



## Managing The Recession - Avoiding Disputes

Pickworths acts for both employers and employees. We don't just become involved when things have reached the stage where Tribunal proceedings have either started or have become inevitable. If we are instructed early enough, with our advice clients are often able to resolve matters quicker and relatively amicably.

During the last year or so, employers have been looking for ways to cut costs, but retain their staff until things pick up. A way that this can be done is to reduce wages and/or hours on a temporary basis. This has a number of benefits.

- The costs of redundancy are avoided
- There is a ready workforce in place for when things do improve
- Employees continue to receive a salary and may be entitled to Government benefits to reduce the impact

In one case we advised an employer who wanted to reduce the wages of his staff and put them on short time working. The management were also prepared to accept the same reductions in pay. We advised them throughout the consultation process and drafted the necessary letters and agreements for the reduction in hours and salary. Less than 3 months later, business had picked up and staff were back on their normal hours and pay – a great result for everyone concerned.

If instead of this course of action staff had been made redundant then there would have been an additional cost on the business that the company could not really afford and it would then not have been in

a such a good position to respond to the upturn in business or alternatively the extra expenses could have been the final factor to push the business into liquidation.

With another company the staff did not agree to the proposed reduction in hours and salary and unfortunately this meant that redundancies were necessary. Pickworths advised the employer throughout the entire redundancy process and due to the employer following the correct procedures and doing things properly no Tribunal claims were made.

Some employers however have used the current economic situation to unfairly dismiss women who are on maternity leave on the basis that they were redundant. In these cases we have been able to obtain substantial settlements for our female clients as the employers have been unable to establish that the client had been fairly selected.

If you are in doubt about an employment situation whether you are an employer or employee please contact the Pickworths Employment Team of Ian Tottman or Mike Powell and we will give you the advice and assistance you need.

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EDITOR: SHEILA MCENTEE



**resolution** first for family law INVESTORS IN PEOPLE

## Divide but not conquer

Lawyers can be accused of causing further conflict between separating couples. Agreements already reached can collapse once either party obtains legal advice causing feelings of anger and betrayal for the party who is willing to stick to the agreement.

Pickworths family lawyer Jane Leadbeater helps clients realise the outcome they want to achieve. This may include drawing up a legal document setting out financial agreement reached with their spouse (a consent order) and then obtain approval of it by the divorce court.

Other clients may be unable, or unwilling to reach a financial agreement and want full financial disclosure exchanged and advice on financial settlements they should try to obtain. Jane can advise on the most cost effective way of negotiating an agreement including the option of a referral to mediation.

A recent client achieved the financial outcome he sought by Jane advising on realistic proposals for settlement early on in his case. His wife had instructed her solicitor to issue an application to court for financial relief.

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# Duties and Liabilities of a Director

The majority of provisions are now in force in the new Companies Act 2006. Company directors should already be aware that their duties are governed by this legislation. The duties are owed to the company and enforceable by the company board of directors or shareholders. Company directors have a duty to consider the following matters whenever a corporate decision is made.

- The likely consequences of any long term decision
- The interests of the company's employees
- The need to foster business relationships with suppliers, customers and others
- The impact of the company's operations on the community and environment;
- The prestige of maintaining a reputation of high standards of business conduct
- The need to act fairly between members of the company

When a company decision is being made it is good practice to record that you have considered these duties in meeting minutes.

Every company must have at least one natural person as a director i.e. not corporate director so that someone can be liable for directors' duties. This provision comes into force on 1 October 2010 so presently you still have time to find a human director!

If you are a company director you are at risk of claims being made against you for breach of duty. If you have to defend legal proceedings for your company or an associated company, the company is allowed to make a loan to the director for this purpose.

*For more information on company law contact Elaine Wong*



# Belinda is Leading the Equestrian Field

Pickworths partner Belinda Walkinshaw spends her free time training and riding her three champion horses Bruce, Mani and Jack ready for Team Chase events. They won five out of the eight events they entered last autumn and have qualified for the Chesterton Humberts National Team Chase Championship near Market Harborough in Leicestershire in March 2010.

The team 'Relentless FTB' consists of Rowan & Lydia Cope riding Bruce and Jack respectively, Ben Pauling riding Mani along with Team mate Dougie Gittins on his own horse Bono. Belinda said "The Jockeys are great; very competitive, brave and full of spirit – it's not something I could carry off so I prefer the training, the behind the scenes stuff, getting the horses in tip top condition. The guys turn up on Sunday and race their hearts out".

Belinda is one of the country's few equestrian law specialists and is a resident expert legal writer for 'Your Horse' magazine. She deals with all aspect of equestrian law from developing land for stables to loan, livery and share agreements. She says "I consider myself



very lucky to have such a great interest that I can transfer into my working life too – I can apply all aspects of law to equestrian situations because I know and understand horses. That knowledge that I

have grown up with gives me my expertise and I can help people in all situations.

*For more information on equestrian law contact Belinda Walkinshaw.*

# Personal Injury - *Dental Negligence*

The majority of us are aware that should you have the misfortune to suffer an injury through no fault of your own, you are entitled to make a claim through your personal injury solicitor for compensation. The mainstream of personal injury claims are for road traffic accidents, injuries sustained at work, uneven pavements or substandard products bought for the home. But what if your injury was caused by your dentist?

Dentists must provide a 'Duty of Care' to their patients. This means explaining benefits and drawbacks of any treatment they recommend and alternatives that may be available and they must have your permission before any treatment is carried out. They must only carry out treatment which they feel they have the appropriate skills to undertake.

If this 'Duty of Care' is breached by the Dentist, the patient may be entitled to pursue a Claim for negligence, and as a rule is entitled to receive compensation.

