Conclusion

If you are in the process of disposing of your business or assets within it, or are thinking of doing so, you should consider whether you are entitled to Entrepreneurs' Relief because substantial tax savings can be enjoyed. There are some traps within the rules so the best course of action is to seek advice before entering into a transaction which relies on it.



Case Note - Resolving disputes

Clare Kelly of the commercial dispute resolution team issued a Vendor Purchaser Summons for the purchaser of a property who found out, after exchange of contracts, that the seller had misrepresented the fact that there were no ongoing disputes, on the sales forms.

The client had exchanged contracts for the purchase of an expensive loft style apartment, with original wooden floors dating from its time as a warehouse on the banks of the river Thames. After exchange, when it was too late to withdraw without penalty, our client became aware that there had been a dispute with the downstairs neighbours about the noise created by the wooden floors and that the neighbours were hoping to enforce a term in the lease which would have meant our client carpeting the floors, or soundproofing them at high cost.

Despite attempts to negotiate with the seller, she and her solicitors refused to respond to our correspondence other than to serve a notice to complete, giving our client 14 days to complete

the sale before damages would become payable. Our client was concerned about completing before the dispute was dealt with, because the seller was resident outside the UK, and claiming damages could easily be drawn out and expensive.

We made an emergency application to the High Court for an order that completion could take place, with purchase monies being held in this firm's client account until such time as the damages claim had been resolved. This was a great success for Clare Kelly and a highly unusual application.

The Court normally takes the view that those who want to buy houses, or pursue litigation, should do so at their own risk. After several hours of argument, we were able to convince the Court to make the Order. Our client could then complete the purchase and ultimately settle the claim for damages with the seller. It has also been agreed with the neighbours that no further action will be taken in relation to noise, and so the wooden floors can remain in place.



The new Bribery Act 2010 - is corporate hospitality still legal?

Clare Kelly - Partner,
Commercial Dispute Resolution Team

The Bribery Act 2010, updating the outdated law on bribery in this country, will come into force on 1 July 2011, by which time all businesses operating in the UK need to ensure that they have procedures in place to prevent bribery. A surprising number of standard commercial practices may be viewed as bribery for the purposes of the Act, and so we advise all clients to consider carefully what they have in place.

Sections 1 and 2 of the Act deal with the straightforward offences of giving or accepting a bribe. It is unlawful, as it always has been, to give a bribe to someone with the intention of bringing about the improper performance by that person of a relevant function or activity. Similarly, it is unlawful to request or accept a bribe in those circumstances. Improper activity (covered in sections 3-5 of the Act) is that which amounts to breach of an expectation that a person will act in good faith, impartially or in accordance with a position of trust.

It is quite clear that large payments in brown paper envelopes will amount to a bribe. What has been more controversial is whether corporate hospitality will be caught by the Act. There is no desire to criminalise activities designed to promote and enhance corporate relationships, but it is likely to be a question of degree. The more lavish the hospitality, and the less obviously connected it is to a corporate relationship, then the more suspicion it might raise. Taking your clients to a Six Nations rugby match at Twickenham is unlikely to be questioned. Paying for the Chairman of a client and his wife to enjoy a 7 day safari in Kenya may be more questionable.

S6 of the Act refers specifically to payments to foreign officials. An offence is committed when a person gives a bribe to a foreign public official with the intention of influencing that official and obtaining or retaining business as a result. In some countries, it is obligatory to provide community investment as part of a contract tender, and where that is the case then no offence will be committed. The Act does not provide any exemption for facilitation payments.

S7 of the Act creates a new commercial offence. A company may be liable if it cannot show that it has adequate procedures in place to prevent bribery by individuals. However, s7 also provides a complete defence. If an adequate policy and procedures are in place to prevent bribery, then the company is unlikely to be liable.

There are no standard documents, because the procedures have to be proportionate to the risks faced by the company. The Guidance on the Act refers to there being a top down commitment to stamping out corruption with good communication of this; risk assessment; adequate due diligence when entering into new contracts and regular monitoring and review.

If found guilty under the Act, then there is a maximum penalty of 10 years' imprisonment or an unlimited fine. There is also a high likelihood of being sued in civil law for damages. It is therefore crucial to examine your corporate practices to ensure that you comply.

We are currently running seminars on the Act and how to ensure compliance.

For further information, please see our website www.anthonygold.co.uk or contact keeley.power@anthonygold.co.uk



02

For Individuals

Whatever your personal circumstances and needs we will advise you on the best course of action to ensure your experience of the legal system is as stress free as possible.

We assist individuals in a broad range of personal and private matters.

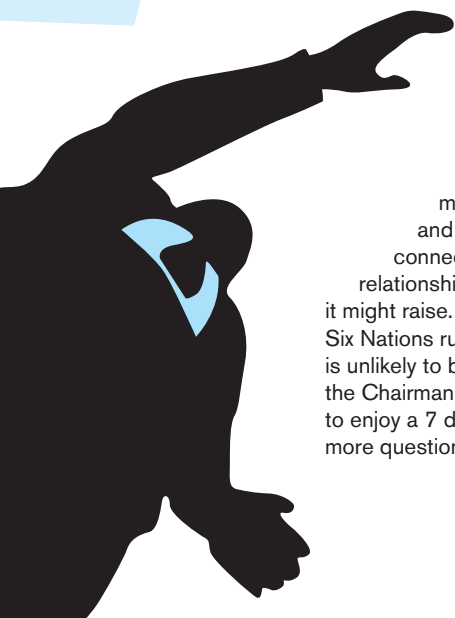
Whether you're moving home, writing a Will, going through a relationship breakdown, making a personal injury claim or experiencing problems at work, we are on hand to provide specialist legal advice, tailored to your specific individual needs.

- Catastrophic Injury
- Clinical Negligence
- Contentious Probate & Trusts
- Employment
- Family & Divorce Law
- Housing & Public Law
- Leasehold Services
- Notary Public Services
- Power of Attorney and Court of Protection
- Personal Injury
- Professional Negligence
- Property Dispute Resolution
- Residential Property
- Wills, Trusts & Probate



Please contact Clare Kelly with any queries about the Bribery Act 2010.

