

Personal Injury

Conditional Fee Agreements

We are now conducting personal injury claims almost exclusively under Conditional Fee Agreements. This is excellent news for our clients who can be confident that they carry no risk of exposure to costs even if their claim fails. The additional cost of funding, i.e. our success fee and the after event legal expenses insurance premium can be recovered from the defendant if the claim succeeds.

The Litigation Department has been busy recently and we have had a number of notable successes including recovery of:

- £381,000 for a man injured in a car accident
- £82,000 for a woman knocked down by a motorcycle
- £4,500 for a woman injured by a dolphin on holiday abroad
- £6,000 for a soldier injured by an explosive device in the jungle
- £15,000 for a woman injured whilst travelling as a passenger in a car
- £1,000 for a disabled woman who tripped over boxes in a shop

These cases are now processed far more quickly than prior to the introduction of the Civil Procedure Rules in 1999. Happily clients recover their damages more quickly and with less risk than previously.

Slipping on the Public Highway

Claimants suffering injuries through accidents on ice due to failure by the local authority to grit or salt can, since 31st October 2003, rely on s.111 of the Railways and Transport Safety Act 2003. This creates a statutory duty to take reasonable steps to ensure that safe passage along the highway is not endangered by snow or ice.

We acted for a client who had just such an accident in 1996 fracturing her hip. Fortunately she was successful and recovered £127,000 damages. The case was heard before the appeal decision in *Goodes v East Sussex County Council* (2000) which held that there was no duty to salt or grit. The position is now covered by the new Act and these claims are more likely to succeed than before.

Tom Harrison (Partner)

New Partner for Adams Harrison



Earlier this year Shoshana Goldhill accepted an offer from the four existing partners in the firm to join them in the partnership.

Shoshana joined the firm in May 2000 and now heads a team of five handling divorce, children and other related family matters. She is an accredited specialist member of the Solicitors Family Law Association.

Born in New York Shoshana has lived in England since 1980 and was educated at Brown University, USA and Newnham College Cambridge. She lives in Cambridge with her husband and two children.

Welcome

Welcome to the first issue of our newsletter. We hope you find the articles interesting and informative. The newsletter is available as a printed version and also from our website www.adams-harrison.co.uk. Issues will be published in the Spring and in the Autumn.



If there are any areas of the law that you would like us to cover in the next issue please let me know by writing to one of the addresses shown or by e-mailing me at saffron@adams-harrison.co.uk

Paul Cammiss (Partner)

Contents

Personal Injury	1
New Partner for Adams Harrison	1
Equality in the Workplace	2
The Land Registration Act 2002	2
Why make a Will?	3
Change of Rules for Business Tenants	4
Squatters Rights & Land Registration	4

**Adams
HARRISON**

Equality in the Workplace

On 2nd December 2003 new legislation came into force affecting the way in which employers will need to act, deal with complaints and recruit. The act affords extended rights to certain groups of people.

The Race Relations Act 1976 makes it unlawful for an employer to discriminate against someone on grounds of their race. However, until the introduction of the **Employment Equality (Religion or Belief) Regulations 2003**, there was nothing to stop an employer treating someone less favourably because of their religion or belief.

An example would be where an employer decides not to recruit a Hindu person although they have the requisite skill and competence for the job. If the reason for refusing the person the job is that they follow the Hindu religion, this is clearly unlawful discrimination contrary to the Regulations.

An unsuccessful job applicant can make a claim for compensation to an Employment Tribunal.

A less obvious example of discrimination would be where an employer orders that his delivery drivers are not to wear any head gear because he dislikes baseball caps. This

policy would disadvantage Sikh staff who wear turbans for religious reasons. This is indirect unlawful discrimination.

If someone is ridiculed, bullied or harassed in the workplace by colleagues because of their own or their partner/spouses religion or beliefs this would be unlawful. An employee who suffered such treatment could bring a claim to an Employment Tribunal for harassment. The employees' colleagues as well as the employer may have to pay compensation.

The Regulations do afford some protection to employers who wish to introduce a justified policy that may result in indirect discrimination. Provided the employer can demonstrate it is as a result of a real business need, that the policy/practice is necessary and no alternative means is available.