Initial 'Breach of Duty of Care' reports can usually be produced based on a review of all relevant Dental Notes and X Rays without the need for an appointment, and therefore can be produced very quickly to establish whether a client has grounds for a claim against the Dentist in question.

If it appears that a claim for negligence can be established, compensation can then be calculated. The amount received will depend on a number of factors, including the length of injury or pain as a result of the treatment, any long term effects of the treatment, and the amount of any expenses incurred as a result of the claim.



This can include the cost of any corrective treatment.

Pickworths personal injury solicitor Linsey Mullan has a particular specialism in Dental Negligence and has access to Dental experts who can provide reports very quickly to establish whether there is a valid claim for compensation.

*For more information on Dental Negligence contact Linsey Mullan.*

## Lasting Power of Attorney vs Court of Protection

***If you have not made a Lasting Power of Attorney what happens if you are no longer capable of managing your own affairs? Without a Lasting Power of Attorney you will have to use the services of the Court of Protection***

A Lasting Power of Attorney (LPA) can give you the choice of whom you appoint to deal with your affairs and/or welfare when you are no longer able to manage them yourself. You can be safe in the knowledge that there will be someone you trust overseeing and maintaining your affairs for your benefit.

Conversely, if you don't have a LPA and you become incapable of dealing with your own affairs, the decision to who is appointed will be in the hands of the Court of Protection. Although your loved ones can make an application to be appointed, the final decision is with the court. The Court will only make a decision after thoroughly vetting the person who wishes to be appointed to look after your finances.

In addition, the cost of going through the Court to have someone appointed to deal with your affairs can be expensive and the process can be lengthy and invasive. There

is not only the initial application cost but potentially there could be continued yearly costs levied on your finances to pay for supervision and insurance of your affairs by the court. This is a drain on your finances at a time when your loved ones need the money the most to care for you at a vulnerable time in your life.

Clearly it is therefore better you make the decision now as to whom you wish to appoint in a Lasting Power of Attorney rather than wait and risk having the decision made for you.

*For more information contact June Yap or Ian Tottman*



# SPOTLIGHT ON...



## Elaine Wong

### Civil Litigation Solicitor

Elaine joined the Pickworths Litigation team in March 2008. Raised in Ely in Cambridge, Elaine undertook her LLB at the University of Surrey. During this time she studied for six months in Finland and also worked in Belgium as part of her European Studies. She then went on to train as a solicitor with a Nottingham firm before returning to the South East of England.

Dealing with a wide range of disputes Elaine has undertaken contractual, and property disputes, professional negligence

cases and also deals with debt collection.

Elaine has gained extensive experience dealing with each stage of a dispute, starting with initial attempts at resolution before taking the matter to the courts and believes in resolving disputes at an early stage in order to save on the expense of taking a matter through to trial. Elaine has represented clients at mediation meetings during the court procedure and handled a variety of claims, ranging from small debt to substantial damages in the High Court.

Whatever the subject matter, Elaine is always satisfied when she has a result that is favourable to her clients.

When she does have spare time, Elaine has an eclectic range of interests, from walking in the English countryside to travelling Europe, Asia and the Middle East. Her favourite activity, however, is anything to do with food and wine.

*For more information on court claims and disputes contact Elaine Wong.*

## Doing our bit ...



At Pickworths, we are pleased to do our bit for the Local Community. Last year, as you may be aware, we sponsored the Pink T-shirts for the Hospice of St Francis 'Walk with the Stars' event. This was one of the more prominent things we do but Senior Partner Ian Tottman is a trustee for DENS (Dacorum Emergency Night Shelter). Ian is a director on the board and helps to make decisions for the charity by assisting with the legal aspects as well as contributing ideas.

Pickworths are the official solicitors and

one of the main sponsors of the Fullarians Rugby Club based in Watford. Ian is also on the committee and is a qualified coach and referee.

A number of our solicitors support the CAB (Citizens Advice Bureau) by attending the Watford and St Albans CAB offices to assist people with legal advice on employment, civil litigation and family law.

Partner Glenda Ferneyhough is a trustee for CAD (Community Action Dacorum) which includes Connect Dacorum. CAD provides support to voluntary organisations and community groups and also runs Paradise Furniture Project, Community Wheels and Herts interpreting and training services. Assisting with the legal aspects that such groups can face in the setting up of new projects Pickworths recently received a Certificate of Appreciation for work in the area of Corporate Social Responsibility from the Mayor of Dacorum Stephen Holmes and this was presented to Glenda by local MP's Mike Penning and David Gauke.

For more information on how you can help these organisations, visit their websites:

[www.stfrancis.org.uk](http://www.stfrancis.org.uk)  
[www.dens.org.uk](http://www.dens.org.uk)  
[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)  
[www.dacorumcvs.org.uk](http://www.dacorumcvs.org.uk)

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Prior to the court hearing Jane took the initiative and sent an offer on behalf of her client but received no response. Jane also drafted a schedule of assets and liabilities on behalf of her client but still received no response from his wife's solicitor. The schedule in combination with Jane's letter formed the basis of useful negotiations at court. An agreement was reached saving either side any need for a further costly court hearing.

Expert knowledge in the developing area of law governing co-habitation disputes has also helped another of Jane's client's. She had left her former partner many years ago and had not paid the mortgage since leaving the joint property. Jane obtained documentary evidence that her client and former partner had agreed that each held 50% in the equity of the property. Issuing court proceedings because the former partner put forward totally unrealistic proposals for settlement her former partner's solicitor tried to claim that her equity in the property should be reduced to compensate their client. They were unsuccessful as case law did not support their argument. Jane's client was entitled to claim occupational rent as her former partner had the benefit of the sole use of the property.

*For more information on family law contact Jane Leadbeater.*

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**PICKWORTHS**  
• SOLICITORS •

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