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Contested Wills claims rise

David Wedgwood - Partner, Contested Wills Team

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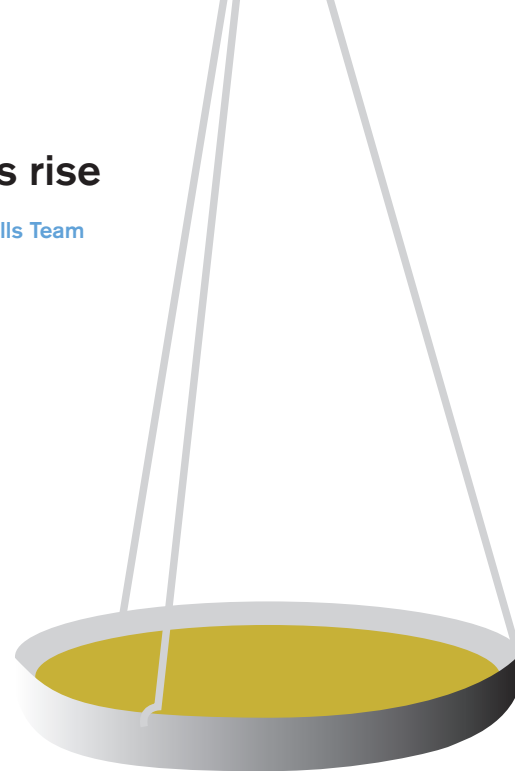
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Contested Wills cases have risen dramatically in recent years. In 2009, there were 110 cases that came to a trial in the High Court, compared to 80 the previous year, and just 10 in 2006. The reason for this increase is not clear. Some lawyers have identified the recession as a key reason for the rising number of legal challenges against estates. Other factors include the increasing complexity of family structures, and the growing trend for DIY wills, which often give rise to doubts as to the validity of the Will.

My own experience is that clients make claims for many personal reasons. Some clients do give their own personal financial uncertainty as a fundamental reason for bringing a case. Many others come to us with a heart felt sense of grievance at what they see as an injustice dished out by a loved relative.

Clients considering such claims are often understandably emotional after suffering a bereavement. They are faced with a complex area of law, where the use of Latin and jargon is still commonplace. Some do not know where to turn and rush into entering a Caveat, the first formal stage in a Court action. That can be dangerous as, unless these claims are dealt with correctly, there is an exposure to an adverse costs order.

Relatives should seek calm, objective advice at the outset. They need dispassionate advice on the merits and the economics of taking a claim. Whatever their personal motivation, without underlying merits and an economic rationale, it is unwise to make an expensive claim.



Despite the recent downturn over the past ten years, property prices have risen relative to legal fees. As such, a strong claim involving a property, is more likely to lead to litigation. This is part of the reason for the increase in claims.

I always recommend that clients seek specialist advice before taking a claim. At present, after the entry of a Caveat, it is all too easy to get quickly drawn into Court. Clients often arrive at the office with an ongoing probate claim. We believe that the procedure itself needs a radical overhaul. The Jackson Report, now approved by the Government, recommended the adoption of a Pre Action Protocol, such as the one recommended by Association of Contentious Trusts and Probate Lawyers. As members of that organisation, we comply with their code of practice.

Our People



Giles Peaker

Giles Peaker is a member of the Housing Team and the founder and editor of the [Nearly Legal Housing Law News and Comment site](#), listed as one of the 'top legal blogs' in the Times Online.

Case Notes

Employment

We acted for a claimant dismissed by her employer for "health and safety" reasons, shortly after she informed her employers that she was pregnant. We brought claims for unfair dismissal, breach of the maternity regulations, and sex discrimination.

We also claimed and secured a full mark-up of the compensation by 50% for the employer's failure to follow statutory procedures. Our client was awarded compensation of almost twice her annual salary.

What are your most recent challenges?

Two cases, one was a judicial review for a homeless client on whether he could be said to occupy a property where he had held a tenancy for about an hour. That was complex law but had to be prepared very quickly as my client was sleeping on night buses. The other was successfully appealing a judgment in a disrepair claim. We had won the claim, but appealed to the High Court on the basis of new evidence. The appeal was opposed and we had to demonstrate that the new evidence was not obtainable before and would have had a significant impact on the outcome of the trial. This was not easy, given that we had won. Without the appeal my client would not have got the repairs needed to a large part of her home.

What are the main developments in your area of practice this year?

That has to be the Supreme Court judgments in *Pinnock v Manchester and Hounslow*, which opened up a new defence of proportionality under Article 8 of the Human Rights convention, to mandatory possession proceedings by social landlords. It is not an easy defence, but Local Authorities and Registered Social Landlords are going to have to learn to respond to it quickly.

What is your most rewarding experience as a lawyer?

Many clients are in desperate positions or dire need. Their cases are often the most difficult because there is frequently no straightforward legal answer. Finding an argument and presenting their case, so they get what they need, can be incredibly rewarding. One example that was both frustrating and rewarding was that of a client with two young children. She couldn't work, because of her immigration situation although she was very keen to do so. A Council's Social Services department had been supporting them, but decided to end support and accommodation. The client and her children had nowhere else to go and no way to get assistance. She and her children faced being homeless and destitute. I brought a judicial review on the basis that Social Services had ended support on the wrong grounds and so it was unlawful. The case was frustrating because it settled on the morning of the final review hearing, when the other side gave in. We could have made significant new law if it had gone ahead. But it was very rewarding because the client and her children were supported until her immigration status was resolved a few months later. The client started work immediately and found her own accommodation for the family.

Another example was keeping a 70 year old blind and very ill client in his home after third parties had taken advantage of him. Technically, he had given up his Council home, but I successfully argued that the Council had failed to consider all the circumstances, that they knew about when deciding to evict him. I relied on very new law in my argument.

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Families and the effect of social networking

Sarah Hughes and Shelley Cumbers - Solicitors in the Family Team



How many of us have social networking profiles? An iPhone or other Internet enabled phone? A laptop or computer?

Most of us see these developments as part of our every day lives. Things we cannot live without. However, if you are going through a relationship breakdown it is important to think carefully before indulging in online activity. Otherwise, it may reach a solicitors' office, or even a courtroom.

The hugely popular modern trend of social networking, through websites such as Facebook, Twitter, Bebo and MySpace, has become increasingly prevalent in our lives.

Social networking enables suspicious spouses and partners to keep up-to-date with their other halves' lives. Previously, if you suspected your ex-spouse or partner of being dishonest you needed to follow them, intercept their letters, or hire a private investigator. Now by simply switching on your computer, or accessing the Internet through your mobile phone, you can see what they been up to through wall posts, online chat, photographs, status updates, blogs, videos and 'Tweets'. The same applies to your online activity so your partner may also see everything you do.

The consequences can be seen in recent celebrity revelations where sports players, television personalities and Hollywood stars are caught with an inappropriate text, picture message, or email on their mobile phones (known as "sexting"). This has resulted in messy and highly publicised fall outs. Celebrity victims include Tiger Woods, Ashley Cole and, most recently, Liz Hurley whose alleged flirty 'Tweets'

with Australian cricketer Shane Warne led to the breakdown of her marriage to Arun Nayar. These headlines show how relevant social networking has become in relationship breakdown, so it is not surprising that family lawyers increasingly meet clients with firsthand experience of this.

