



BEERS LLP

LEGAL REVIEW

Your quarterly bulletin on legal news & views from Beers LLP Solicitors

BRAIN DAMAGED PATIENT WINS £3.45 MILLION

A woman who went into hospital for routine gallstone treatment has been awarded a compensation package worth £3.45 million, after a series of medical blunders left her with severe brain damage.

In January 2001, Grannia East, 44, was admitted for surgery on her bile duct at the Royal Hospital Haslar, a former Royal Navy hospital in Hampshire. Complications meant that doctors had to abandon the operation, however. Mrs East lost a lot of blood and developed acute pancreatitis. She was transferred to another hospital, where doctors discovered a massive stomach bleed. She also developed kidney problems and had to undergo further surgery. Mrs East then suffered a cardiac arrest, which resulted in the injury to her brain. She is now in a wheelchair, has problems with her memory and requires round-the-clock care.

Mrs East brought a claim against the Ministry of Defence (MoD), which ran the Royal

Hospital Haslar, but it denied any liability. In 2007, the High Court ruled that the medical treatment she received had been negligent.

The MoD appealed against the decision, arguing that negligent medical treatment was not the cause of Mrs East's injuries. In July 2008, the Court of Appeal dismissed the appeal, finding that medical mistakes were to blame for her condition.

A settlement of £3.45 million has now been approved, which will enable Mrs East's family to adapt a property to meet her needs, as well as provide her with the therapy and care she requires.

The Royal Hospital Haslar closed in July 2009.

There are strict time limits that apply when making a personal injury claim. If you or a member of your family has suffered as a result of improper medical treatment, please contact us for advice.

EXECUTOR WHO STOLE FROM ESTATE FACES PRISON

An executor who stole more than £80,000 from the estate of a client faces a jail sentence for his crime.

The man, who operated as a 'will writer', also faces a confiscation order against his assets. Much of the money was used to finance a luxury cruise for him and his wife and for gambling.

The theft was discovered by a cancer charity, which was due to benefit under the client's will and which informed the police when no payment was forthcoming.



Stories like this involving non-solicitor will writers are all too frequent. Unlike solicitors, unregulated will writers do not have to be

legally qualified or insured. As there is no regulatory body, there is no mechanism for bringing a complaint, and without insurance there may be no means of redress should things go wrong. Solicitors, on the other hand, are professionally qualified to do the work, are bound by a stringent code of professional conduct and, in the very rare event of a loss to a client, clients are protected by the solicitor's professional indemnity insurance, which is compulsory.

If you are seeking to write or amend your will, we provide a professional service to give you the peace of mind that comes from knowing that your will has been drafted by qualified specialists.



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COMPROMISE AGREEMENTS AND INDEPENDENT LEGAL ADVICE

There are specific rules that normally apply when an employer makes a settlement by way of a compromise agreement in order to prevent an employee from taking action on a particular matter at the Employment Tribunal (ET) at a future date. One such rule is that for the agreement to be valid, the employee must have received independent legal advice.

In *McWilliam and others v Glasgow City Council*, the Scottish ET ruled as to what constitutes advice in this context.

Faced with a large number of equal pay claims, Glasgow City Council wished to settle the claims by reaching compromise agreements with the employees concerned. To this end, it made arrangements with local law firms to act for the claimants. The participating law firms gave presentations and held group advisory sessions informing the employees of the terms and effect of the compromise agreements and the

full settlement offer. The employees were also offered one-to-one consultations, but the solicitors made it clear that they could not advise individual employees as to whether or not it was a good idea for them to sign their agreement.

Even though they had reached compromise agreements with their employer, Mrs McWilliam and several other employees tried to bring equal pay claims against the Council that related to the specific period covered by the agreements. Their contention was that the advice they had been given before signing the agreements did not constitute independent legal advice.

The ET disagreed. In its view, all that is required to satisfy the requirements of Section 77 of the Sex Discrimination Act 1975 is that the claimant is advised what the terms of the compromise agreement are and what is their effect. It is not necessary for the advice to include an assessment of whether or not the offered agreement is a good deal.

