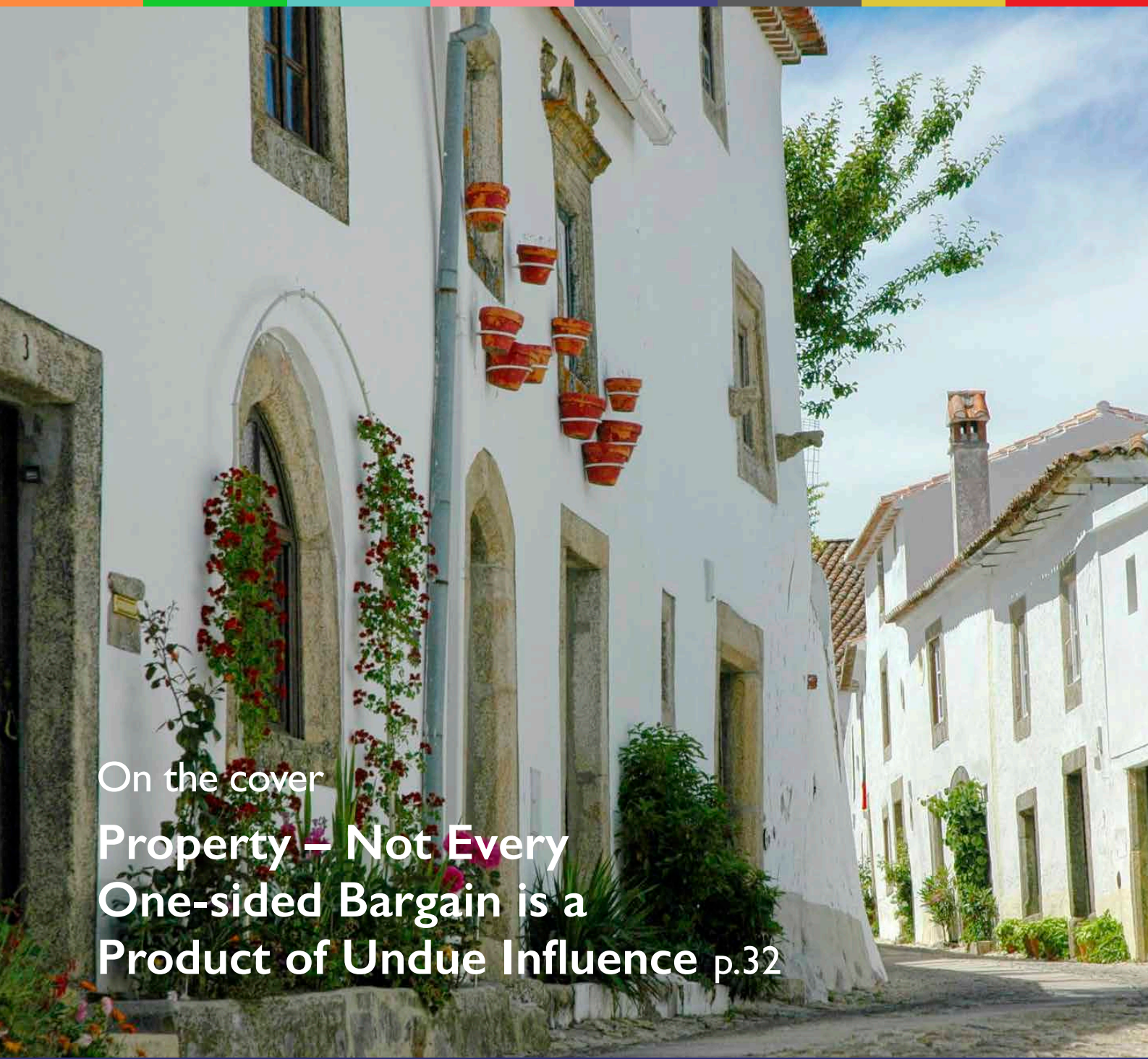
Manchester Law Society
Instituted 1838 Incorporated 1871

NOVEMBER 2023 | ISSUE 15

THE MLS Journal

COURT REPORTS MAGAZINE



On the cover

Property – Not Every One-sided Bargain is a Product of Undue Influence p.32

BUSINESS TAX | CLINICAL NEGLIGATION | PLANNING LAW | COMMERCIAL + MORE...

CLICK FOR MORE INFO

Are you missing out?

Networking and referrals with over 3,900 members	An industry sounding board	Lobbying – have your voice heard	Support your local profession and join a committee
Individual and corporate memberships available	Training, development and social events throughout the year	News and insights from the legal world, direct to your inbox	Valuable discounts from legal suppliers
Help, advice and support	Out of city members welcomed	Manchester Legal Awards	Promote your successes in our monthly magazine

It all adds up!

Be part of the most vibrant local Law Society in the UK.

For more information on membership visit:

www.manchesterlawsociety.org.uk

Manchester Law Society

Instituted 1838 Incorporated 1871

Manchester Law Society
Instituted 1838 Incorporated 1871

Manchester Law Society
Annual General Meeting

Dear Member,

Your attendance is requested at the Annual General Meeting of the Members of the Manchester Law Society, to be held at the offices of Eversheds Sutherland, Two New Bailey, 6 Stanley St, Salford M3 5GX on Tuesday 5th December 2023 at 5.00pm **PROMPT**.

AGENDA

1. Apologies
2. Minutes – Annual General Meeting held on Tuesday 6th December 2022
3. Auditors Report
4. To pass the Balance Sheet and Income & Expenditure Account for the past year ended 31 December 2022
5. To report the Officers chosen by the Council for the ensuing year
6. Attendance of Council Members
7. To elect Members of Council
   (Nomination Sheet has been posted in the Society's offices, 64 Bridge St, Manchester, M3 3BN)
8. To elect Auditors
9. Any other Business
10. Vote of thanks.

A copy of the Society's draft accounts can be obtained in advance, at the Society's office.

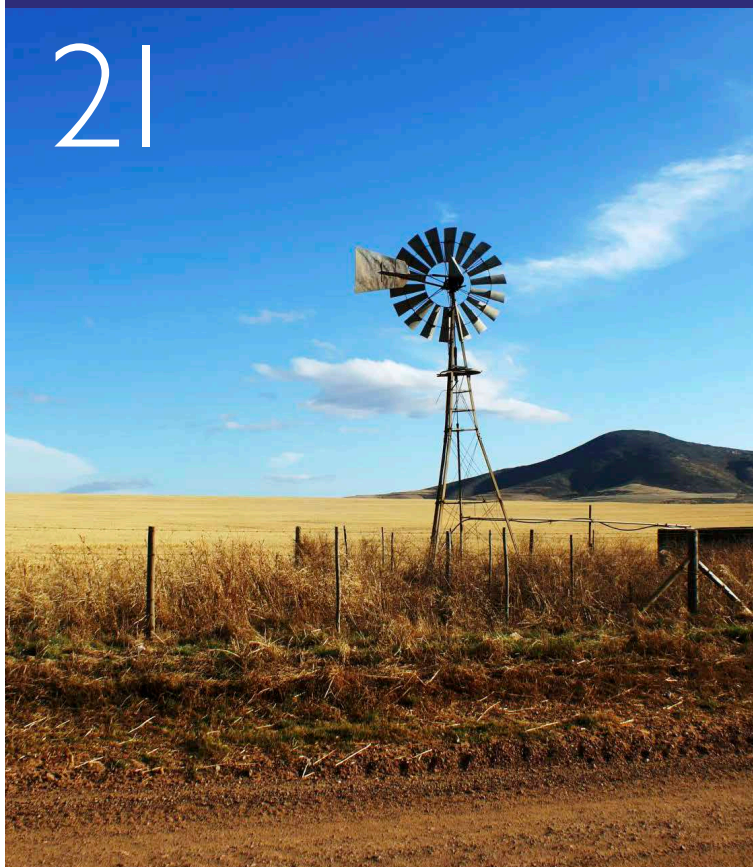
If you wish to attend please email **ChandreMay@manchesterlawsociety.org.uk** for the joining instructions.

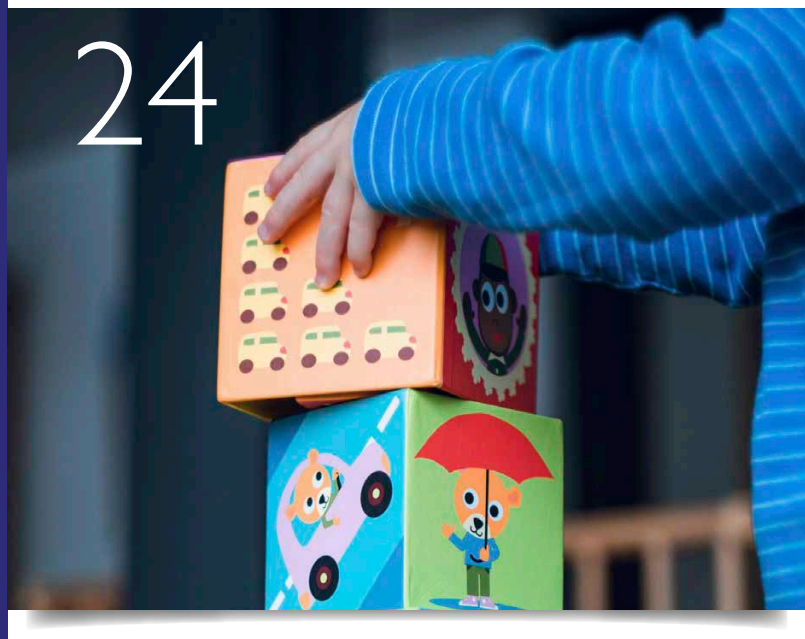
Under **S324 of the Companies Act 2006** you are able to send a proxy in your place if you are not able to attend.

Yours faithfully

Nick Johnson
President Manchester Law Society

Contents





Manchester Law Society
64 Bridge Street, Manchester, M3 3BN
General Enquiries: **+44(0)161 831 7337**
enquiries@manchesterlawsociety.org.uk

Manchester Law Society
Instituted 1838 Incorporated 1871

Manchester Law Society
Instituted 1838 Incorporated 1871

Potential Unearthed
Personal Development

LEADERSHIP CONFERENCE

This joint event from Manchester Law Society and Potential Unearthed will feature sessions on:

- Understanding Imposter Syndrome
- Five Insights to bring Sound Sleep and Boost Health, Happiness and Performance
- Psychological Safety and it's role in success
- A panel looking at the leadership journey of law firm leaders and future leaders
- Make Difficult Clients a Thing of The Past (with the help of your perfectly formed team)

Hosted by Mike Ode it will be a great day to support you in your leadership journey!

Thursday 30th November
09:00 to 15:45

Manchester Marriott Victoria & Albert Hotel,
Water St, Manchester M3 4JQ

MLS Members £95.00 + VAT (£114.00)
Non Members £120.00 + VAT (£144.00)

BOOK NOW

Vicarious Liability Can Extend Beyond Those Formally On Your Payroll

Published 03/10/2023

An important Court of Appeal ruling provided a clear warning to employers that their indirect – or vicarious – responsibility for the unlawful acts of those who work for them may not be confined to those who are formally on their payroll.

The case concerned an 18-year-old former pupil at a secondary school who returned to his alma mater for a week-long work experience placement. Whilst there, he met a 13-year-old pupil with whom he began to communicate on social media shortly after his placement ended. He started to abuse her a few months later and subsequently pleaded guilty to sexual activity with a child and other sexual offences.

His victim subsequently launched proceedings against the school, seeking £27,500 in compensation for psychiatric injury. Following a trial, however, a judge rejected her claim on the basis that she had failed to establish that the school bore vicarious responsibility for the abuser's wrongdoing.

The abuser was not the school's employee and the judge noted that affording him work experience was an altruistic gesture. The limited activities that he performed were required to be closely supervised by qualified staff and his presence was a burden to the school, rather than a benefit.

Ruling on the victim's challenge to that outcome, the Court found that the abuser's position vis-à-vis the school was nevertheless akin to an employment relationship. He was required to read and accept the school's procedures and guidance; he assisted with the school's business and it regulated his time, supervised him and directed and controlled what he did. Pupils were told to treat him with the same respect due to any member of staff. There were powerful pointers in the evidence that he began grooming the victim during his placement.