Divorce proceedings

The relevance of social networking is also recognised by the media. The Telegraph previously quoted research by Divorce-Online that 1 in 5 divorce petitions now refer to Facebook, with flirty emails and online messages being common examples of 'unreasonable behaviour'. Therefore, if your relationship breakdown is due to discoveries online, there is a good chance this will feature in the divorce petition.



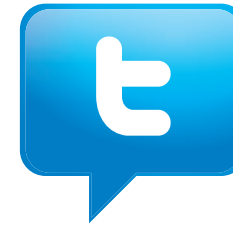
The Mail Online also published an article last year about the "world's first divorce by Facebook", when Emma Brady went online to discover her husband had posted "Neil Brady has ended his marriage to Emma Brady". This may be a sign of things to come, as people already post their life stories on websites before discussing with friends and family

Financial disputes

Social networking also has an impact when people wish to rely on information posted by their ex spouse or partner on social networking websites, to support their financial case. Examples include discovering holiday snaps of an ex-spouse or partner enjoying a holiday you were unaware of, or one completely different to what you were led to believe. This can easily arouse suspicion of financial extravagance,

particularly if it demonstrates a lifestyle beyond the financial means disclosed. These issues escalate when photographs include images of a new relationship.

Similarly, tweets, status updates, or photos bragging about expensive holidays, or extravagant purchases (such as a new sports car!) could lead to further questions in Court about true financial circumstances. This is important to remember, whether you are posting the information, or discovering it.



Children disputes

Tweets, status updates, and photographs relating to children can cause issues between parents, particularly if one has not seen the children for some time, or new partners are featured in the photographs. Images may show children playing with new expensive toys, playing computer games instead of doing homework, or being awake past their bedtime. This can lead to further disputes which end up in court.

Further, a parent wishing to relocate to another country may 'Tweet' or announce their plans in a status update, resulting in the other parent, if they had not been informed, panicking and issuing injunction proceedings to prevent this.

Most children of a certain age have their own social networking profiles. Their online activity can cause problems, if their status updates, posts, or tweets cause surprises. The fact that a child has a social networking profile can also be an issue between parents, with one wishing to discourage this, and the other being more lenient.

However, social networking websites can prove beneficial as they allow parents and children to interact through

instant chat, tweets, Skype, photos and videos. Courts are now open to considering these forms of contact, particularly if they are living far apart, or in different countries. This means that 'indirect contact' is no longer limited to letters in the post, which can feel unnatural to a child already socialising with friends and other family members online.

Injunction disputes

Social networking can feature when one person applies for an order against another to prevent harassment, or regulate occupation of a property. Harassment often takes place online, with Facebook activity being an increasingly common example, through threatening words, or unflattering/inappropriate images posted online. This is common where one person has changed their phone number or moved address, so that email and social networking are the only forms of contact.

However, whilst social media has provided an additional forum for harassment, it also enables the victim to rely on evidence such as wall posts or online discussions, where they otherwise may have no proof.

Even if not threatening or harassing, social networking can fuel the flames of couples struggling to come to terms with relationship breakdown, especially as information is publicised for friends and family to read. It is therefore always best to refrain from discussing personal matters via social networks if you know your ex-spouse or partner may see this.

Jurisdiction and International disputes

Social networking through the "worldwide web", can prove a useful tool in family cases with an international dimension. For example, if you are trying to establish that you are entitled to issue proceedings in a certain country, you may wish to rely on social networking activity to show that you were in a certain country at a certain time, or for a certain length of time. However, social networking can also make matters trickier as it is mobile and can take place in any country, in contrast with postmarks on letters.

Please contact Shelley Cumbers or Sarah Hughes with any family law enquiry.

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or sarah.hughes@anthonygold.co.uk
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Access and communication

Even if someone does not know their ex-spouse or partners postal address, they often know their email or social networking profiles. It is tempting to suggest these contact details be used by solicitors and the Court, and for legal documents to be served this way, including public wall posts. The Courts now recognise the importance of serving legal documents by email i.e. where one person is abroad or no postal address is known. However, it may be that serving people online through public means is a step too far. Therefore it is important to have as many contact details for your ex-spouse/partner as possible. At the very least you should have a valid email address.

Conclusion

Despite concerns in the press about the dangers of social networking sites, this is fast becoming the way of the future. Users need to be aware of the legal implications of social networking, especially if involved in relationship breakdown or related legal proceedings. If this is relevant to you then you should carefully consider your online activity and seek advice from a specialist family lawyer, as the effects can be far-reaching.

Our Family Team can offer expert advice in all areas of family law and the effects of social networking on relationship breakdown.

Barry Austin applied to the county court to be appointed to represent Alan's estate in the 1986 possession proceedings and then to postpone the date of possession so that Alan's tenancy would have retrospectively existed at the date of his death and Barry would have, succeeded to the tenancy. The application failed at first instance, on appeal to the High Court and on appeal to the Court of Appeal. The principal issue on each appeal was the Court of Appeal judgment in *Brent London Borough Council v Knightley* (1997) 29 HLR 857, that the right to apply for a postponement of an order for possession was not an interest in land capable of being inherited, and was therefore a personal right that ended with the death of the tenant/ tolerated trespasser.

could not exercise the right to buy even if arrears were cleared, and succession claims failed.

Both Lord Hope and Lady Hale found for Mr Austin and all five judges allowed the appeal. Lord Hope held that: "If it had been the intention of Parliament that the powers should not be exercisable on death it would have been easy to say so....."

This case is remarkable for a number of reasons. It marks the Supreme Court's adoption of the Practice Statement of 26 July 1966 of the House of Lords in respect of overturning its own previous judgments. The Supreme Court accepted that the Practice Direction also applied to it in its approach to overturning House of Lords judgments and indeed its own at some future date.

The judgment lays bare the lack of reasoning apparent in the establishment and approval of the concept of the tolerated trespasser in 1987 and 1996, such that, in Lady Hale's words, the law had been on "a course which was wrong in principle and wrong in practice". That course lasted 20 years.

Most importantly it enables potentially hundreds of people who would have been successors to a tenancy to apply to postpone the date of possession and revive the tenancy of the deceased tolerated trespasser, so that they can rightfully succeed to the tenancy. It is estimated that at least some 318 tolerated trespassers died each year, many of whom would have had potential successors.

Those potential successors will need to apply in the original possession proceedings under section 85 of the Housing Act 1985 to postpone the date of possession. Whether this will be successful is at the discretion of the county court judge, but if the arrears are low, or manageable, and there is a plan for the future, then the court is likely to respond favourably. Councils' attitudes vary, but there will need to be a basis for any opposition.