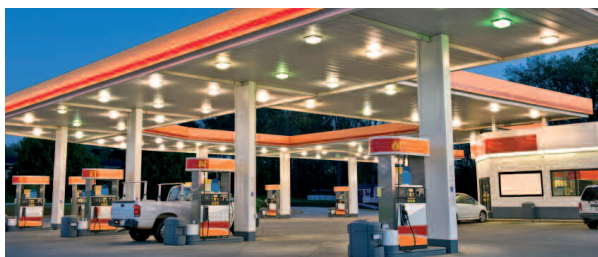
Whilst it is clearly desirable that the advice given enables the employee to make an informed decision, that is not what Section 77 requires. The advice given in this case was therefore legally valid and the ET had no jurisdiction to hear equal pay claims relating to the period covered by the compromise agreements.

The ET was also satisfied on the question of the independence of the solicitors instructed by the Council. It found that even though the Council paid their fees a situation that is not uncommon when a compromise agreement is reached – the facts of the case showed that the payments were for advice given to the employees, not the Council, and there was no question that the advice given was not impartial.

If you are contemplating entering into a compromise agreement, we can advise you to ensure that all relevant claims are compromised.

OVER-OPTIMISM NOT GROUNDS FOR CLAIM

The developer of the M20 services in Kent was recently successful in court in resisting a claim for damages from the tenants of the service area, who were dissatisfied because representations made to them regarding visitor numbers and the facilities of the site were not realised, causing them commercial losses. The main cause of the tenants' dissatisfaction was that visitor numbers, estimated in an independent report commissioned by the developer to be between 11,000 and 12,000 a day on average, were in reality only about a tenth of the number anticipated.



In addition, the developer's sales literature had envisaged having screens showing Channel Tunnel and port departure information. Lastly, the tenants claimed that the signage from the motorway was not of the expected standard.

The former was later found to be impractical for technical reasons (despite being an idea which had

attracted the support of the Port of Dover and Eurotunnel) and the latter was not under the control of the developer. The developer could not therefore be held to account for either of these issues.

When the lease documentation was examined, the court found that the developer had restricted its liability to any representation made by its solicitors in reply to questions.

The decision as to whether the shortfall in visitor numbers could lead to a claim therefore turned on whether the representations were made fraudulently to induce the tenants into executing their leases. The court sympathised with the tenants, but there was no ground for believing that they were: indeed, the developer had also suffered a large loss because of its reliance on the over-optimistic forecasts.

If you intend to lease premises where footfall is crucial, it makes sense to negotiate an appropriate clause in the lease agreement, so that the rental paid will be less if expectations are not met.

We can assist you in negotiating a lease which protects your position if things do not turn out as expected.

TIME DOESN'T RUN OUT FOR MAINTENANCE PENALTY

Failure to pay maintenance for children can have severe consequences.

Recently, a father who had failed to pay maintenance for several years found himself subject to a liability order requiring payment. When this was unsuccessful in producing the payment, it was followed many years later by an order under section 39 of the Child Support Act 1991 whereby the court withdrew his licence to drive. The court also had the option to send the man to prison.

The father appealed against the order, arguing that his debt for the maintenance was subject to the statute of limitations, which (in simple terms) provides that a debt which is not pursued for six years can no longer be recovered.

The argument went to the Court of Appeal, which heard that the man's liability to pay maintenance was established in 1996 and the liability order was obtained in 2002. The man argued that the statute of limitations applied to the order because it was an attempt to obtain payment of 'a sum recoverable by virtue of any enactment' (i.e. under the law).



The Court rejected this line of reasoning however. The orders that were possible – a driving ban or imprisonment – would not of themselves produce payment of the arrears of maintenance. They did not lead directly to the recovery of a sum of money and so the statute of limitations did not apply.

If you should be receiving maintenance but it is not being paid, contact us for advice regarding your options.

NHS WILL FORGERY CASE HIGHLIGHTS NEED FOR CAUTION

A recent case shows yet again that there are those who will prey on the elderly and the bereaved for their own benefit.

An NHS bereavement services adviser from Leicestershire was jailed after being found guilty of stealing £3/4 million from the estates of deceased hospital patients.

The woman had befriended the patients and used the trust they

bestowed on her to forge wills and other documents, allowing her to embezzle large sums from them.



This had continued since at least 2002. She pleaded guilty to 11 counts of forging wills and other documents, numerous charges of theft and other offences and was sent to prison for five years.

Proceedings under the Proceeds of Crime Act 2002 will now commence in order to confiscate, to the extent possible, her 'criminal assets' so that restitution can be made. One of the beneficiaries under a will which was replaced by a forged will was a charity, which had been bequeathed more than £200,000.

It is a regrettable fact that not everyone is trustworthy. We can help you to ensure that your assets are protected against the unscrupulous or those who wish to exert pressure on you for their own benefit.