In dismissing the appeal, however, the Court found that the abuser's wrongdoing was not so closely connected to his relationship with the school as to give rise to vicarious liability. He was not placed in a position of authority over pupils and had no caring or pastoral responsibilities. The abuse did not begin until many weeks after his placement came to an end. Overall, it would not be fair, just or reasonable to hold the school indirectly responsible for his unlawful acts.

Case notes:
MXX v A Secondary School.
Case Number: CA-2022-001876

CLICK FOR MORE INFO

ARE YOUR SONS & DAUGHTERS...

...READY FOR NEW YORK?

CAMP NEW YORK

APPLY NOW FOR SUMMER 2024

Let **CAMP NEW YORK** help them prepare for New York in 2024, and have:

- A **summer camp placement** in the New York State area
- Minimum **$2,000** salary
- A **life enhancing** experience – and great for their CV
- Preferred age range **18–28 years**
- Full **guidance and support** from some of the best professionals in the business

WATCH THE VIDEO!

CLICK HERE TO APPLY NOW

CAMPNEWYORK.ORG

Going Into Business with a Loved One? Don't Dispense with Legal Formality

Published 02/10/2023

Couples who run businesses together are often tempted to dispense with paperwork and rely solely on trust. As a High Court ruling showed, however, any relationship may come to an end, leaving both sides wishing they had taken a more formal approach at the outset.

The case concerned a couple whose relationship lasted for about 18 years before ending unhappily. Whilst they were together, they established a company through which a buy-to-let property was purchased. She provided finance and administrative services whilst he was responsible for refurbishing the property.

They each had a 50 per cent stake in the company, which was a joint venture taking the form of a quasi-partnership. However, their business relationship was never the subject of a formal shareholders' agreement. Neither of them had a written contract governing their roles as directors or the terms on which the company employed them.

Despite the end of their relationship, they remained uncomfortably locked together in the business. Each of them accused the other of excluding them from the company's management and acting to its detriment. She lodged a petition under Section 994 of the **Companies Act 2006**, asserting that he had taken steps which unfairly prejudiced her position as a shareholder.

Ruling on the matter, the Court rejected a number of her allegations. In upholding her petition, however, it found that he had in some respects impeded the smooth running of the company and acted in a way that was potentially detrimental to its success.

His counterclaim, in which he made similar allegations against her, was dismissed.

Subject to hearing further submissions, the Court proposed an order whereby he would be removed as a director of the company and she would be entitled to buy out his shareholding at a price to be fixed by an expert valuer. She would be given credit for over £200,000 owed to her by the company on her director's loan account. The Court hoped that its decision would enable the former couple to draw a line under their disputes and make a fresh start.

Case notes:
Couch v Fox & Anr.
Case Number: CR-2022-000906

Selling a Company? Put Lipstick on a Pig at Your Peril

Published 06/10/2023

When marketing a company, it may be perfectly legitimate to paint its business and prospects in the best possible light. However, as a High Court ruling showed, the thick application of lipstick to a pig may enter the realms of fraud.

The case concerned the sale of a controlling interest in a company for over £2.1 million. The purchaser later alleged that the company was, at the time of the sale, balance sheet insolvent. The purchaser, together with the company, launched proceedings against two of the latter's former directors, alleging fraud.

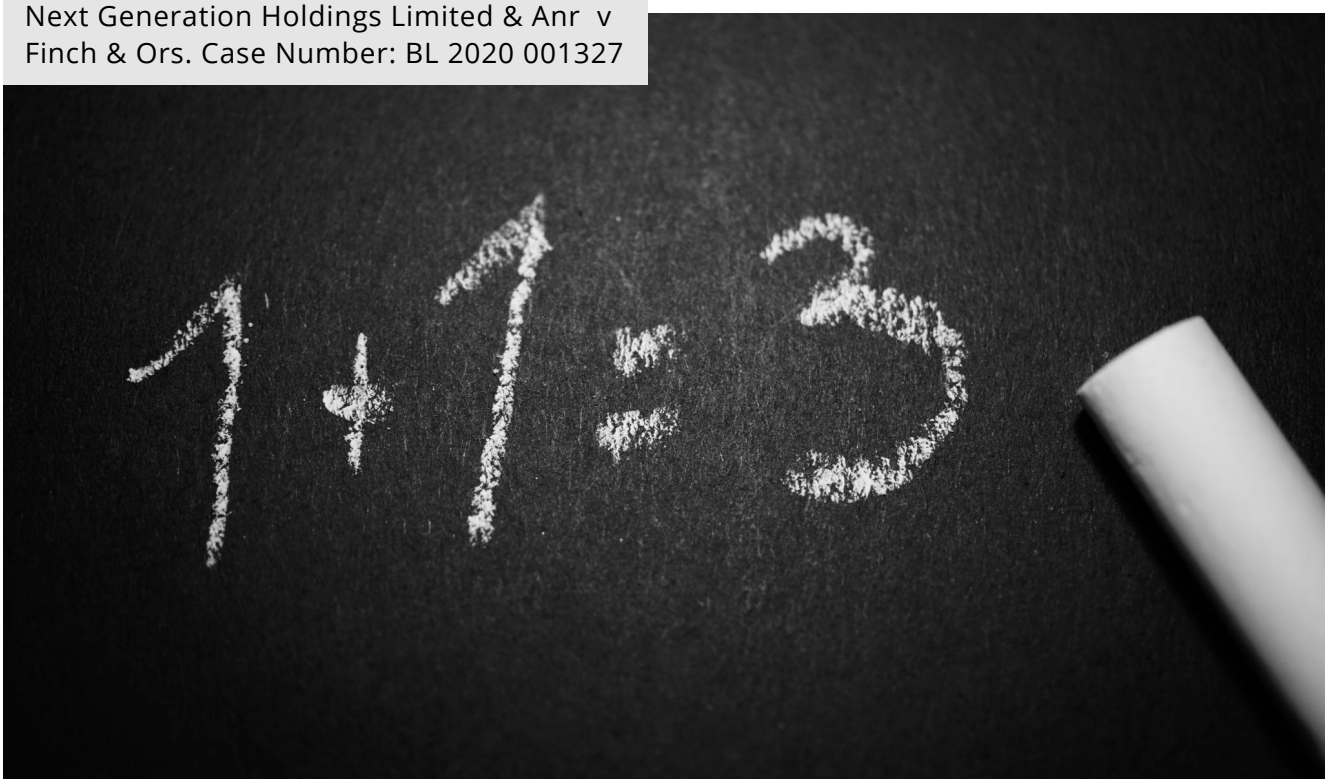
Ruling on the matter, the Court upheld the purchaser's case that there was, at the relevant time, an undeclared hole in excess of £3.5 million in the company's client money account. A false picture had been painted of the company's health by, amongst other things, overstating sums it was owed by debtors.

The Court accepted evidence that steps were taken to make the company look like a profitable and successful business to potential buyers and to disguise the fact that it was, in fact, balance sheet insolvent and operating at a loss. The company's stated income and balance sheet were distorted and money was wrongfully taken from its client account to fund trading expenses.

In upholding the claim, the Court found that the former directors had made fraudulent misrepresentations prior to the sale which were relied upon by the purchaser. They had engaged in an unlawful means conspiracy and breached the duties they owed to the company as directors. Warranties contained in the share purchase agreement had also been breached.

The amount of compensation payable to the purchaser and the company had yet to be finally assessed. However, given the extent of the recoverable losses sustained, the awards were bound to substantially exceed the purchase price.

Case notes:
Next Generation Holdings Limited & Anr v Finch & Ors. Case Number: BL 2020 001327



Stamp Duty – When is a House So Derelict That it Ceases to Be a Dwelling?

Published 04/10/2023

What state of dereliction does a house have to reach before it can be viewed as not suitable for use as a dwelling for the purposes of Stamp Duty Land Tax (SDLT)? A tax tribunal gave guidance on that issue in a case of importance to the legion of property developers engaged in domestic property renovations.

A house that had been empty for some time following the death of its owner was purchased by a company with a view to refurbishing it for resale. The company asserted that it was in such poor condition that it was not suitable for use as a dwelling, within the meaning of the Finance Act 2003 .

On that basis, it argued that SDLT was payable at the lower, non-residential rate and applied for a £12,350 tax rebate. After HM Revenue and Customs refused the application, the company appealed.

Ruling on the matter, the First-tier Tribunal (FTT) noted that the ceiling of the house's kitchen had partially collapsed, apparently due to a leaking water pipe. Rotten joists meant that parts of the property could not be safely accessed. Dangerous wiring had to be entirely replaced, together with the obsolete heating system.

On the other hand, the rotten joists had been swiftly replaced at relatively low cost, the stairs remained usable and the damage affected less than half of the property's overall floor area. The building, including the roof, at all times remained fundamentally sound and no part of it required demolition.

The FTT acknowledged that there are cases in which a property may be so derelict as to render it unsuitable for use as a dwelling for SDLT purposes. Asbestos may, for example, be extensively present or there may be structural defects, or missing elements of essential fabric, that render a property uninhabitable.

Dismissing the appeal, however, the FTT emphasised that such cases are relatively few and far between. The critical question is not whether a property is immediately habitable or ready for occupation, but whether it is suitable for residential use. The house in question, whilst parts of it were in a state of disrepair, contained all the required facilities for living. On the evidence, the company had not taken a non-residential building and made it into a dwelling.

Case notes:
Henderson Acquisitions Limited v The Commissioners for His Majesty's Revenue and Customs. Case Number: TC08922

Legal Costs Update

By Nick McDonnell (pictured on the left) and Colin Campbell (right)

Here, in Kain Knight Costs Lawyers' regular monthly legal costs update, we focus on those cases which we believe are likely to have a practical relevance for its members. We welcome feedback and if there is an area, topic or case you would like us to address, please let us know

The most important case this month is the decision of the Court of Appeal in Diag Human SE v Volterra Fietta [2023] Costs LR 1511. In proceedings in which solicitors had acted for the claimant under a Conditional Fee Agreement (CFA), Stuart-Smith LJ held that the court below (see [2022] Costs LR 1209) had been correct to uphold the decision of the Master who had assessed the defendant's bill of $2,929,928.38 at nil in determining a preliminary issue under s.70 Solicitors Act 1974. It had been common ground that the CFA was unenforceable as it had included a success fee that could exceed 100% and had not stated the success fee percentage contrary to s 58 Courts and Legal Services Act (CLSA) 1990. The solicitors argued that the offending term could be severed, so that at least base costs would be payable, alternatively, that the firm was entitled to payment on a quantum meruit basis. Those arguments were unanimously rejected: worse for the solicitors, reversing the decision of Garland J in Aratra Potato Co Ltd v Taylor Joynson Hicks, the court directed that any sums already billed and paid should be reimbursed to the client – a mere $1.5m!

Another case where it all went wrong for the lawyers is Glaser KC v Atay [2023] EWHC 2539 (KB). Here two barristers had undertaken work under the Public Access Scheme for fees to include trial. However, the trial had been adjourned, at which point the client withdrew her instructions, and refused to pay the fees. Turner J held that the barristers were entitled to nothing. The payment term had been unfair under s.62 of the Consumer Rights Act 2015, meaning that the contract fell to be treated as if the entirety of the payment term had never existed. It followed that the barristers had no contractual right to payment of the agreed price at any time. In what other walks of life could lawyers do good work and go unpaid, it might be asked? Is the answer that it is the lawyers who write the contract, so they only have themselves to blame?

Next, an unusual costs budgeting case. In South Tees Development Corporation v PD Teesport Limited [2023] EWHC 2270 (Ch,) Trower J held that the successful defendant on an appeal should have the costs. Although the costs of the appeal had not been included in its costs budget and no application to vary it under CPR 3.15A had been made, Trower J found that (1) the costs of any appeal are not to be included in the form of costs budget mandated by the CPR, (2) the defendant was not under any obligation to vary its precedent H and (3) the fact it did not do so did not have any effect on the way in which the court's discretion ought to be exercised when considering the appropriate costs order

to be made in relation to the appeal, so the defendant was entitled to its costs.
For an extraordinary case on the making of an indemnity basis costs order, see X v Transcription Agency LLP [2023] EWHC 2283 (KB) in which the claimant in a claim for a subject access request under the **Data Protection Act 2018**, had made unfounded allegations of dishonesty and improper conduct against the judge. He had also aggressively pursued litigation against the transcription service, seeking to force it to reveal its insurer, in a manner which was outside the norm. Indemnity basis costs ordered.