If the date of possession is postponed, then succession is a matter of law, but occupation may need to be evidenced.

A definitive obituary: on appeal to the Supreme Court

There were two main judgments, by Lord Hope and Lady Hale.

Lord Hope gave the leading judgment and favoured the view that a tenancy ends only when an order for possession is executed.

Lady Hale gave what was described by Lord Walker as "the definitive obituary of the tolerated trespasser". She described a tolerated trespasser as "an oxymoron, a trespasser being someone who should not be there, but tolerated trespassers were allowed to be there."

Lady Hale gave examples of the obvious problems of the tolerated trespasser regime, those who did not realise the order was breached, blameless tolerated trespassers due to the housing benefit system, neither landlord or former tenant able to enforce covenants under the tenancy agreement, the statutory scheme for determining rent did not apply, the trespasser

Resident upheaval

Charlotte Collins and Giles Peaker - Solicitors in the Housing and Public Law team



After persuading the Supreme Court to lay the "zombie-like creature" to rest, Charlotte Collins and Giles Peaker pick over the bones of the tolerated trespasser.

In Lord Walker's words, the tolerated trespasser is a "zombie-like" creature which has been living a "sort of half-life" at the heart of housing law practice for the past 20 years.

The occupant of a local authority property whose tenancy had been ended by possession order but against whom enforcement had been stayed by the court, or not sought by the landlord, lived outside the usual rules of landlord and tenant. There was no obligation on either party to fulfil their covenants, but there was still a requirement on the occupant to pay use and occupation charges at the same level as the rent.

So when the Housing and Regeneration Act 2008 finally came into force, it was assumed, with considerable relief on the part of both local authorities and tenants' advisors, that this zombie had been finally put to rest. The Act gave all the existing tolerated trespassers with a common landlord a 'replacement tenancy' on the same terms as the one that had been ended by possession order.

The elephant in the room

Barry Austin was the brother of the late Alan Austin, who was a secure tenant in the London Borough of Southwark. In 1987 a suspended possession order was made against Alan Austin, 'not to be enforced' if rent arrears of £3,192.96 were paid within 28 days. The order was breached, so Alan Austin was a tolerated trespasser from 1987.

Southwark did not enforce the order and there was no indication that Alan had been informed that he was a tolerated trespasser then or subsequently. In 2003, on his account, Barry Austin moved in with his brother to care for him as he was by then seriously ill. In February 2005, Alan Austin died. In September 2006 Southwark served Notice to Quit on Barry Austin and then began possession proceedings in January 2007. It came as a complete surprise to Barry that there had been a possession order and certainly that his late brother was a tolerated trespasser.

The borough council insisted that as there was no tenancy in existence at the date of Alan's death, Barry could not succeed to the tenancy as he would otherwise have been entitled to do under Housing Act 1985.



Please contact Charlotte Collins or Giles Peaker with any Housing Law query.
charlotte.collins@anthonygold.co.uk
giles.peaker@anthonygold.co.uk
0207 940 4000



Getting the best out of your divorce lawyer

Kim Beatson - Head of Family Team

In the current economic climate the price of legal advice is obviously crucial but the cheaper lawyer may not have the necessary expertise. Efficient, experienced lawyers could be better value and possibly less expensive in the long run providing the focus is on the settlement process. Clients too must take some responsibility for costs and this article seeks to assist divorcing and separating clients in examining their own role in the legal process with a view to ensuring that costs do not run out of control.

Process

Select the right process for you. Specialist family lawyers will not simply offer legal advice and representation in Court and some will have other skills, for example as mediators and collaborative lawyers.

Many separating couples prefer to attempt to negotiate issues relating to children or financial affairs with the assistance of a mediator so that their respective lawyers play a cost effective, supportive role – very much in the background. The mediator may also be an experienced family lawyer (in the writer's view this is essential in more complex financial cases). The advantage of mediation is that there will usually be just one mediator so the costs can be shared between the couple.

Some lawyers will have trained as collaborative lawyers which is very different from the traditional process. Here both parties instruct a collaborative lawyer so that each has the benefit of legal advice. However, the lawyers have a wholly different role which is supportive of the couple and child focused. Decisions are negotiated at round table meetings and the couple and the lawyers agree not to go through

the Court system unless negotiations breakdown totally. The couple dictate the timetable and the agenda. Where appropriate, other professionals such as child development specialists, accountants and actuaries are involved in the process, receiving joint instructions from the lawyers and this in itself reduces costs.

Choice of Solicitor

Make sure the solicitor suits your chosen process. This could mean that your solicitor is supportive of mediation and able to refer you to an experienced mediator. If collaborative law is the process for you then you must ensure that your solicitor is collaboratively trained. For information about special qualifications you should visit the Resolution website (www.resolution.org.uk). Many journals (Chambers Guide and Legal 500) recommend solicitors and these guides are based on peer reviews and client recommendations. Many solicitors are accredited specialists and have a particular expertise in a given area (for example, high value financial cases, children or cohabitation). The accrediting organisations are The Law Society and Resolution. The best way to choose a solicitor is to rely on personal recommendation from friends and family then to recheck the guides and websites for comments and information about specialist qualifications.

Always seek a detailed costs estimate and timetable. Ask your solicitor how junior fee earners will be deployed and how they will be charged out. It is not always necessary for a partner level solicitor to attend Court with counsel or to prepare straightforward documentation.

Case Notes

Employment

Mark Cornish acted for eight security guards who sought our advice and assistance after they were dismissed from their employment when a rival security firm took over the management of security at an Embassy in London.

The security guards' employment was protected by Transfer of Undertakings legislation. As such, the new firm operating the Embassy's security was effectively obliged to employ these security guards on the same terms of employment as before. The new security firm failed to give this legislation any consideration and simply dismissed all but one of the staff at the Embassy, at the Embassy's request. Proceedings were brought against the new security firm and the Embassy.

After tribunal proceedings were initiated the new security firm quickly realised that their position was unsustainable and each of the security guards received between three and eight thousand pounds in compensation.

Your relationship with your former partner

Try to retain a working relationship in order to keep costs down and remember the long term benefits of doing so if you have children. Maintaining a working relationship may enable you to sort out valuations together. The two of you may be able to decide who will be responsible for the bills and mortgage, whether the joint accounts should be closed and whether credit cards should be suspended. (Remember: divorcing couples sometimes spend freely on themselves and on new relationships so this might be an important consideration!)