PLANNING CHANGE AFFECTS PRIVATE LANDLORDS

Little publicised, but nonetheless important for private landlords, are changes implemented by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010, which mean that, in certain circumstances, a landlord wishing to let out a property as a house in multiple occupation may need to seek planning permission before doing so.

The main effects of the new Use Classes Order are to amend Class C3, which until the change included all houses that are occupied by up to six persons not living together as a household, and to specify classes of

use for which planning permission is not required. Class C3 has now been subdivided into three classes:

- Class C3(a) is a single family household. In this case, there is no limit to the number of persons who can occupy the property;
- Class C3(b) applies to those living together as a household and receiving care. In this case, the occupancy limit before planning approval is needed is limited to six people; and
- Class C3(c), which includes those living together as a household and not within class C4.

Class C4 relates to houses in multiple occupation which are occupied by between three and six people who share basic amenities such as a kitchen or bathrooms. It specifically includes bed-sit properties.

Planning permission is not required for a change of use from Class 4 to Class 3, but will be required for a change from Class 3 to Class 4.

The changes came into effect on 10 April 2010 and have implications for many residential landlords.

Please contact us for advice.

NEW RIGHTS FOR HOUSE BUYERS

The new Consumer Code for Home Builders came into force on 1 April 2010 and provides significant new protection for those who buy homes 'off plan'.

The Code requires builders of houses to keep buyers informed of the progress of the construction work. It specifically requires builders to provide 'reliable and realistic' information regarding completion of the construction, the date of legal completion, and the date for handover of the home.

Buyers must also be advised that they have the right to withdraw from the purchase if there is an unreasonable delay in completing the construction of the home and serving the notice to complete.

The Code sets out a standard form of wording for use in such circumstances. The buyer may terminate the contract if the builder fails to serve notice to complete the sale within six months for houses and twelve months for flats, where contracts are exchanged before the building is weatherproof.



If contracts are exchanged at an advanced stage of construction, the buyer has the right to terminate the contract if the builder fails to serve notice to complete the sale within two months for houses or four months for flats. Please contact us for advice.

TOURISTS WIN MILLIONS FOR SLIPS, TRIPS AND FALLS

A survey has revealed that top tourist attractions in Britain have paid out millions in compensation and legal costs for slips and trips over the last five years.

In one of the largest claims, a woman who hurt her hip in a revolving door at the Victoria and Albert Museum won £23,651. Carlisle Castle paid out £15,000 to a woman who fell into a moat and suffered hip and pelvic injuries.

In an accident at Tate Modern in London, Kate Phillips, 63, was going down a slide that formed part of an art installation. Even though she followed the safety instructions she broke several bones in her hand and was unable to drive, write or type for two months. She received £3,500 in damages.

Another visitor to Tate Modern was awarded compensation after she injured her foot on an artwork that comprised a gaping crevice in the floor. Other locations at which people were injured and successfully claimed compensation include the Tower of London, Snowdonia National Park and many canal and river bank areas that are the property of British Waterways. One successful claim was for £150 to cover vets' fees after a dog fell into a hole at Pendennis Castle in Cornwall.

Whilst some of the successful claims will be cited as further proof of a rapidly expanding compensation culture that is threatening the UK, owners and controllers of land open to members of the public do have a duty of care to ensure people's safety. If through no fault of your own, you have been injured on property open to the public, you may be entitled to compensation. For individual claims advice, please contact us for details.

TIME OFF WORK FOR PUBLIC DUTIES

Employers have a statutory duty to allow their employees reasonable time off work to carry out public duties.

Such duties include acting as a justice of the peace, as a prison visitor, as a member of a local authority or relevant health or education body, as a member of a police authority etc. A full list can be found in the Employment Rights Act 1996, Section 50.

If you are faced with a request for time off work to carry out public duties, the amount of time you allow the employee to take, when the time is taken and subject to what conditions must be 'reasonable in all the circumstances'. When reaching your decision, three specific questions should be asked. These are:

- how much time off is needed for the employee to

perform the duty in question and how much time is needed to perform the duties of the office overall?

- how much time off for public duties has the employee already been granted?
- what is the effect on your business of the employee taking the time off work?

If you refuse a request, an employee generally has three months in which to present a complaint to the Employment Tribunal (ET). If the ET finds that the refusal was not reasonable given all the circumstances, it has the power to award 'just and equitable' compensation.

If you need advice on whether or not you can legitimately refuse an employee's request for time off work, please contact us for details.

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