Hot of the legal press is a long and thorough judgment by Freedman J in which he refused to make a non-party costs order (NPCO) against the claimant's solicitors - see The Scout Association -v- Bolt Burdon Kemp [2023] EWHC 2575 (KB). In brief, it was the defendant's case that the solicitors should satisfy various adverse costs orders made against the claimant which they could not enforce due to QOCS. That argument failed, the court holding that, contrary to the defendant's assertion, the solicitors could not be described as the "real party" to the litigation. In the context of an NPCO application, that would usually be determined by reference to whether the solicitor was acting "beyond or outside the role of a solicitor." The firm was not, so the application failed.

Lastly a brief mention of the costs aspect in V (Medical Treatment) [2023] EWCA Civ 1190. See paragraphs 1, 42-43 and 49-57. The Court of Appeal was not persuaded to depart from **Rule 19.3 of the Court of Protection Rules 2017** which provide that, "where the proceedings concern P's personal welfare the general rule is that there will be no order as to the costs of the proceedings".

As always, these are a selection of the principal recent cases which are likely to be of use to practitioners and if any further information is required, please contact either Nick McDonnell or Colin Campbell at **Nick.McDonnell@kain-knight.co.uk** or **Colin.Campbell@kain-knight.co.uk**

Litigating Without Professional Representation – This is What Can Happen

Published 24/10/2023

Anyone tempted to pursue litigation without professional assistance should take note of a case in which a businessman's persistent delay in getting his case in order resulted in his appeal against a six-figure tax bill being struck out without his arguments ever having been considered on their merits.

Following an investigation, HM Revenue and Customs (HMRC) decided that the man was liable for more than £940,000 in Income Tax in respect of undeclared income and gains over a period of about 15 years. He contended that no tax was due in that he was domiciled abroad during the relevant period and that work giving rise to the disputed income had been performed outside the UK. Without the benefit of legal representation, he lodged an appeal to the First-tier Tribunal (FTT).

The FTT subsequently issued a succession of increasingly firm orders requiring him, amongst other things, to set out his case in detail and to disclose a list of documents on which he intended to rely. When he failed to meet a deadline set by the last of those orders, his appeal was automatically struck out. He subsequently applied to reinstate the appeal.

Ruling on the matter, the FTT found that he had, over a lengthy period, failed to give proper attention to the conduct of his appeal. He had been obstructive and almost belligerent in his communications with HMRC and the FTT, and had for many months made no serious attempt to locate relevant documents. There was no reason, other than apathy, for his failure to appoint legal representation.

In nevertheless permitting his appeal to proceed by the narrowest of margins, the FTT found that he had used his best endeavours to comply with what he mistakenly believed to be the deadline. He had provided the documents required, albeit after the deadline passed, and had finally appointed a lawyer to represent him.

In upholding HMRC's challenge to that decision, the Upper Tribunal (UT) found that the FTT had failed to take account of the full extent of his non-compliance with its orders. It also had regard to the irrelevant fact that the initial burden of proof in the proposed appeal would rest upon HMRC.

Remaking the decision, the UT found that his conduct of the appeal demonstrated a long history of non-compliance with the FTT's orders, requirements and requests which was both serious and significant. It reached the clear conclusion that his appeal should remain struck out.

Case notes:
The Commissioners for His Majesty's Revenue and Customs v Breen. Case Number: UT/2022/00090

Every Minute – Even Second – of Delay in a Baby's Birth Can Make a Difference

Published 23/10/2023

When children suffer asphyxia in the womb, a delay of minutes – even seconds – in their delivery can make an enormous difference to the level of disability, if any, that they will endure for the rest of their lives. One such delay was the focus of a High Court case concerning a seven-year-old boy.

There was no dispute that the boy was deprived of oxygen prior to his birth due to a compressed umbilical cord. A clinical negligence claim was lodged on his behalf, alleging that permanent injury to his brain was avoidable and that a failure adequately to monitor the foetal heartbeat in the few minutes before he was born led to a catastrophic delay in his delivery.

The NHS trust that bore responsibility for his care admitted that there were failings in midwifery care in the latter stages of his mother's labour. There was, however, a dispute as to the precise time that he would have been born but for those failings. The trust presented expert evidence that the timing and brevity of the delay was such that it had little or no impact on the extent of his injuries.

In the light of those arguments, a settlement of liability issues was reached whereby the trust agreed to pay 80 per cent of the full value of his claim. In approving that compromise, the Court noted that a foetus is generally considered able to withstand 10 minutes of asphyxia before sustaining permanent brain damage. However, every second that passes thereafter may crucially affect the outcome.

Given a number of imponderables identified in expert evidence, complex issues relating to the timing of the boy's delivery could have been decided either way had the case proceeded to a contested trial. On that basis, the Court found that the settlement was sensible and proportionate.

The boy is of average intelligence and has no hearing or visual problems. However, he has motor, cognitive and emotional difficulties that are likely to be lifelong. It will be some time before the amount of his compensation can be assessed. Given the severity of his disabilities, however, his award is likely to run well into seven figures even after the agreed 20 per cent deduction.

Case notes:
ABC v Maidstone and Tunbridge Wells NHS Trust. Case number strictly not for publication.

Clinical Negligence – Sympathy for an Injured Patient May Not Be Enough

Published 13/10/2023

When an operation ends badly, leaving a patient seriously disabled, any sympathetic person might think that compensation will follow as night follows day. However, as a High Court ruling made plain, it is a judge's duty dispassionately to consider the evidence in deciding whether an injury was caused by clinical negligence.

The case concerned a man in his early 40s who underwent complex surgery after developing what was described as a giant prolapsed disc. His spinal cord sustained damage during the operation, rendering him partially paraplegic. He subsequently launched a compensation claim against the NHS trust that bore responsibility for his care.

Ruling on the matter, the Court acknowledged that he had suffered greatly and expressed its admiration for the way he had dealt with the enormous challenges posed by the life-changing consequences of the operation. He had conducted himself in court with forbearance, fortitude and dignity.

Dismissing his claim, however, the Court found that conservative management of his rare condition would not have been an appropriate option. Surgical decompression of the spinal cord was the only reasonable choice. He was warned that the operation, to which he consented, was not without risk.

The surgical approach taken by the consultant neurosurgeon concerned was logical and appropriate and in accordance with a responsible, reasonable and respectable body of expert opinion. The neurosurgeon was also not negligent in changing that approach in response to difficulties that arose during the operation.

The spinal cord had, during the procedure, been mobilised gently, with appropriate skill and care and in accordance with standard practice. The damage was probably caused by a sharp fragment of disc digging into the spinal cord or by the surgeon's non-negligent attempt to remove it. Whilst recognising that the outcome of the case would be deeply disappointing to the patient, the Court concluded that there was no breach of duty on the surgeon's part.

Case notes:
Shally v Imperial College Healthcare NHS Trust. Case Number: QB-2020-004468

Debtor's False Sob Story Lands Him in Prison for Contempt of Court

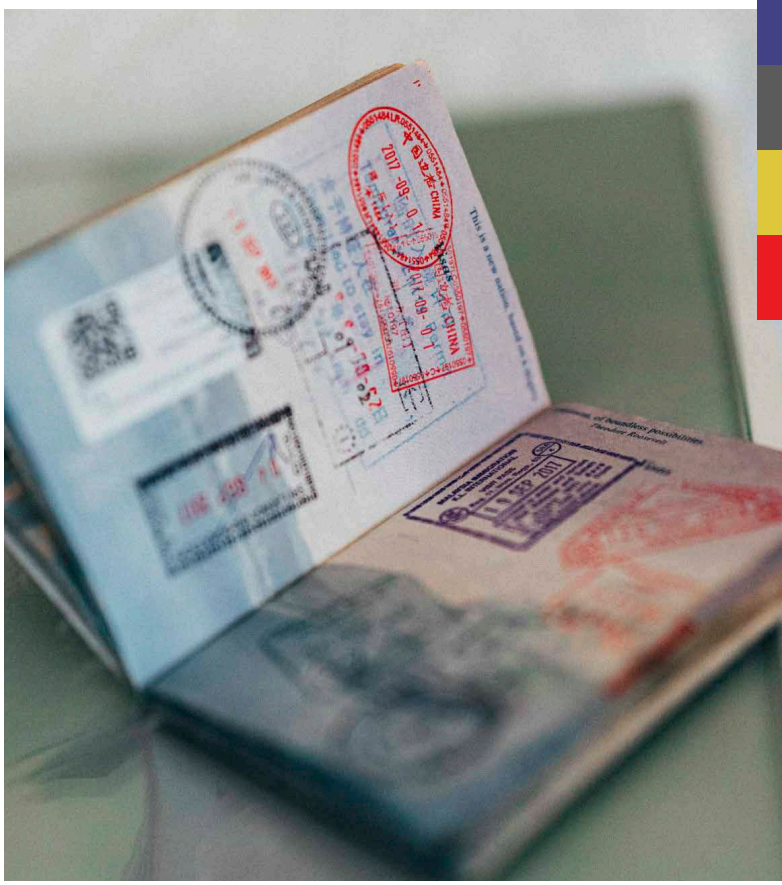
Published 23/10/2023

Witnesses who deliberately give false evidence in legal proceedings are very likely to be found out and severely punished. A debtor who swore that his mother-in-law had died when she was, in fact, still numbered amongst the living found that out when his false sob story earned him a substantial prison sentence.

The debtor was alleged to have misapplied and misappropriated large sums from a company of which he was a de facto director. The company's liquidators obtained summary judgment against him for a sum approaching £28 million. Asset freezing orders were issued against him and he was required to deliver up his passport and those of members of his immediate family so that he could not leave the UK.

In subsequently applying for the return of the passports on compassionate grounds, he made sworn statements, both in writing and orally in court, that his wife's mother had died overseas and that he and his family were anxious to attend her funeral and see to her burial. After his story unravelled and it emerged that his mother-in-law was alive when he made the statements, the liquidators sought his committal to prison for contempt of court.

Ruling on the matter, the High Court found him a thoroughly dishonest witness who had been caught out in a falsehood. He had no honest belief in the truth of his statements concerning his mother-in-law's purported death and intended them to interfere with the course of justice. He had also deliberately failed to disclose certain assets and substantial payments that had been made by him, or at his direction, to an overseas recipient.



Sentencing him to 18 months' imprisonment, the Court found that his culpability was at the higher end of the scale. One of his sworn statements, at least, amounted to a planned deception. His scheme was not particularly sophisticated but he persisted in it for his own personal gain. His clear objective was to regain the passports so that he could abscond to a foreign country where he had undisclosed assets.

Case notes:
Brittain & Anr v Raja.
Case Number: BL-2020-001098

Director of Counterfeit COVID-19 Face Masks Supplier Cleared of Fraud

Published 25/10/2023

The corporate veil affords no protection to directors who have behaved fraudulently. However, as was made plain by a case concerning the frenzied market in the supply of face masks during the COVID-19 pandemic, there is a great difference between carelessness – even gross carelessness – and dishonesty.

A pharmaceutical packaging company (the buyer) agreed to purchase 400,000 face masks with a view to their onward sale to the NHS. The masks bore the mark and specification number of a reputable manufacturer. They later turned out to be counterfeit, however, and the NHS rejected them.

After the buyer launched a breach of contract claim, summary judgment was entered against the company from which it purchased the masks (the seller) on the basis that it had no realistic prospect of successfully defending the claim. Damages in excess of £1.6 million, representing the entirety of the purchase price and warehousing costs, were awarded against the seller.