Choice of Court

You need to check this with your solicitor but the Principal Registry of the Family Division in London is said to be generous to women and slow. The County Courts in Oxford and Ipswich are thought to be very efficient. It is not necessary to file your Petition in the local County Court and you may have good reasons to avoid yours.

Unbundling/Delegation

Whatever process you use, consider very carefully how you wish to employ your solicitor and never use your lawyer as a therapist unless you are prepared to pay the price.

Clients are increasingly seeking a relationship with a solicitor that involves co-working. Typically the client pays the solicitor at hourly rates or fixed or capped fees for different aspects of their advice and this is known as "an unbundled retainer".

It is necessary for the solicitor and client to jointly decide who will be responsible for what tasks. For example, a client may decide to act in person (dealing directly with the other solicitor) in connection with the divorce and matters relating to children. He/she could instruct his/her own solicitor in connection with the financial negotiations. Even that aspect could be unbundled so that the client is responsible for gathering together financial data and preparing financial disclosure documents and the solicitor might then be responsible for negotiating and advising on terms of settlement. The client could also act in person and then appoint a solicitor at certain stages in the process such as attending round table meetings or providing representation at Court.

From the point of view of all concerned it is necessary to carefully agree the ambit of such retainer so that everyone is crystal clear about responsibility for various tasks.

Finally, empower yourself. There is a wealth of information in handouts, literature, DVDs and on the website. Inform your decision-making by researching and educating yourself.

"You get what you pay for" can take on a whole new meaning.



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7/7 – What was the purpose of the Inquests?

Clifford Tibber - Partner, Anthony Gold

The inquests into the deaths of the 52 innocent victims of the London bombings on 7 July 2005 came to an end on 6 May 2011. They had started on 11 October 2005.

The Government had consistently rejected calls for a public inquiry into the terrible events of that day. The inquests represented perhaps the best hopes for the families and survivors of finding answers to their many questions.

Anthony Gold represented seven of the bereaved families as well as many of the survivors who took a keen interest in the proceedings. Many of them gave evidence to the inquests.

The Coroner's 62 page report is a complete answer to those who doubted at the outset what purpose could be served by the inquests.

For most of the families they now know exactly what happened to their loved one; how and where they died; whether they were alone or were helped by any of the heroic survivors who stayed with them until the emergency services arrived. They learned of the operational difficulties that restricted the emergency service response and listened in dignified silence as the Coroner concluded that each of

the victims would have died whatever time the emergency services had reached and rescued them.

Conspiracy theories were laid to rest. An anonymous MI5 official known only as witness G defended the actions of the Security Service in failing to apprehend two of the bombers before they could carry out their attacks citing limited resources and sound operational decisions. The Coroner found that there was no evidence that the Security Service knew of, and therefore failed to prevent the bombings. She was however critical of the "dreadful" child like mutilation of a high quality surveillance photo and the failure to keep proper records.

A Coroner can make recommendations when the evidence shows that circumstances exist which create a risk of death and action is required to prevent such a risk in the future. The families asked her to make 32 recommendations. She made only 9 but even that number might be seen as a worrying reflection of how little had been learned in the six years since the bombings took place.

What happened on the day is now well known. What the authorities will learn from it remains to be seen.

Family mediation for all?

Caroline Bowden - Mediator in Family Law Team

Anthony Gold has a highly experienced mediation team. We responded immediately to the new rule changes and can provide a first class service whether or not you are thinking of going to Court. With our easy online referral system and guidance about why and when you may need mediation, you can come to a mediator without the need to consult a solicitor first.

What problems can be brought to mediation?

- decisions about separation or divorce
- housing and property arrangements

- arrangements for care of children and visiting arrangements
- financial support

What is the mediator's role?

Anthony Gold's Mediators will assist you to resolve issues as a couple, but they will not make decisions for you, nor give advice. Their job is to:

- Be impartial and independent.
- Help you resolve conflict and reach joint solutions.
- Provide information to help you reach informed decisions.
- Help you focus on the future and problem-solve.

Please contact Clifford Tibber for further information.
clifford.tibber@anthonygold.co.uk
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There is no doubt that the Government is keen on family mediation. Since 6 April 2011, most couples must, at least, have explored the possibility of attending a mediation before they can make any application to Court.

Please contact Caroline Bowden with any mediation enquiry.
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0207 940 4000



The importance of understanding residential leases

Ian Mitchell - Head of Leasehold Services

Owning a leasehold flat should not be a concern as long as you know and appreciate your rights and obligations. With a well-written lease and a properly managed building, a leasehold flat should provide a perfectly good home and a secure investment.

Contact Ian Mitchell with any query about a residential lease.
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Imagine a large house purchased circa 1960. 10 years later, the owner sells the upstairs part of the house by splitting the property into two flats. He does this by granting a 99 year lease of the upstairs. He sells the lease and retains the freehold interest. He continues to reside downstairs. 30 years later he moves out and grants a lease of the ground floor flat on identical terms to the upstairs lease. He retains the freehold interest.

Present day, the owner of the first floor flat has decided to sell up. You are considering buying the flat. What do you need to look out for when reviewing the lease?

1. Has the lease sufficient length?

As the length of the lease runs down, the value in the flat reverts back to the freehold interest. This process begins to speed up at the point when the lease term drops below 80 years. The lease of the first floor flat has approximately 59 years remaining. A prudent buyer would reflect this in their offer and request that their solicitor advise how to resolve the lease length. The lease can be extended by statutory entitlement or negotiation. Most mainstream lenders will not lend against this flat on account of the term being below 60 years.

2. State of building

Are major building repairs on the horizon? Repair costs are usually divided between the leaseholders even though the freeholder may carry out the works. You would want to reflect outstanding building repairs in your offer price. It is important to look at the state of the building as a whole, not just the flat you are proposing to purchase.

3. What is the average annual service charge?

If this is a lease under which a service charge is payable, then ask for copies of the service charge accounts for at least the past 3 to 5 years.

4. Does the Lease contain an adequate insurance provision?

If the building was for any reason destroyed it is fundamental that the entire building is reinstated. It is desirable to have one single policy for the building as a whole.

5. What is your landlord's ethos?

Some freeholds are owned and managed by large property companies. Their charges will usually be higher. Ask the neighbours their views on the current management arrangements.

6. Does the lease protect your continued use and enjoyment of the property?

Check that the lease adequately allows you to deal with issues that could later arise between you and the neighbouring flat owners such as excessive noise or water ingress emanating from upstairs.

7. Is the lease free of defects that would affect resale?

Leases can have minor and major defects. The list of possible defects is non-exhaustive, your solicitor will review this position and advise you accordingly.