For example a small catering supplier needs its staff to work late on a Friday evening as orders have to leave the depot to arrive with customers on Saturday morning. Some staff have a religious gathering on Friday evenings and need to leave earlier. These members of staff want to make up the time during the week. The company cannot agree. It is too small to have anyone else do the work. If it does

not fulfil the orders it would lose its customers. The requirement to work Friday evenings is not unlawful discrimination. It meets a legitimate business aim and no alternative means is available.

The Employment Equality (Sexual Orientation) Regulations 2003 extends the protection and rights of employees, as provided in the Sex Discrimination Act 1975. It makes discrimination against anyone because of their actual or perceived sexual orientation unlawful. This gives homosexuals new rights. As with the regulations relating to religion or belief these regulations protect those that are harassed in the workplace because, for example their son is gay and their colleagues frequently tease and tell jokes about gay people. An organisation may be liable to pay not only if harassment occurs in the workplace but at any place associated with the workplace, for example a work's outing.

These new regulations apply to all employment and vocational training and include recruitment, terms and conditions, promotions, transfers, dismissals and training. At Adams Harrison we are able to advise employers and employees with regard to the applicability of the Regulations.

Jennifer Green (Solicitor)

The Land Registration Act 2002

The Land Registration Act 2002 which came into force on 13 October 2003 introduced wide ranging changes to property law in England and Wales. The changes affect both lawyers and landowners.

No more deeds

Registered land will no longer be evidenced by documents, and the Land Registry will not be issuing any more land or charge certificates. All existing land and charge



certificates have no value and are mere wastepaper. They need not be produced on sales, mortgages or any other dealings of land. From 13 October 2003 the only proof of registered title is the electronic record on the Land Registry computer. A recipe for fraud? We will see!

Increased Registrations

Leases of seven years or more now need to be registered. Previously this was required only for leases of 21 years or more. Whereas previously such a registration usually only affected residential leasehold premises. The requirement to register will now include most commercial leases. Many other rights which previously existed outside the Register must also now be registered.

The theory is that the Register should be conclusive of all title matters i.e. if it is not on the Register it does not exist. Whether

this is workable or whether the Register becomes cluttered with out of date information (which it could well do in the case of short leasehold interests) we will wait and see.

Open to the Public

The Register of Title has been open for many years but with more documents appearing on the Register, for example commercial leases, sensitive commercial information can be available to the public or to competitors. Rules allow prejudicial or commercially sensitive information to be excluded but how the Land Registry will interpret these rules remains to be seen.

Adverse Possession

This topic is covered in the Squatters Rights and Land Registration article, page 4.

Rhodri Rees (Partner)

A Will is a legal document setting out what you want to happen to your assets (including your property) after death.

Top ten reasons for making a Will.

✍ To ensure your assets are left to those you need to maintain and who you want to inherit following your death. If you do not make a Will and die then there are rules under the Law (the Intestacy Rules) that will dictate to whom your assets will go, this could include near or distant relatives who you would not wish to benefit.

✍ To choose someone to deal with your estate (all assets and property) known as the executor. You can choose one or more executors (up to a maximum of four) who can be individuals or professionals, or a mixture of the two. The executors will have a legal right to deal with your estate. No-one else can interfere provided the executors act correctly and in good faith.

✍ To choose guardians for any infant children you leave behind. Otherwise, there may be disagreements amongst relatives who believe they should become guardians with the inherent stress placed on your children. Indeed, you may wish close friends to be appointed guardians rather than elderly or distant relatives. It may be best to maintain the status quo and not move your children away from their home, their school, their friends and all that is familiar and comforting to them.

✍ To minimise the amount of Inheritance Tax to be paid on death and therefore maximise the amount in the estate to leave to your chosen beneficiaries.

✍ To provide for your children whilst they are minors (under 18), or indeed until they have completed further education. Under the age of 18, such benefit will need to be held in Trust for the children by your executors who become Trustees. Income and/or part of capital money from the Trust Fund can be used towards your childrens' maintenance, education or other benefit (for example holidays). Unless you choose an older age (say 21 or 25) for children to benefit from the capital funds, then they would be entitled to the capital at 18.

✍ To leave legacies (specific items or certain amounts of money) to those you feel grateful to for their help, kindness and friendship. These beneficiaries would not benefit under the Intestacy Rules unless they were your nearest next-of-kin.