However, an issue also arose as to whether the seller's sole director should be held personally liable to satisfy the award. The buyer alleged that it had purchased the masks in reliance on his fraudulent representations as to their genuineness. It asserted that he had made statements without an honest belief in their truth, or recklessly, that is without caring whether they were true or false.

Ruling on the matter, the High Court noted that the director appeared to have taken no, or no substantial, steps to verify that the masks were genuine. He was grossly careless in that the steps he did take were wholly inadequate, and obviously so. However, the Court emphasised that, however negligent a person may be, he cannot be held liable for fraud provided that his belief is honest.

Dismissing the claim against the director, the Court noted that he may have been the victim of a fraud himself. After the genuineness of the masks came under suspicion, he did not behave as someone might have done had they committed a fraud, even by recklessness, and who had been or was about to be found out. His conduct was rather that of a man who honestly believed that the masks were genuine and was puzzled by the problem.

Case notes:
Pharmapac UK Limited v Elev8 Global Limited & Anr. Case Number: CC-2022-LIV-000006

Litigation Time Limits – Planning Case Provides a Cautionary Tale

Published 25/10/2023

Procedural requirements controlling access to the justice system – in particular time limits – may appear little more than nit-picking to a non-lawyer. However, as a High Court ruling in a planning case showed, they are anything but and failing to meet them can prevent a claim from even getting off the ground.

A company wished to challenge a decision of the Secretary of State for Levelling Up, Housing and Communities to dismiss its appeal against a local authority's refusal of planning permission for a development of up to 197 new homes. From the date of the Secretary of State's decision letter, the company had six weeks in which to file its claim and serve it on the government's legal department.

The company did not have the benefit of professional legal representation when its planning director took on the task of filing the claim. He did so the day before the six-week time limit expired. He had some litigation experience but encountered various difficulties in filing the claim form online and paying the correct filing fee.

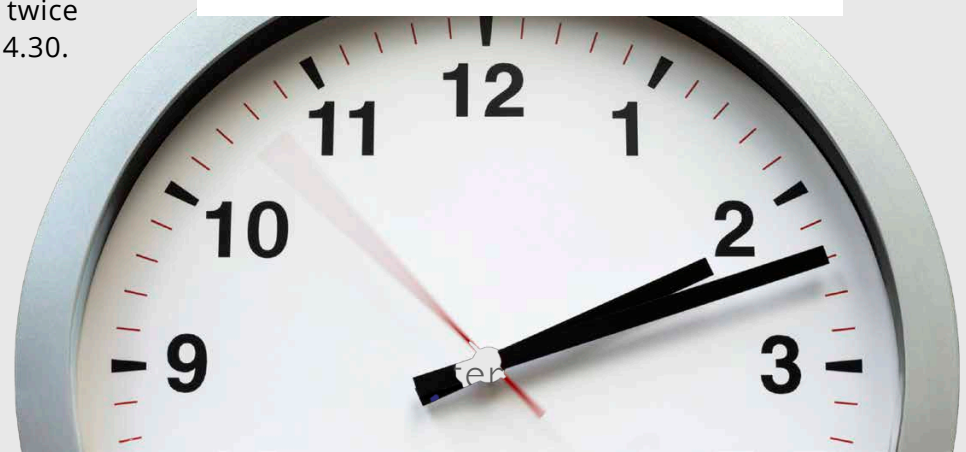
An experienced courier was eventually engaged and the claim form was deposited in the drop box provided in the public area of the Royal Courts of Justice (RCJ) at 15.45 on the day the deadline expired. Close of business at the RCJ is at 16.40. However, the drop box is routinely emptied only twice daily, the final collection being at 14.30.

The end result was that the claim form was not retrieved from the drop box, processed and formally issued by the Administrative Court Office (ACO) until the following day, by which time the deadline had passed. Due to the failure to meet the time limit, the Secretary of State contended that the claim should be dismissed, rather than being considered on its merits.

Ruling on the matter, the Court noted that the RCJ drop box is essentially a dedicated post box. The mere fact of posting a claim form into the drop box is not sufficient to constitute an act of filing a claim. The director was unaware of the way the drop box operated and so did not contact the ACO by email or telephone to arrange an urgent collection so that the claim form could be processed that day.

The reality was that the director had left it far too late to find out how to file the claim form properly, complete his preparation of the claim and then file it in court. He may have been busy doing other things, but that was not a sufficient explanation for the delay. It was not an exceptional case in which the time limit should be extended. In dismissing the claim, the Court found that it had no jurisdiction to consider it. The company was ordered to pay the Secretary of State's legal costs.

Case notes:
Home Farm Land Limited v Secretary of State for Levelling Up, Housing and Communities & Anr. Case Number: CO/4088/2022



Purchasing Property Via an Offshore Company May Muddy the Legal Waters

Published 11/10/2023

Purchasing a residential property under the aegis of an offshore company may have its advantages, but it can also give rise to dispute as to the identity of its beneficial owner. The High Court was presented with just such an issue in the context of an insolvency case.

The case concerned a property that was acquired by a Liberian company to serve as a couple's matrimonial home. More than a decade after the purchase, the husband executed a deed by which he made declarations of trust to the effect that his wife had, since the date of its incorporation, been the company's – and thus the property's – sole beneficial owner.

Some years later, after a judgment for about $18 million had been obtained against him, the husband was declared bankrupt on his own petition. The judgment creditor and the husband's trustees in bankruptcy subsequently launched enforcement proceedings under Section 423 of the **Insolvency Act 1986**.

The claimants asserted that the deed amounted to a gift of the husband's interest in the company to the wife and had been entered into for the purpose of putting an asset – ultimately the property – beyond the reach of his creditors. For her part, the wife contended that the purpose of the deed was to create clear lines of demarcation between her assets and those of her husband.

Dismissing the claim, the Court noted that all the money used to set up the company and acquire the property had been provided by the wife's father. His purpose in doing so was to provide her with financial independence

from her husband. From the date of its establishment, any interest that the husband may have had in the company was held on trust for his wife.

Howsoever shares in the company might be distributed, it was the father's intention that the wife alone should be its beneficial owner. That intention was known to, and acknowledged by, the couple at the time of the company's acquisition. The deed accurately reflected that position and had not been entered into with a view to undermining the position of past or future creditors. The husband had, during the course of the proceedings, been discharged from bankruptcy.

Case notes:
Lemos v Church Bay Trust Company Limited & Ors. Case Number: CR-2016-008560

Another Sad Tale of a Farmer's Disinherited Children – High Court Ruling

Published 10/10/2023

The tale of a devoted son labouring for years on a family farm only to be cut out of his father's will is so often told as to be almost a cliché. However, as a High Court ruling showed, such stories are often reflected in the sad and recurring reality of agricultural inheritance disputes.

When he died, a father was the beneficial owner of a 20 per cent stake in his family farm. He also held a 25 per cent share of a company that ran a market gardening business on the land. By his will, he bequeathed everything he owned, save for a £20,000 legacy to his partner, to his middle son. The other two sons received nothing.

Since his death, the land – which had residential development potential – and the business's assets had been sold for a seven-figure sum. That greatly raised the stakes in that the value of his estate was thereby increased to about £1.7 million. The two disinherited sons launched proceedings.

Ruling on the matter, the Court found that all three brothers had started working on the farm at a very early age. Although the disinherited sons had left home for a while after leaving school, they each returned to devote themselves to the family farming business. The three of them worked long and arduous hours, for relatively low pay, and profits from the farm were largely ploughed back into the business.

The Court found that their father and their mother, who predeceased him, had reassured them on numerous occasions that they would in due course all be treated equally. The couple wanted to keep everything within the

family and, although informally made, their assurances went beyond mere expressions of intent and were binding.

The disinherited brothers had relied upon their parents' assurances. Notwithstanding that they had shared handsomely in the profits from the assets and land sale, that reliance was to their detriment. Overall, their father's decision to renege on the assurances of equality when making his will was unconscionable.

In effectively rewriting the will, the Court ruled that the proceeds of the sale of the father's land and business assets should be divided equally between the three brothers. His personal, non-business assets – worth about £233,000 – would, however, be inherited by the middle brother alone.

Case notes:
Winter & Anr v Winter & Anr.
Case Number: PT-2021-BRS-000057

Contract Adjudicators' Decisions Must Be Honoured Promptly – No Ifs, No Buts

Published 22/09/2023

Those who willingly submit contract disputes to adjudication must, save in very exceptional cases, honour the outcome without delay – no ifs, no buts. The High Court resoundingly made that point in a guideline ruling.

The case concerned highway engineering and construction works carried out by a contractor to the order of a local authority. After a dispute developed, the contractor was successful in an adjudication. It subsequently launched proceedings with a view to enforcing the adjudicator's decision and sought summary judgment against the council for a sum in excess of £3 million.

The council conceded that the contractor was entitled to such a judgment. It did not, however, accept that the adjudicator's decision reflected the true state of its account with the contractor and said that it intended to refer the issue of the true value of the works carried out to a further adjudication.

In seeking a stay of execution pending the outcome of that further proposed adjudication, the council asserted that the contractor was insolvent. If ordered to pay the judgment sum straight away, the council argued that it might not be able to recoup money that the contractor might ultimately be directed to repay.

Ruling on the matter, the Court noted that the contractor's most recent filed accounts recorded a trading loss in the relevant year of over £38 million. Its mounting losses had wiped out its asset base, leaving it balance sheet insolvent with a total deficit of over £58 million. Its growing net current liabilities also indicated cashflow pressure.

The contractor was, however, part of a substantial multinational group and its parent company had offered the council a guarantee. The parent company enjoyed a very healthy balance sheet, showing a net asset position of about £1.5 billion, and was plainly balance sheet solvent. It was, the Court found, fanciful to suggest that it would be unable to repay a judgment sum of around £3 million.

In rejecting the council's application, the Court found no merit in its arguments. Its position was more than protected by the parent company's offered guarantee and there were no proper grounds for staying enforcement of the judgment. The council's conduct had, in certain respects, been unreasonable to a high degree and it was ordered to pay the costs of the stay application on the punitive indemnity basis.

Case notes:
Alun Griffiths (Contractors) Limited v Carmarthenshire County Council.
Case Number: HT-2023-000242

Lost a Key Employee? This is How to Mount a Damage Limitation Exercise

Published 04/09/2023

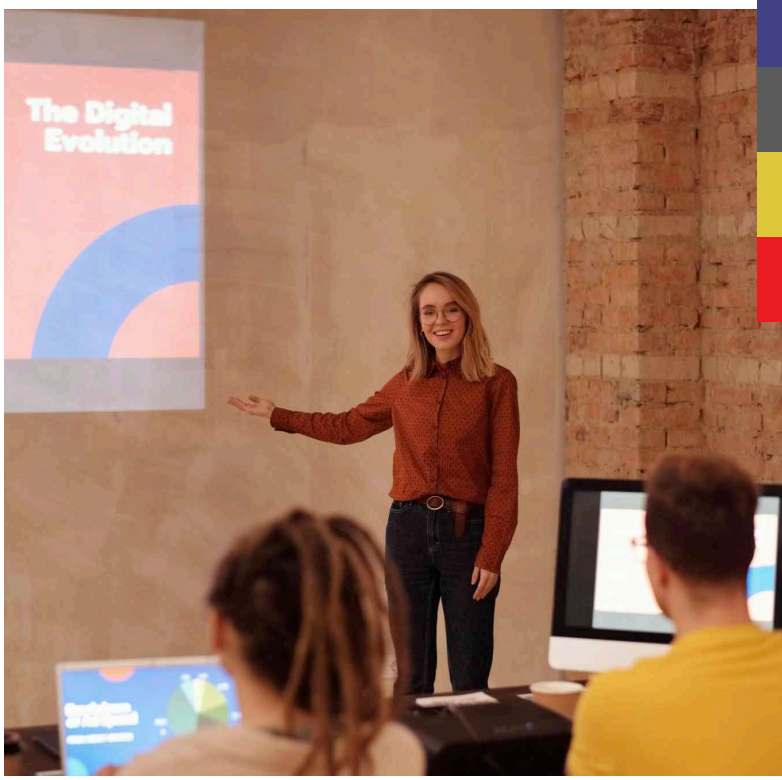
The shock departure of a key employee is a troubling moment for any business. As a High Court ruling showed, however, effective steps can often be taken to prevent them trailing confidential information and important clients in their wake.