8. Does the lease permit you to rent out your flat?

The answer will be in the lease

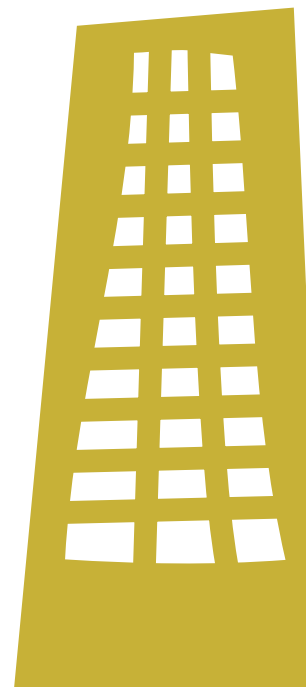
9. Does the terms of the lease permit alterations within your demise?

The answer will be in the lease

10. The ground rent increase

Review how the ground rent increases over the term of the lease so you are not in for any surprises.

Still lost - we can help. Anthony Gold has a specialist conveyancing team and a leasehold services team so you will ensure you get the right advice before you become a leaseholder and during the period of your ownership.





You don't really appreciate what you have until it is taken away from you...

Debra Wilson - Partner, Housing and Public Law Team

Please contact Debra Wilson with any housing or public law enquiry.

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0207 940 4000

In my line of work (Housing and Public Law issues) I am fortunate to meet people from all walks of life. What often determines whether they can engage legal representation is funding for their case. Helping the poor has always been possible through publicly funded Legal Aid. However for those of not so limited means, the cost of litigation is prohibitive. Over the past year, I have seen more people fall into that category where their financial means are limited, but not so much that they could be deemed poor.

The government's Spending Review included cuts to the legal aid scheme with the aim of targeting resources to those who are most in need. Curbing spending is understandable in this economic climate. Invariably however, the government's pursuit of such cuts has been made without allowing for an opportunity to assess the impact the changes may bring. There are concerns that some of the government's proposals may prove counter-productive to their intention.

A prime example is the proposal in the Localism Bill to end the concept of "a council house for life" by bringing in fixed term tenancies. Anyone granted a new council home once the reforms come through, will be subject to a review of their need for social housing after a fixed term. Many have argued that this could be counter-productive to reducing dependency on social housing, since faced with the threat of losing one's home, some will be less inclined to improve their socio-economic position in any way.

A similar problem could arise with the erosion of Legal Aid through the government's spending cuts. As a member of the Law Society Housing Committee, I have worked in conjunction with the Law Society's campaign to seek to maintain a viable legal aid service. Please visit www.soundoffforjustice.org. My best illustration of how funding issues impact is perhaps, from an encounter I had this year in my local county court.

With kind permission of the gentleman concerned, I am able to share my experience with you.

I met an impeccably dressed litigant, but his attire suggested his suit had been well worn and his shoes had seen better days. He was struggling to put across his case for want of proving a point. When the Judge granted him an adjournment, I gave him some tips on what to do next. I also urged him to seek legal representation whereupon he gave me what I should have known was becoming a standard reply. This was that he had tried in the past to get a Solicitor to help him, but he was not eligible for Legal Aid.

It materialised, that the gentleman had been an Economist in the City who had led a happy, comfortable life until his only son, together with his wife, died in a skiing accident on holiday. This tragedy caused him to start drinking, initially largely unbeknown to his friends and family, but eventually his behaviour alienated everyone around him. Despite much sympathy from his employers, it was clear from his account of matters that he was not fit for work and lived off his savings until he could not meet payments due, including the mortgage on his house. Eventually, spiralling conditions led him to become virtually penniless and he took to more drinking to console himself. He became homeless living on the streets. Eventually, when ill health took its toll, he found housing assistance through the local authority. His sorrows did not end when granted a council Flat. He could not cope with the mounting mail that laid unopened. Large rent arrears accrued, which he largely ignored until the final stages of eviction.

When I met this man, he was at the end stages of a possession action, where he was seeking to suspend a bailiff's warrant. This was, he told me, the most sobering thought he could conjure up every time he wanted a drink. Normally, unless there are exceptional circumstances entailing a legal point, legal aid is not now available to

defend the suspension of a warrant of possession, despite the seriousness of the nature of the proceedings.

He was not eligible for legal aid since he had some part-time consultancy work which was lucrative enough but he was not by any measure, wealthy. He was resigned to saying that with hindsight, he would have been better off reducing the work he had, or not working at all, simply in order to get legal representation at an earlier stage in the case.

As to what happened to my friend, you may be pleased to know that like a lot of lawyers working in my field, I am engaged in David Cameron's "Big Society" and unwittingly pick up those one or two

such cases where the deserving would otherwise find no access to justice. My problem is that I fear this is going to occur on a wider scale in a way which perhaps, has not as yet been understood by the general public.

At Anthony Gold, we invariably have to remind ourselves that we are a business and cannot take on cases for free (I say with some irony). We are however, renowned for exploring all options in terms of funding. Whenever anyone approaches us whatever their means, we are conscious that litigation is generally speaking, the preserve of the very wealthy but we are also aware that life may equally be as fragile as that of the tale of my above mentioned friend.

On your bike

Sandra de Souza - Solicitor, Personal Injury Team

It is believed that the number of cyclists in the UK has been in decline since the 1950s. In London, which has the highest number of cycling accidents, it is thought that the main reason for this is fear of being hit by motor vehicles.

Mr Olimpo Andrade, who is represented by Anthony Gold, was recently injured whilst cycling. As a result of this accident Mr Andrade has sustained multiple injuries, including an amputation to his leg. Mr Andrade says 'Serious consideration needs to be given to the safety of cyclists on the road and we need to improve drivers' awareness'.

With rising travel costs, petrol and pollution, the Government is encouraging Londoners to get on their bikes.

'Huge numbers of Londoners are hiring our beautiful bikes. By 2012 Barclays Cycle Hire will be even bigger!' - Boris Johnson.

Whilst the benefit of regular exercise and the effect on the environment cannot be questioned, Transport for London figures show that there were 34

incidents involving the Barclays Cycle Hire bikes between 30 July 2010 and 30 September 2010.

The Government announced in 2008 that a record £140 million was being invested in cycling. This is believed to be channelled at grass roots levels with cycling demonstrations being set up in towns around England, equipping children at an early age to cycle responsibly.

In addition, campaigners have recently secured a victory in the European Parliament after a London cyclist's death. A written declaration supported by a majority of MEPs now requires HGVs to be fitted with cameras and sensors linked to an alarm to eliminate blind spots at the side of vehicles.

It is believed that the best way to improve road systems is through a wide variety of measures including cycle route networks, traffic calming schemes, improved car technology, educating drivers and cyclist training. There will never be a time when we are accident free but it is hoped that if the funds being invested in cycling are used appropriately, serious accidents and fatalities on the roads can be reduced.