✍ To leave legacies to charities which you have supported in your lifetime, or who have been supportive through an illness. Anything left to a charity is exempt from Inheritance Tax.

✍ To enable a business, or partnership, you have an interest in to continue after your death and for the benefit to go to those you choose.

✍ To ensure that heirlooms are retained in the family and not sold.

✍ To record your funeral arrangements and any requests that parts of your body be used for therapeutic use, or medical research, after your death.

Wills need to be made incorporating certain legal requirements. It is always best to take professional legal advice when preparing a Will to ensure that all eventualities are catered for and to avoid undue costs and distress to beneficiaries following your death.

Even if you have an existing Will it should be reviewed every 3-5 years. Remember marriage automatically revokes an existing Will necessitating a new one. Divorce revokes any gifts made to a former spouse and any appointment of that spouse as executor. The rest of the Will remains valid but it may be preferable to make a new Will in the changed circumstances.

If you do not provide for someone who is financially dependent upon you immediately before your death, that person may have a right to claim against your estate.

Adams Harrison have approachable, qualified and experienced personnel to assist you in this area. For an appointment telephone 01799 523441 for our Saffron Walden office or 01440 702485 for our Haverhill office.

Melanie Pratlett (Partner)

Change of Rules for Business Tenants

The Regulatory Reform (Business Tenancies (England and Wales) Order 2003 will come into force on 1 June 2004. It amends the Landlord & Tenant Act 1954 making a number of significant changes to the law that protects business tenants. The main changes are:

Applications for new leases

Some of the strict time limits and procedural booby traps which frequently trip up tenants (and their legal advisers) have been removed, but such time limits which remain must still be complied with, and either the landlord or the tenant can now apply to the Court for a new lease (previously it was only the tenant).

Interim rents

Interim rents i.e. the rents payable pending agreement of the new lease terms will in most cases be equal to or similar to the market rent payable under the new lease.

The existing provisions require the interim rent to be a 'reasonable rent' which was often significantly lower than the eventual market rent. Under the existing rules only the landlord can apply for an interim rent but now either party can apply. This change will greatly benefit tenants in a falling market and the changes taken together remove the temptation on parties wishing to delay to preserve existing rent levels.

Limited Companies

Limited companies which trade in premises in which their controlling owners are tenants will now be protected whereas previously they were not. This will bring a significant number of unprotected leases within the protection of the Act.

Contracting Out

There have always been provisions allowing the landlord and tenant to contract out of the protection of the 1954

Act. The current rules require this to be done by Court Order. It is a simple procedure involving a written application to the Court and the payment of a £130.00 Court fee. No one needs to attend and most district registries will turn applications round in two working days. Some will even deal with them more quickly if you ask nicely.

The new rules will dispense with the Court Order, requiring instead the service of a prescribed notice by the landlord on the tenant, followed by a fourteen day cooling off period. The cooling period can be waived if the tenant signs a statutory declaration which is also in prescribed form. This is a considerable weakening of the protection for the tenant. The new rules could be abused, particularly in cases involving inexperienced tenants tempted to forego a cooling off period in exchange for immediate possession.

Tenants Compensation

There are changes in the rules for the payment of compensation to tenants who are refused a new tenancy because of the statutory grounds. There has been included a new ground for compensation in cases where landlords succeed in opposing a tenancy application by misrepresenting a ground of opposition. This compensation is payable in addition to the compensation which the tenant would otherwise have been entitled to had the landlord's ground for opposition been valid.



Squatters Rights and Land Registration

The Land Registration Act 2002 has changed the law relating to adverse possession (squatters rights). Once land is registered at H M Land Registry it will no longer be possible for occupiers to acquire possessory title relying on adverse possession for 12 years. Under the Act an occupier of land may apply for title after being in possession of the land

for only ten years. The Land Registry will serve notice on the registered proprietor who will have 65 days to object. He then has two years in which to start proceedings to evict the squatter. The ten years or more of occupation is not enough to entitle the squatter to the land. If the proprietor takes no further action to evict the squatter the latter can make another

application for title two years after the original objection.

On balance the Act is more helpful to the owner of land than it is to the squatter. Our advice to clients who own unregistered land is to apply for voluntary registration to secure protection against squatters.

Rhodri Rees (Partner)