A company that specialised in finding and booking motivational or keynote speakers for corporate events launched proceedings following the resignation of one of its directors. Amongst other things, it alleged that he had, whilst still in its employ, been instrumental in preparing to establish a rival business with a longstanding friend.

The allegations were disputed by the director, his friend and the rival business, but their statement of case was struck out after they failed to comply with a raft of court orders. Judgment having been entered against them on liability issues, the factual basis of the company's claim was taken as having been established.

The Court noted that the director was subject to a panoply of restrictive covenants in his employment contract which were designed, amongst other things, to protect the company's confidential information and to restrain him from soliciting its established clients or involving himself in competing businesses for nine months following his departure.

Ruling on the matter, the Court concluded that the company's loss of one particularly successful speaker was caused by breaches of contract on the part of the director and his friend. Whilst the latter had no written contract with the company, he had worked



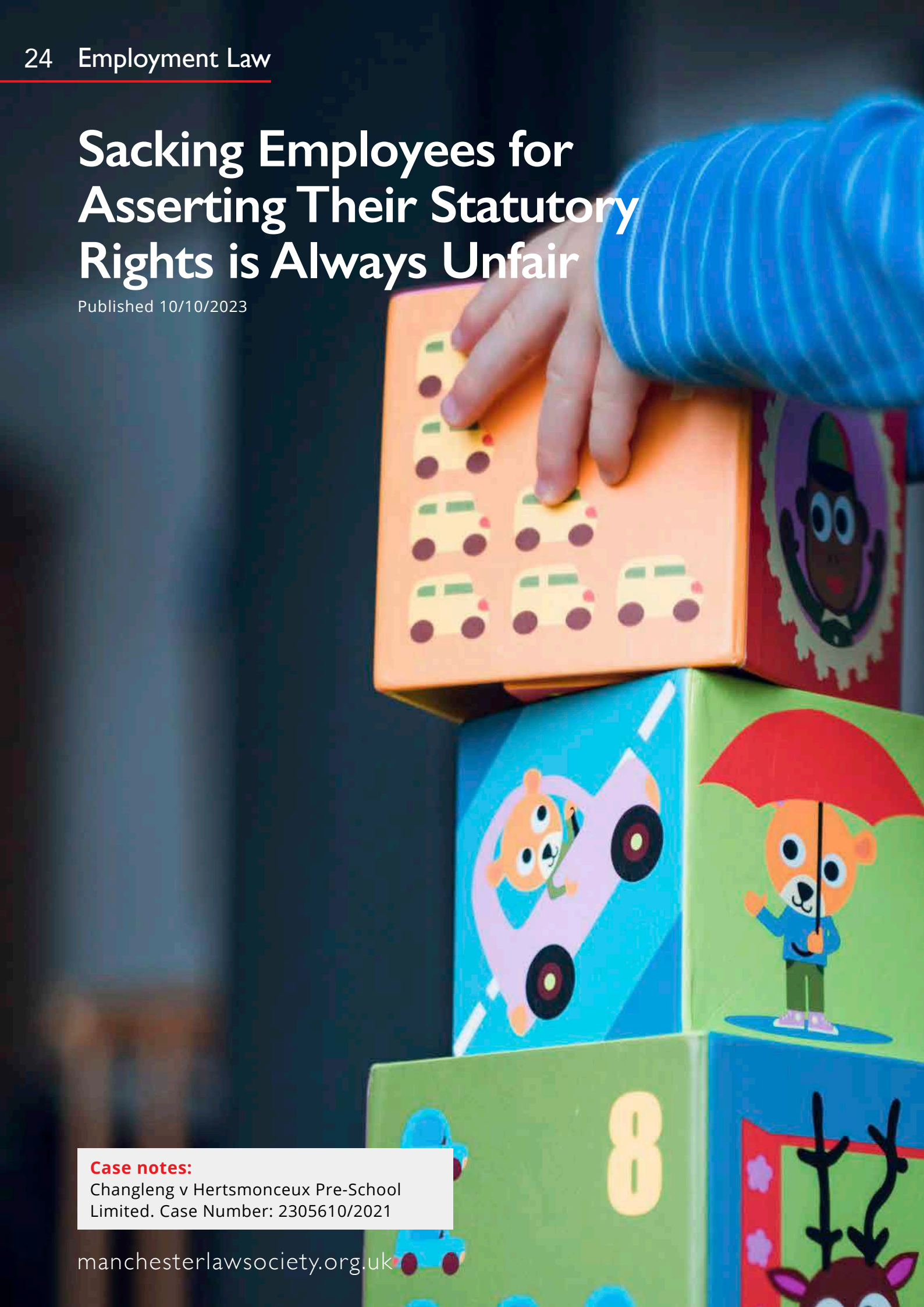
for it as a sub-agent in circumstances that the company argued gave rise to an expectation of good faith and loyalty. On the basis of the company's pleaded case, breaches of duty on the part of the rival business were also established.

The Court issued an injunction with a view to restraining any further breaches of the company's rights. It further awarded the company £220,453 in damages and interest, including £50,000 in respect of interference with its rights in its confidential database of clients and speakers.

Case notes:
Celebrity Speakers Limited v Daniel & Ors.
Case Number: QB-2021-002807

Sacking Employees for Asserting Their Statutory Rights is Always Unfair

Published 10/10/2023



Case notes:
Changleng v Hertsmonceux Pre-School Limited. Case Number: 2305610/2021

Workers who exercise their entitlement to take a firm stand on their statutory rights may sadly be viewed askance by some employers. However, as an Employment Tribunal (ET) ruling made plain, dismissing them for doing so is, as a matter of law, automatically unfair.

The case concerned an early-years practitioner who worked for a company that ran a pre-school. Various issues had arisen between her and a director of the company in respect of the calculation of her pay, particularly in the context of the COVID-19 pandemic. She was ultimately summarily dismissed on the stated ground that she had committed repudiatory breaches of her employment contract.

After she launched proceedings, the ET noted that it was fair to say that allegations had been made on both sides and that the language of their correspondence had become increasingly forceful and emotive. The director did not appreciate being subject to challenge in respect of his calculations and viewed her pursuit of her rights in respect of her pay as insubordination.

Whilst expressing sympathy for the owner of a small business having to navigate the complexities of employment law, particularly during the pandemic, the ET found that the principal reason for her dismissal was her assertion of her statutory rights in relation to her wages. Her dismissal was thus automatically unfair within the meaning of Section 104 of the **Employment Rights Act 1996** .

In also upholding her wrongful dismissal claim, the ET found that the company had breached her contract by failing to pay her four weeks' wages in lieu of notice. Unauthorised deductions had been made from her pay and pension contributions had been made at rates below her contractual entitlement. If not agreed, the amount of her compensation would be assessed at a further hearing.

Gender Transition – Deadnamed Employee Wins Substantial Compensation

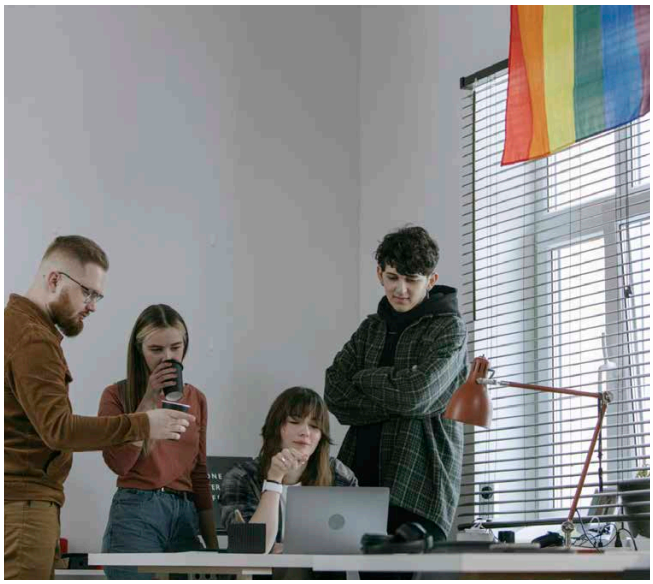
Published 18/10/2023

Those who undergo the challenging process of gender transition are entitled to their employers' full understanding and support in establishing their new identity. A local authority which woefully failed in that obligation by persistently deadnaming a transitioning employee was ordered to pay her substantial compensation.

The woman gave the council eight months' notice of her intention to transition. She subsequently launched Employment Tribunal (ET) proceedings, alleging numerous acts of direct discrimination contrary to Section 13 of the **Equality Act 2010**. She claimed, amongst other things, that the council entirely failed to support her in achieving acceptance of her new, gender appropriate name.

The council accepted that its Dignity at Work Policy had not at the relevant time been updated to reflect the requirements of the Act. It admitted that, for a period of about two years following the woman's transition, it failed to update her name on its pension records, staff directory or complaints system. For many months, her door pass also continued to bear her former name.

Ruling on the matter, the ET noted that the council has thousands of employees and a human resources department numbering around 60. Given those resources, the failure to have an up-to-date policy in place was surprising. No appropriate staff training on trans issues was provided. The woman was left to navigate the council's complex systems with no support, or even signposting, from human resources.



The council said that it had learned a lesson with regard to deadnaming and that more support would in future be provided to transitioning employees. The ET found, however, that its policies and practices at the relevant time were woefully inadequate and that the woman understandably felt badly let down.

In awarding her £21,000 in compensation for injury to her feelings, the ET noted the council's apparent failure to formally apologise for its lengthy delay in addressing the deadnaming issue. That added to her distress and, whilst she had thankfully made a good recovery, deadnaming was a contributory factor in her very significant period of psychiatric ill health. She was also awarded £4,423 in interest.

Case notes:
Miss AB v Royal Borough of Kingston upon Thames. Case Number: 2303616/2021

Financial Aspects of Divorce – Play with a Straight Bat or Pay the Price!

Published 29/09/2023

When it comes to the financial fall-out from divorce, there will sadly always be those who do not play with a straight bat and think that they are clever enough to pull the wool over a judge's eyes. A High Court ruling showed how wrong they almost invariably are.

The case concerned a middle-aged former couple whose marriage lasted 15 years. In financial proceedings following their divorce, a judge considered that the husband was an unreliable witness, harbouring controlled anger towards the wife. He made trenchant findings about the husband's conduct of the litigation, his failure to fully disclose his assets and his general dishonesty.

The judge found that, as a successful finance professional, the husband was capable of earning in the region of £150,000 to £180,000 a year. That compared to the wife's earnings of £40,000 a year. It was difficult to detect any real reduction in his standard of living since their separation and the judge refused to accept that his livelihood had disappeared or significantly diminished.

The judge found that he had deliberately reduced his earnings as they appeared on paper and drawn down on his capital investments in his businesses with the intention of defeating the wife's claim. She was wholly financially dependent on him prior to their separation, yet he paid her no maintenance and terminated her access to funds. To her credit, she had since retrained and found paid employment.

The net marital assets were valued by the judge at £339,000. Of that sum, the wife was awarded £211,000 – or 62 per cent – on a clean break basis so that she could purchase a suitable property to live in. Her share of the assets was liquid, whereas the husband's 38 per cent share was less easily realisable.

Ruling on the husband's appeal against that outcome, the Court took the view that he had only himself to blame and had no entitlement to complain. His deficient disclosure and manipulative litigation conduct inevitably exposed him to the sort of findings and evaluation undertaken by the judge. The Court made certain amendments to the judge's order, but otherwise dismissed the appeal.

Case notes:
Ditchfield v Ditchfield.
Case Number: FA-2023-000140

Sometimes Parental Love is Not Enough – Court Sanctions Boy's Adoption

Published 04/10/2023

> Ruling on the matter, the Court had no doubt that all three adults, along with other family members, held the boy very dear to their hearts and wanted the best for him

Parents may be worthy of praise and deeply love their children, but it sadly does not always follow that they are able to provide them with a stable home. The High Court made that point in sanctioning a little boy's placement for adoption.