It is estimated that 17,000 cyclists are involved in accidents every year in the UK. Facts and figures taken from the Royal Society of the Prevention of Accidents reveal the following:

- 104 Cyclists are killed every year
- 2,606 Cyclists are seriously injured
- 14,354 Cyclists are 'slightly' injured

However, these statistics are assumed to be largely under representative of what is occurring. Large proportions of these accidents are not even reported to the police.

Please contact Sandra de Souza with any query about personal injury.
sandra.desouza@anthonygold.co.uk
0207 940 4000

Our People



Stephanie Prior

A partner in the Clinical Negligence and Personal Injury team with a particular interest in birth injuries, spinal injuries, child abuse claims and fatal accident cases.

Recent Challenges as a Lawyer?

Dealing with the mass of Implanon enquiries, media and press interest - Stephanie acted for two women who claimed they had suffered personal loss and injury as a result of their Implanon contraceptive devices being wrongly inserted. To date, both cases have settled, with the clients receiving damages from their local PCT's for trauma of miscarrying/and undergoing termination. Stephanie has 12 other Implanon cases. Stephanie is also acting for a young man who is a tetraplegic, liability in the case has been admitted and quantum is likely to be in the region of £5 million. Stephanie also has many complex child abuse claims which are ongoing and many cases relating obstetric negligence/ophthalmic negligence.

Main developments in practice this year

Almost doubling her clinical negligence and child abuse practice since joining the firm in 2009. Stephanie has taken part in many tv and radio interviews relating to the Implanon cases and she has had global media newspaper coverage. Stephanie was also named Lawyer of the Week in the Law Society Gazette earlier this year.

Rewarding experience

Settling cases where compensation awarded has made a real difference to the client, for example in child abuse cases and cases where the client has significant disabilities following negligent medical treatment.

Career high

Settling a group action for 10 adult survivors of abuse by a paedophile in a children's home in the 1970s where there were only 12 children in the home at the time.

Career low

"As a trainee solicitor, I had to attend a court hearing in Woolwich County Court, but when I got to work I realised that I was wearing odd shoes. I ended up borrowing the accounts assistant's shoes, which was very embarrassing. Luckily the judge didn't notice".

stephanie.prior@anthonygold.co.uk

The legal implications of the implanon contraceptive device

Rebecca Sheriff - Trainee Solicitor, Clinical Negligence Team

Over the last 12 years, Implanon, the only subdermal contraceptive available in the UK, has been used by thousands of women.

The implant, a flexible plastic rod 4cm in length and 2mm in width, is

inserted under the skin of the upper arm. It works by gradually releasing the hormone progesterone which stops the ovaries from releasing eggs and makes the womb less receptive to fertilised eggs. It provides protection

against pregnancy for up to three years and properly inserted is 99.95% effective among all users.

Recent controversy surrounding the implant has arisen as it has emerged that despite having the hormone filled rod inserted in their arms, a total of 584 women have reported unwanted pregnancies to the Medicines and Healthcare Regulatory Agency. Even more women have complained that they were left injured or scarred by the rod inserted into their arm and it is reported that the NHS has paid out compensation to these women as a result. The total number of women affected could in fact be far higher as many women may not have complained after becoming

unbeknownst to them. Proper insertion of the device, therefore, is the key issue here.

Those responsible for inserting the implant are recommended to ask the patient to feel for the implant after it has been inserted. Recent cases have shown, that in many cases patients do not know what they are feeling for or what their arm should feel like once the implant has been inserted. Furthermore, following the application of a local anaesthetic prior to insertion, many women claim that their arms felt swollen and so they assume, wrongly, that the implant had been successfully inserted. This begs the question of whether the responsibility for checking that the device has been

Guidelines dictate that health workers must have a diploma to fit the hormone rod into a patient's arm.

pregnant and miscarrying, undergoing abortions or giving birth.

The Implanon implant is invisible to x-rays and, therefore, impossible to detect in the body without a CT scan and a blood test. Given that these are not routine tests carried out after the insertion of the implant, many women then go on to have sexual intercourse in the belief that they are protected from pregnancy having had an Implanon implant inserted.

Legal Issues arising From Implanon

Pregnancy

Whilst Implanon is considered very reliable, as with all other forms of contraception it is not 100% safe as a form of protection. Therefore, there is no legal basis for bringing a claim in the event that a woman becomes pregnant despite having an implant.

Where a potential claim may arise, is from non-insertion of the implant itself into the patient's arm. Indeed investigations have shown and cases are currently being pursued where the implant was not in fact released from the pre-loaded applicator and, therefore, never inserted into the arm of the patient at all

inserted should be the patient's - a person, who in most cases has no prior experience or knowledge of how these devices feel under the skin.

Stephanie Prior, has acted and continues to act for women who have suffered personal loss and injury as a result of the Implanon devices being wrongly inserted.

One previous client, whose claim has now settled, suffered psychological trauma after becoming pregnant and miscarrying. Tests later showed that the Implanon implant had never been inserted in her arm. In the same circumstances, another client faced the difficult decision to terminate the pregnancy, going against her religious beliefs, causing her marriage to break down as a result. Other clients have continued with their pregnancies.

Since the issue surrounding the insertion of the Implanon implant came to the forefront last month, Stephanie has been inundated with new enquiries from the general public. Stephanie stated that 'these cases are not about Implanon failing, they are about doctors failing to insert these devices properly. I have clients who fell pregnant as they were unaware that the Implanon device had

not been inserted into their arm and they suffered psychological difficulties as a consequence of falling pregnant and later miscarrying or having to make the decision to terminate the pregnancy.'

Scarring & Nerve Damage

In other cases, removal of the Implanon implant has left some women with unsightly and raised scarring. It is, however, much harder to establish a claim for negligence in this area.

When an implant is inserted, one would normally expect the scar to be approximately two to three millimetres wide. When the implant is later removed, it is usually removed through the original scar. In some cases, however, patients are left with larger scars as those who attempt to remove it either struggle to find the implant as it has been inserted too deeply and/or into the muscle or they make larger incisions than necessary. The opinion of medical experts of late is that where a scar is larger than one to two centimetres there may very well be a claim for negligence.

Stephanie Prior is also currently representing a client who suffered extensive keloid scarring to her arm when the device was removed. This has caused her emotional distress and embarrassment as the scar is very unsightly.

In other and more extreme cases, if an Implanon implant has been inserted too deeply, it can cause significant nerve damage. In such cases, however, negligence is easier to establish. While there have been some reported cases of migration of an implant, deep insertion is generally accepted to be associated with poor insertion technique rather than migration of a properly inserted implant and, therefore, a claim for negligence may arise.