Due to concerns that he was not receiving a good enough standard of parenting, a local authority placed him in temporary foster care and sought care and placement orders. His parents, although separated, staunchly resisted plans for his adoption, arguing that his mother was able to look after him. His paternal grandmother was willing to step in as primary carer if the mother proved unable to cope.

Ruling on the matter, the Court had no doubt that all three adults, along with other family members, held the boy very dear to their hearts and wanted the best for him. They were entirely genuine in their motivations and their desire to keep him within their family. The polite and courteous way in which they conducted themselves during the proceedings was highly impressive.

The Court noted the high likelihood that adoption would in due course lead to the complete severance of the boy's relationship with his parents and wider family. He was currently benefiting from those relationships via contact sessions and ending them would be detrimental to him. There was a risk that he would be left with an embedded sense of loss.

The mother, however, bore the emotional scars of her troubled childhood. She had a history of cannabis abuse and a mental health expert's report indicated that she had unstable and sensation-seeking personality traits. Her feelings of loneliness and distress gave rise to professional concerns that she might prioritise a relationship with a partner over her own welfare and that of her child.

The father also had a history of psychiatric and substance abuse issues and frankly accepted that he was not currently well placed to care for the boy. The paternal grandmother's property was in a poor condition. Her advancing years and other factors cast doubt on whether she would be able to provide the boy with a safe and appropriate home in which he could thrive throughout his childhood.

The mother was making progress in tackling her problems, but the Court found that it would be far too risky to place the burden of primary care on her at a relatively early stage in her therapeutic journey. Her plea that the case should be adjourned to enable a further assessment of her parenting abilities was rejected.

Granting the council the orders sought, the Court found that the boy, whose welfare was paramount, could not wait to be placed in the security of a permanent home. Options short of adoption simply could not meet his needs within an appropriate timescale. Given the commitment and love that his family had shown him, the Court urged that consideration be given to some form of open adoption in which a level of contact between them might be maintained.

Case notes:
A London Borough v The Mother & Ors.
Case Number: ZW22C50234

High Court Quashes Planning Consent for Large Crematorium with an Ocean View

Published 09/10/2023

Commercial developers should be aware that the hard-fought process of obtaining planning permission for controversial projects may only be a preliminary skirmish in a longer war. The point was powerfully made by a High Court ruling which put proposals for a large-scale crematorium in a scenic coastal location back to square one.

The crematorium, if built on a 5.8-hectare rural site overlooking the Atlantic Ocean, would be one of the largest in the UK. The proposal was the subject of fierce local controversy but the local authority resolved to grant planning permission on the strength of a planning officer's report. Whilst acknowledging that it was a finely balanced case, the report advised that the benefits of the proposal outweighed any identified harm.

Amongst other things, the developer contended that the area's increasing population would place pressure on its existing crematoria. Environmental and other benefits would arise from reduced travel times to the new facility. Local objectors, however, put forward numerous grounds of opposition and asserted that the sheer scale of the proposed facility created a risk that it would become an unviable white elephant.

After two local residents launched proceedings, the Court found that the planning officer's report gave a seriously misleading overall impression of the evidence concerning the project's viability. The risk that the crematorium might not be fully used – or even built to the full extent permitted, or at all – needed to be spelt out. The local parish council had raised concerns that the permission was capable of being used as a foot in the door for some other form of development.

The report's analysis of a key local planning policy was also inadequate. That policy stated that business developments in rural locations would only be permitted if they were of appropriate scale or if there was an overriding need for them. The report's advice in respect of the transport benefits of the proposal was significantly misleading and it expressed no clear conclusion as to whether the proposal complied with certain landscape and environmental protection policies. The planning permission was quashed.

Case notes:
Watton & Anr v The Cornwall Council.
Case Number: CO/345/2023

Open Justice Principle Prevails in Disgraced Pensions Adviser's Case

Published 03/10/2023

Litigants are often concerned that publicity surrounding their cases will have a grave impact on their private lives, even potentially exposing them to physical violence. As a case concerning a disgraced pensions adviser made plain, however, powerful reasons are always needed to displace the open justice principle.

In the context of advice that the man had given to members of a large occupational pension scheme, the Financial Conduct Authority (FCA) issued a decision notice by which it concluded that he lacked honesty and integrity and was therefore unfit to perform functions in relation to any regulated activity. A prohibition order was also made and he was issued with a penalty in excess of £2.2 million.

In referring the matter to the Upper Tribunal (UT), he challenged the penalty together with the breadth of the prohibition order, which he said made it very difficult for him to obtain paid employment. At a preliminary hearing, he contended that the decision notice should not be published prior to the outcome of the reference and that his name should not appear on the UT's register of pending hearings.

He contended, amongst other things, that such publication would infringe his human rights to life and to respect for his privacy and family life. Publicity relating to the matter would expose him and his family to a serious threat of violent reprisals and would harm his mental health and that of a vulnerable relative.

The UT accepted that he had been the subject of a level of unpleasant comment on social media and had endured a very difficult time. He had never expected the level of criticism that he had encountered. However, one incident apart, he had not been seriously threatened with physical harm. That incident had not resulted in an attack and he could not point to any other violent acts against him.

Rejecting his application, the UT found that he had failed convincingly to show that publication of the decision notice would pose a serious risk of physical harm to him or his family. There was no cogent evidence of a real threat that such publication would have a serious mental health impact or seriously harm his, or anyone else's, right to a private life.

The UT acknowledged that publication of the decision notice might reignite adverse criticism and result in disagreeable statements about him and possibly members of his family. He did not, however, dispute the core conclusions of the FCA in relation to his honesty and integrity and such a collateral impact was part of the price to be paid for open justice.

Case notes:
Reynolds v The Financial Conduct Authority. Case Number: UT/2023/000050

Property – Not Every One-sided Bargain is a Product of Undue Influence

Published 26/09/2023

Where a transaction appears to be very one-sided or manifestly more advantageous to one side or the other, judicial eyebrows are likely to be raised. However, as a High Court ruling showed, such an imbalance does not necessarily mean that a bargain should be set aside on grounds that it is unconscionable or the product of undue influence.

A householder was anxious to pay off a £41,000 debt to a local authority which was secured by way of a charge – effectively a mortgage – over his property. To that end, he transferred ownership of the property to a woman who discharged the debt. Free of the charge, the property was at the time worth at least £300,000.

Case notes:
Azam v Molazam.
Case Number: CH-2023-000027

After he launched proceedings, a judge noted that the one-sided transaction was very much to his disadvantage. There was, however, no allegation of misconduct on the woman's part and his initial claims that she had acted fraudulently or overtly pressured him into executing the transfer were not pursued.

In nevertheless setting aside the transaction, the judge found on the evidence that there was a presumption that undue influence had been brought to bear upon him. The transaction was clearly one that called for an explanation. Noting that he was in poor health and desperate for money at the time, the judge found that the woman had exploited or taken advantage of his vulnerability.

Upholding her appeal against that outcome, the Court well understood that a judge, when faced with a badly one-sided transaction, might be tempted to set it aside. The householder had, however, failed to establish on the evidence that she was aware that he had recently suffered a second heart attack or that she held a position of ascendency, dependency or influence over him.

In finding that a presumption of undue influence did not arise, the Court noted that it was he who had proposed the transaction. It was not alleged that she had manipulated him into doing so. The bargain, although imbalanced in terms of advantage, was not rendered unconscionable by any conduct on her part. It had not been shown that, in accepting his proposal, she had sought to influence his exercise of free will in any way, whether directly or indirectly.

Landlords – Keep Your Properties Hazard Free or Face the Full Force of the Law

Published 09/10/2023

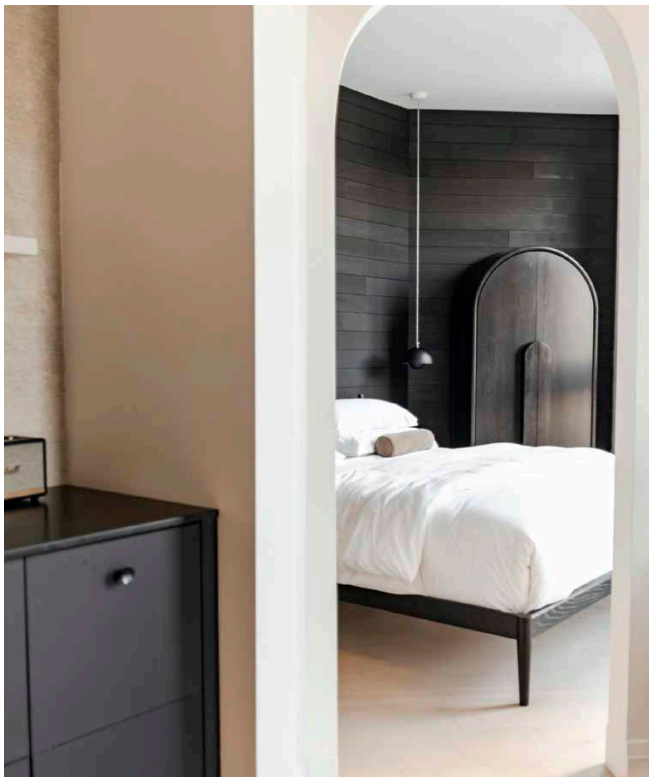
The balance of power in overheated rental markets where demand outstrips supply tends to shift in favour of landlords. As a High Court ruling showed, however, those involved in renting out defective or hazardous homes are likely to feel the hard edge of both the criminal and civil law.

A couple with four young children complained to a local authority about the state of their rental property. A housing enforcement officer visited the house and identified serious hazards, including defective heating, faulty wiring, inadequate smoke detectors and a bed bug infestation.

The property's long leaseholder and its managing agents were served with improvement notices under the **Housing Act 2004**, requiring them to complete specified remedial works. Both received substantial fines after being successfully prosecuted for failing to comply with the notices.

Further inspections of the property, however, revealed that the criminal proceedings had not had their desired effect. The required remedial works remained incomplete and no or minimal steps were said to have been taken to improve the tenants' living conditions. Faced with that impasse, the council resorted to the civil law, seeking a mandatory injunction to compel the defendants to comply with the notices.

Granting the order sought, the Court was satisfied that the defendants, who had failed meaningfully to engage in the proceedings, were in knowing, flagrant and continuing breach of the criminal law. Their disregard of the requirements of the notices had



real-world consequences for the tenants, who continued to suffer unsatisfactory and possibly unsafe housing conditions.

Given that the defendants had shown no intention to comply with the notices, the Court found that nothing short of an injunction would be effective in bringing them to heel. They were further ordered to pay the council's legal costs. Any breach of the injunction could amount to a contempt of court, punishable by up to two years' imprisonment or an unlimited fine.

Case notes:
London Borough of Barking and Dagenham v Gbadegesin & Anr. Case Number: KB-2023-003121

Personal Injury – Over-Egging a Compensation Claim is a Fool's Game

Published 09/10/2023

There will always sadly be a few accident victims who exaggerate their injuries with a view to maximising their compensation. A High Court ruling, however, showed the extent of legal and surveillance resources that insurance companies are willing to deploy in their determination to weed out dishonest claims.

The case concerned a father-of-two who lodged a claim for in excess of £600,000 in compensation following a workplace accident. Liability was admitted, but the insurance company that would foot the bill grew suspicious and put inquiry agents on his tail. Their surveillance reports prompted the insurer to contend that his claim was tainted by fundamental dishonesty and should be dismissed in its entirety.

In his claim, the man asserted, amongst other things, that the accident had rendered him barely able to walk, totally reliant on others and essentially housebound. However, the surveillance footage was said to show him driving and working under the bonnet of a car and walking freely on shopping trips without the use of a stick. Such activities were said to be wholly inconsistent with his claimed disabilities.

The man denied dishonesty but his claim was eventually struck out due to a failure to comply with case management orders. He was ordered to pay legal costs and to reimburse a £10,000 interim payment he had previously received. The insurer later launched further proceedings, alleging contempt of court.

In granting permission for those proceedings to continue to trial, the Court found that the insurer had, on the face of it, shown a strong case that the man had knowingly made false statements and either fabricated or grossly exaggerated the effects of the accident. If found in contempt, he would face a maximum penalty of two years' imprisonment or an unlimited fine.