Training

It has also come to light during the recent controversy that the lack of training available to those health workers responsible for inserting the Implanon implant is also a contributing factor to the problems that have arisen.

Guidelines dictate that health workers must have a diploma to fit the hormone rod into a patient's arm. NHS chiefs, however, are ignoring this to hit targets and to save costs. The Faculty of Sexual and Reproductive Healthcare has said that the money that was assigned by the government for contraceptive training in a three year program at the start of 2006 was in fact not used for that purpose.

GP's are often less experienced in the insertion of implants as this is generally carried out by Family Planning Clinics. There is, therefore, a higher burden on Family Planning Clinics given the qualifications and experience of the staff that are employed.

Health workers have, therefore, been inserting implants without the requisite training resulting in non-insertion, deep insertion, scarring and nerve damage. Stephanie Prior has also confirmed that training is a major factor in these cases.

Interactions With Other Medication

There have been numerous new enquiries from women who have had the implant correctly inserted but have fallen pregnant due to interaction of the Implanon implant with other medication that they were taking at the time of insertion to the full knowledge of the health worker inserting it.

Particular medications that have been mentioned are 'carbamazepine' and 'lamotrigine' which have interacted with the hormone released by the Implanon implant rendering it ineffective and leaving them at an increased risk of pregnancy.

If a woman is prescribed the Implanon implant in such circumstances then a claim for negligence may very well be established with supportive expert evidence.

Bringing a Claim

As with all personal injury claims, to bring a claim for negligence in these such circumstances, there is a time limit of three years from the date of the incident or date of knowledge. In order to protect claims for non-insertion resulting in pregnancy, therefore, it

is best to assume that the date of knowledge is the date when the woman first takes a pregnancy test as this is the date when they first realise that something is wrong and consider the possibility that they may be pregnant. By ensuring that the claim is issued within three years of this date, there is no argument for the defendant that the claim is out of time.

In order to bring a claim for negligence arising from any one of the circumstances above, a positive report from a Contraceptive and Reproductive Health Care expert is vital. Following this, a report of a Psychiatrist will also be essential in documenting the psychological effect that an unwanted pregnancy, miscarriage, abortion, scarring or nerve damage has had on the client.

Conclusion

In response to these concerns, the Implanon implant was withdrawn by the manufacturers in October 2010 and replaced with a newer version, Nexplanon. This has a new applicator designed to reduce insertion errors and is radiopaque so that it can be easily detected by x-ray or CT scan.

It is clear, however, from the number of women contacting Anthony Gold on a daily basis that the controversy and effects of the Implanon implant looks set to continue for some time to come.

Please contact Stephanie Prior with any query about an Implanon claim.
stephanie.prior@anthonygold.co.uk
0207 940 4000

Our commitment to others - Corporate Social Responsibility (CSR)

Debra Wilson - Partner, Housing and Public Law Team

Enshrined in Anthony Gold's business mantra is the idea of "Being committed to the ethical practice of the law". This is defined by a statement of our values of striving to seek justice for all irrespective of means and wanting to help people to solve their legal problems. An often quoted phrase that we are "not just in it for the money" has been ascribed to our firm as recognition that legal services are not only about sustaining a viable commercial enterprise.

We offer a range of alternative means for funding a case, which still includes Legal Aid Public Funding for Housing and Clinical Negligence cases, despite the continuing erosion of the Government scheme. As a result of less people being eligible for Legal Aid and the resulting gap in access to justice, Anthony Gold's lawyers have faced increasing demands to find ways of delivering services to those who cannot afford legal services and/or are the hardest hit by the Government's spending cuts.

Over the last year, we are resolved in our efforts to strengthen our CSR work, so as to place ourselves in a position where we continue to engage effectively within our community. Over the past year, Anthony Gold's CSR activities have seen members of our Firm involved in providing their time and resources in joining various local community initiatives, as well as being involved in a diverse range of charitable sponsorships.

CSR is not an "optional extra" within our firm. We are growing ideas in the coming months to ensure that it is firmly embedded in our business ethos. We intend to define our CSR activity in a more informative way to meet growing demands amongst the discerning seekers of legal services who want to engage lawyers who uphold the concept of delivering business ethically.

We hope you will be among the discerning clients who seek us out and follow our interest in promoting our CSR activities in the coming months.

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Seminars

Anthony Gold's Seminar programme keeps both clients and contacts up to date with changes in the law and other relevant interesting topics. Below is the current list of Breakfast and Evening seminars for 2011.

- 21.06.2011 Breakfast update on National Employees Savings Trust "NEST " Legislation in conjunction with HSBC
- 29.06.2011 Breakfast Seminar, Bribery Act - Southwark Chamber of Commerce
- 06.2011 Evening Seminar on Pre-Nuptial Agreements - Association of Women Solicitors
- 06.2011 Breakfast Seminar on Effective Debt Collection
- 09.2011 Breakfast Seminar on Redundancy - Southwark Chamber of Commerce
- 19.10.2011 Evening Seminar on Notary Public work - Association of Women Solicitors
- 15.11.2011 Child Brain Injury Trust Seminar/Workshop

Please contact Keeley Power (contact details below) if you wish to join us and check our website as we are continually adding to our events timetable.

Email: keeley.power@anthonygold.co.uk

Telephone: 0207 940 4010

What do you think?

We welcome any feedback on our Annual Review. Please email philippa.savage@anthonygold.co.uk

Philippa can also remove you from our mailing list if you would rather not receive our literature.



What our clients said about us this year

'Perhaps I shouldn't say that it is a rare thing to find efficiency and kindness in a solicitor – but I think it is. I can't speak too highly of him.' / 'When we felt like giving up you gave us courage and hope to carry on which led to a very satisfactory conclusion.' / 'I would always use you again when I need a solicitor.' / 'Keep up the good work.' / 'The Solicitor handling my case is very thorough and is in touch at all levels. I am very confident that she really does a great job.' / 'There is nothing I could suggest at the moment that would make the service that you have provided me with any better.' / 'She showed great determination and an almost personal commitment to pursuing my case to a successful conclusion.' / 'I am so grateful to my friend for recommending Anthony Gold Solicitors.' / 'In all his dealings with me, he was kind, considerate, sensitive, and he did everything he said he would, when he said he would. I can't thank him enough.' / 'She has been wonderful throughout an incredibly difficult situation. I am very glad I was referred to her.' / 'The Solicitor dealing with my case is probably the best I have had dealings with' / 'She was faultless and achieved an excellent outcome for me. I am very grateful for her support and hard work throughout my case.' / 'My case was dealt with brilliantly.'



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