Case notes:
QBE UK Limited v Hilton. Case Number: KB-2023-000137

Unexplained Car Fire Leaves Judge to Ponder the Law of Cause and Effect

Published 28/09/2023

The cause of an unusual event may be the subject of any number of theories, none of which may provide a perfect explanation. The High Court made that point in a case concerning a parked car which caught fire for no obvious reason.

Soon after purchasing the relatively new ex-demonstration vehicle, its owner parked it on the driveway of his mother's home, where it burst into flames. The car was a write-off. The owner launched proceedings under the Consumer Rights Act 2015 against the hire purchase company through which he had bought the vehicle.

In contending that the car was not of satisfactory quality when he purchased it, he presented expert evidence that a defect in its internal wiring was the more than probable cause of the fire. The company's expert, however, supported an alternative theory that a passer-by had carelessly disposed of a cigarette end which had ignited debris on the driveway that spread to the car.

Both hypotheses had shortcomings: amongst other things, no specific electrical fault had been identified in the fire-damaged vehicle and, in order to spark the blaze, a passer-by would have had to cast a cigarette a substantial distance through a narrow gap. After a judge dismissed his claim, the owner appealed. He contended, amongst other things, that the cigarette hypothesis was highly improbable.

Rejecting the appeal, the Court found that the judge was not bound to reach a firm conclusion as to which of the competing hypotheses he accepted. There might be other possible

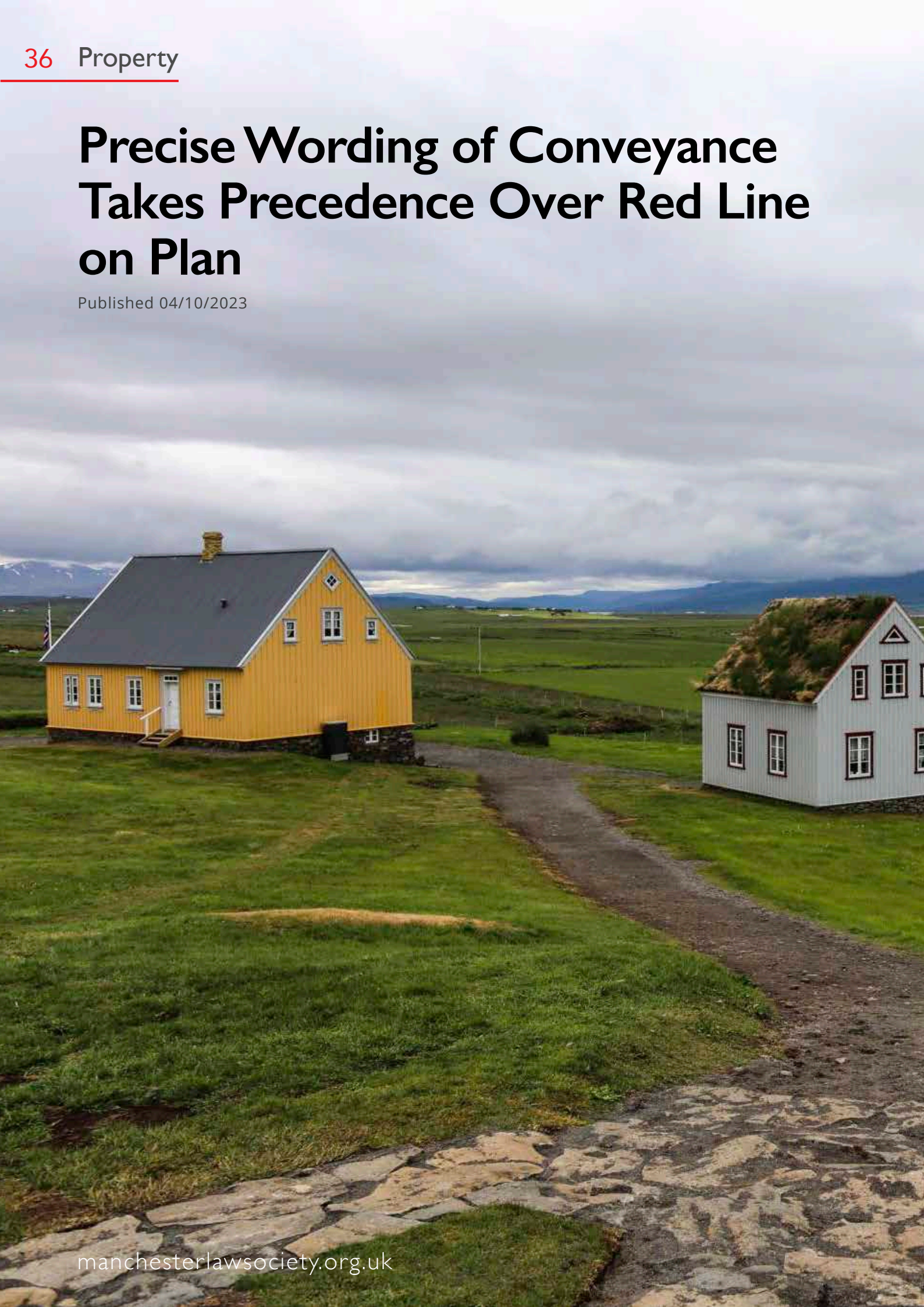
explanations for the fire. The burden of proof rested upon the owner and the judge had to resolve a single question: whether the owner had established that it was more likely than not that the fire arose from an electrical fault.

The judge's approach was unexceptionable and his decision was neither wrong in law nor procedurally unfair. There was no logical gap or lack of consistency in his evaluation of the evidence and there was no basis on which the Court could properly interfere with his decision.

Case notes:
Nash v Volkswagen Financial Services (UK) Limited. Case Number: [2023] EWHC 2326 (KB)

Precise Wording of Conveyance Takes Precedence Over Red Line on Plan

Published 04/10/2023



A conveyance normally includes both a visual plan and a written description of the land that is to change hands – but what happens if there is a conflict between the two? The Upper Tribunal (UT) addressed that vital issue in a guideline case.

The case concerned a small plot of land that formed part of a rural lane. In seeking to have it registered in his name, the owner of adjoining farmland argued that his grandfather had obtained title to it by a conveyance signed in 1918 and that it had since passed to him by way of inheritance.

In objecting to the farmer's application, a neighbour relied on a plan that formed part of the conveyance. He pointed out that a red line on the plan, which was intended to indicate precisely the boundaries of the land that was being conveyed, clearly did not encompass the disputed plot.

For his part, the farmer relied on a handwritten schedule to the conveyance which specified the area of the land to be conveyed to within a thousandth of an acre. The schedule clearly indicated that the disputed plot did form part of the land conveyed. In upholding the neighbour's case, however, the First-tier Tribunal found that the plan took precedence over the schedule.

Case notes:
Dunlop v Romanoff.
Case Number: LC-2023-24

Ruling on the farmer's challenge to that outcome, the UT noted that the plan was expressed in the conveyance to be not merely indicative but to 'more particularly delineate' the land conveyed. Given the use of that phrase, the plan would normally trump the written wording of the schedule in the event of a conflict between the two.

Upholding the appeal, however, the UT noted that, when it comes to interpreting a conveyance, judges may in certain circumstances look beyond the four corners of the document itself and take into account extrinsic evidence. In this case, such evidence pointed overwhelmingly in favour of the schedule prevailing.

The farmer's grandfather had contracted to purchase the land, including the disputed plot, prior to formal execution of the conveyance. He had at that point become the plot's beneficial owner and was contractually entitled to call for it to be conveyed to him. It would have been surprising to say the least had that not occurred. He had also subsequently granted a right of way over the plot, something he could only have done if he owned it.

The UT found that, on its true interpretation, the conveyance was effective to transfer title to the disputed plot to the farmer's grandfather. The farmer having inherited that title, the UT directed the chief land registrar to register him as the plot's proprietor.

Has Your Home Been Devalued by Public Infrastructure Works? Read This

Published 29/09/2023

To state that location is the only important factor when it comes to valuing a home is a cliché and something of a generalisation. However, as an Upper Tribunal (UT) ruling showed, if public infrastructure works render the location of your property less desirable you may well be entitled to compensation.

The case concerned a detached property the back garden of which formerly looked out over an area of open land that had at one time been used as allotments. That was before a 40-metre spur road was constructed to give access to a development of 280 new homes.

In seeking compensation from his local authority under the **Land Compensation Act 1973**, the property's joint owner contended that its value had been significantly depleted by intrusive LED street lighting on the new road, together with the noise and fumes of construction traffic making its way to the development site.

The owner said that the street lighting had affected growth of plants in his garden and meant that he and his wife could no longer sleep with their curtains and windows open. The noise of construction traffic began as early as 5.45am and exhaust fumes blew into their garden when there was an easterly wind. The spur road was raised on an elevated embankment and the nearest street lighting was 22 metres away from the property's rear elevation.

Ruling on the case, the UT noted that the council was only required to pay compensation for loss of value arising from certain physical factors caused by use of the road. The owner could not be compensated under the Act for other aspects of the works that might affect the value of his home, including harm to its views or loss of amenity or convenience.

Dimmable streetlights had since been installed and they were switched off between 11.30pm and 6.00am. An acoustic fence had also been put in place. The owner had, however, lodged his claim before those mitigation steps were taken. The UT was satisfied that, at the relevant valuation date, a hypothetical purchaser of the property would have sought and achieved a discount of 2.5 per cent. On that basis, the owner was awarded £10,000 in compensation.

Case notes:
Fisk v Suffolk County Council.
Case Number: LC-2023-44

Lawyers Negotiate £13.4 Million Settlement of Young Meningitis Victim's Claim

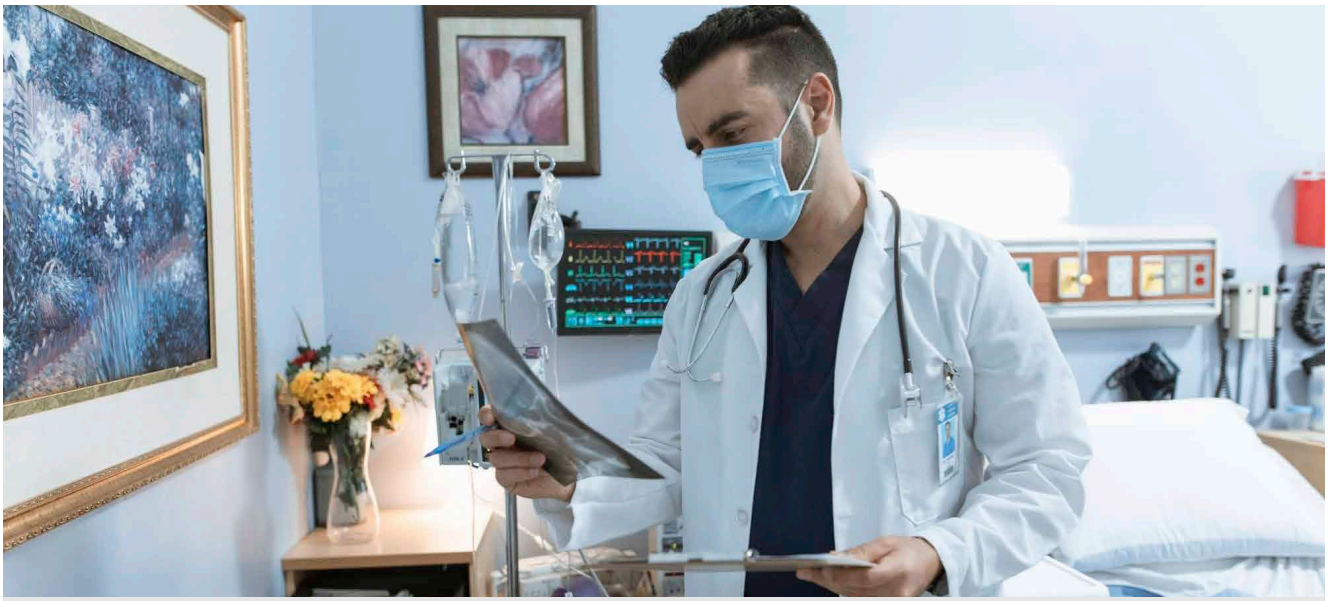
Published 09/10/2023

For personal injury lawyers, negotiating and risk assessment skills are just as crucial as their knowledge of the law or their ability as advocates. That was certainly so in a case concerning a seven-year-old girl who was a baby when she was struck down by a devastating bout of pneumococcal septicaemia and meningitis.

As a consequence of the infection, which struck when she was approaching her first birthday, the girl sustained a catastrophic brain injury. Severe quadriplegic cerebral palsy will always affect every aspect of her life and development. A clinical negligence claim was lodged against the NHS trust that bore responsibility for her care at the relevant time.

Meningitis is notoriously difficult to diagnose but, after intensive negotiations with her legal team, the trust agreed to pay 87.5 per cent of the full value of her damages claim. A further round-table meeting yielded a final settlement of the case, whereby the trust agreed to pay her a lump sum of £4.2 million, plus annual, index-linked payments towards the costs of her care for life. The settlement was calculated to have an overall capitalised value of £13.4 million.

Approving the settlement, the High Court noted that there were issues in the case, not least in respect of her life expectancy, that could have been decided either way had the case been the subject of a contested trial. The compromise of such issues that was reached represented a very good resolution in a desperately sad situation. The level of energy her parents and wider family put into caring for her was a testament to their strength of character.



Case notes:
QXB v University Hospitals Plymouth NHS Trust. Case Number: QB-2020-000410

Boy Injured at Birth Receives NHS Settlement Worth Over £18 Million

Published 26/10/2023

The High Court has praised the dedication and professionalism of lawyers after they achieved a settlement of a little boy's clinical negligence claim. The boy sustained injuries of near-maximum severity at or around the time of his birth and the settlement had a capitalised value in excess of £18 million.

It was alleged that recordings of his foetal heart rate during the latter stages of his mother's labour did not reflect his serious condition at birth. There was an issue as to whether the monitoring equipment was in working order. The NHS trust that bore responsibility for his care disputed liability but, following negotiations, agreed to pay 80 per cent of the full value of his claim.

Under the terms of the settlement, the trust agreed to pay a lump sum of £6,750,000, together with guaranteed, index-linked payments towards the costs of his care for life. Those payments will be set at £180,000 a year until he reaches the age of 19, rising thereafter to £277,000 a year. His parents had given up their professional employment to devote themselves to his care and will receive £170,035 of the settlement total as some modest reflection of their expenses and the care that they had lavished upon him.

In addressing the Court, his mother paid tribute to the phenomenal support provided by the family's legal team and expressed relief that it had been possible to reach agreement without the need for a contested trial. She hoped that all her son's care needs would henceforth be met and that the family could now move on with their lives.

Approving the settlement, the Court noted that the boy seemed a delightful child and congratulated his parents and grandparents for all that they had done for him. The compromise arrived at was a product of the hard work and professionalism of lawyers on both sides.

Case notes:
BXX v University Hospital Coventry and Warwickshire NHS Trust. Case number strictly not for publication.

Registering a Trade Mark is the Best Way to Protect Your Valuable Brand

Published 10/10/2023

Having worked hard to establish the reputation of your product, there is nothing more annoying than a competitor marketing rival goods under a confusingly similar name. As a High Court ruling showed, however, registering a trade mark is a highly effective means of defending yourself against such conduct.

A company designed, manufactured and sold a range of high-visibility goods for use by equestrians which were branded with the word 'Mercury'. Its sole director swiftly complained after a competitor company began marketing hi-vis equestrian products the labelling of which included the same word.

After the company registered 'Mercury' as a trade mark, the competitor undertook a voluntary rebranding process, aiming to reduce and then cease its use of the word in connection with its products. Some infringing use continued, however, and the company launched proceedings.

Following a trial, a judge found the competitor liable both for infringing the company's trade mark and for passing off. An injunction was issued restraining the competitor from engaging in any further acts of infringement. The company elected to have its compensation assessed on the basis of the profits that the competitor had made from selling infringing goods.

Ruling on the matter, the Court found that the competitor had made a gross profit of £24,356 on selling goods bearing the Mercury mark. After deduction of overheads, the net profit figure came to £20,947. A further deduction was also made because the use of Mercury labels was not the sole factor driving the sale of the infringing goods. The company was awarded £12,568 in damages, plus interest.

Case notes:
Equisafety Limited v Battle, Hayward and Bower Limited & Anr. Case Number: IL-2020-LIV-000001

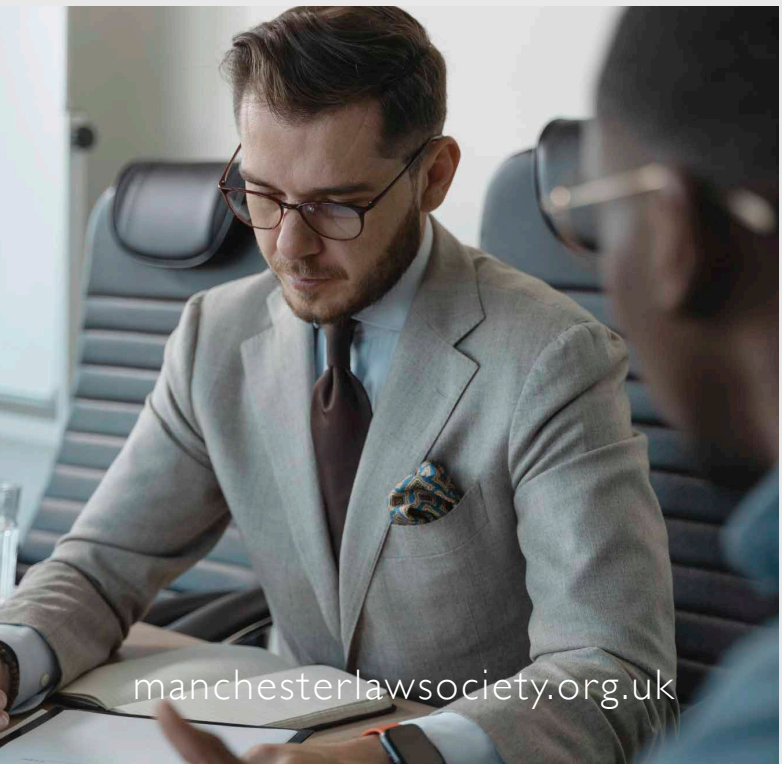
Are Bonus Clawback Provisions an Unreasonable Restraint of Trade?

Published 23/10/2023

Employment bonuses are commonly awarded on the basis that they must be repaid if recipients leave their jobs within a given period of time. In an important ruling, the High Court considered whether such clawback arrangements are capable of amounting to an unreasonable restraint of trade.

A global executive search firm operated a discretionary annual bonus scheme whereby awards were conditional on recipients remaining in the firm's employ, and not having given, or been given, notice of termination of their appointments, during the three months following the date of payment.

A dispute arose when an employee resigned during the month following his receipt of a £187,500 bonus, a sum that was almost three times his basic salary. After he declined to reimburse that sum, the firm issued a statutory demand requiring him to repay the full amount of the bonus plus legal costs.



In applying to have the demand set aside, the employee contended that the clawback provisions operated as an unreasonable restraint of trade and were thus unenforceable. Given that he was required to give three months' notice before leaving his job, the provisions meant that he could secure his bonus only if he worked for the firm for an additional six months.

Rejecting his application, a judge found that the weight of legal authority was that the clawback provisions did not fall within the restraint of trade doctrine since they did not restrict his ability to work elsewhere. The conditions attached to his bonus payments were, the judge ruled, very moderate and it was not arguable that they gave rise to adverse consequences for him that were clearly out of all proportion to the benefit he received.

In dismissing his appeal against that outcome, the Court acknowledged that there may be circumstances in which bonus clawback provisions are so punitive as to amount to an unreasonable restraint of trade. It was agreed that the provisions in question disincentivised the employee from resigning within three months of receiving his annual bonus. However, the judge's analysis of the law and his conclusion that the effect of the provisions was not unreasonable were unimpeachable.

Case notes:
Steel v Spencer Road LLP.
Case Number: CH-2023-000084

Inheritance – Your Right to Seek Reasonable Provision Dies With You

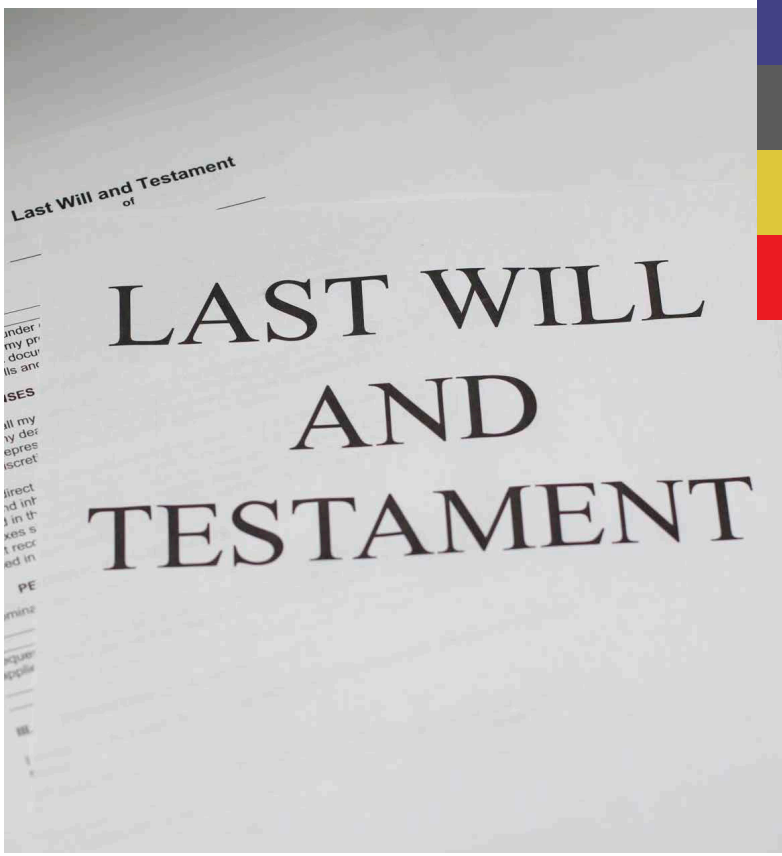
Published 26/10/2023

If you have not been reasonably provided for in a loved one's will, the law may come to your aid. However, as a High Court ruling made plain, your ability to seek legal redress cannot itself be inherited and will expire on your death.

Following the deaths of his adoptive parents, a son launched proceedings under the **Inheritance (Provision for Family and Dependants) Act 1975** asserting that they had not made reasonable provision for him in their wills. The son sadly died before his case could come to court and his widow thereafter sought to pursue the claim on behalf of his estate.

Dismissing the claim, the Court found that the right to apply for reasonable provision from a deceased person's estate is purely personal to the applicant and is incapable of being further pursued following their death. The objective of the Act is to ensure that family members and dependants receive such financial provision as is reasonably required for their maintenance. Any such need for maintenance, the Court observed, plainly ceases on the applicant's death.

In further seeking to pursue a claim for reasonable provision in her own right, the widow asserted that her parents-in-law had treated her as a child of the family. They had, she argued, developed a relationship of mutual dependency. They had provided her and her husband with financial support when needed and, just as a daughter would do, she had provided them with care and company in their final years.



In striking out her claim, however, the Court found that there was nothing in their relationship which went beyond the usual display of affection, kindness and hospitality between parents and the spouse of their child. She had not been treated as a child of the family in her own right and thus did not fall within the limited category of those who can bring proceedings under the Act.

Case notes:
The Estate of Neil Archibald Deceased & Anr v Stewart & Anr. Case Number: PT-2022-0004

Useful links

SIGN UP TO OUR NEWSLETTER

MEMBERSHIP SIGN UP

CONTACT US

Manchester Law Society
Instituted 1838 Incorporated 1871

Manchester Law Society
64 Bridge Street, Manchester, M3 3BN
General Enquiries: **+44(0)161 831 7337**
enquiries@manchesterlawsociety.org.uk