



Employment Law Seminar
Thursday 30th September 2004
 Old Albanians Sports Club, St Albans

New Rules, New Rights, New Risks!

The government is implementing new regulations on dispute resolution that will affect all employers. Are you ready for all the changes?

Pickworths' Employment Seminar is for employers, on the major changes about to come into force in England and Wales. In the following article Partner, Ian Tottman, takes a brief look at recent case law affecting employers, illustrating the need to remain on top of all the changes in order to take the right decisions when issues arise.

Use the enclosed Response Form to **book your place now**, or either email Sheila McEntee at sheila.mcentee@pickworths.co.uk, call 01442 261731 or fax 01442 230356.

Not All Bad News

Employers could be forgiven if they feel that employment law in England and Wales is stacked against them. This is the overwhelming feedback we receive from delegates at our employment law seminars.

We are pleased to tell you it is not all bad news. Recent decisions have certainly been to the benefit of the employer.

Unfair Dismissal

In unfair dismissal, the position until recently was that an employee who was dismissed without notice, or pay in lieu, was entitled to be awarded compensation for wages due during the notice period, without deduction of earnings from another employer – i.e. this assumes that they quickly start work somewhere else. This rule was based on the idea that it was in accordance with "good industrial practice". However in *Hardy v Polk (Leeds) Ltd* the Employment Appeals Tribunal (EAT) decided that it fails to take account of the duty on the employee to mitigate their loss. The EAT said that a compensatory award

is based on compensating the victim for their loss and not penalising the employer.

Holiday Pay

On the long running saga of how and when holiday pay should be paid, the Court of Appeal has agreed with the EAT in the case of *Caulfield v Marshalls Clay Products* and *Clarke v Frank Staddon Ltd* that, in England, the Working Time Regulations are not contravened by a contractual arrangement, just because holiday pay is not paid when the employee actually takes their holiday. It is therefore in order for the employee's

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EDITOR: KIM HOBBS

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Commonhold Reforms Good For Flat Owners – *Eventually!*

Reforms to property law affecting leasehold ownership have been widely heralded as being worthwhile improvements for flat and apartment owners. Delays however, continue to beset the changes and even as they are implemented, limitations are all too evident. They simply do not go far enough.

Embassy Court: the subject of a major court appeal case in which Pickworths was involved.



The changes enshrined in the Leasehold and Commonhold Reform Act 2002 include a new concept of shared ownership called Commonhold. This is where owners of interdependent properties, with common parts and shared facilities, own both the freehold of their individual unit and are a member of a Commonhold Association which owns the shared areas. Each Association is governed by a "standard" Commonhold Community Statement.

The need for change has come about as leasehold arrangements have become discredited over the years. Our recent

success in the Embassy Court/Bluestorm case (see web site article) illustrates the problems when individual owners or groups of owners unreasonably withhold service-charge payments and the difficulties caused by differing interpretations of lease provisions. Commonhold is intended to significantly reduce this problem by ensuring that all unit owners have an interest and an equal voice in management decisions, rather than being subject to the control of an outside investor Landlord. It will also mean that the same rules govern all Commonhold developments.

Upon implementation (latest date September 27th) all new developments which share common parts may be registered as Commonhold with the Land Registry. There appears however to be little incentive to developers of new blocks to register the land as Commonhold and it seems unlikely that many existing leasehold developments will be converted as the consents of all of the lessees, the freeholder, any mortgagees and possibly others will have to be obtained. As Commonhold is a voluntary system and is not retrospective, it is only likely to become established if its advantages start to become widely apparent to developers and lessees.

Not All Bad News

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wages to be topped up by a specific sum for holiday pay, which is then shared across each pay period.

Lastly in the case of *Dunnachie v Kingston upon Hull City Council* it had been held earlier this year by both the EAT and the Court of Appeal that an employee claiming unfair dismissal in an employment tribunal could recover compensation for non-economic loss. The decision was a change from what the law had been for the last thirty years and stemmed from what Lord Steyn had said in the case of *Johnson v Unisys*. He could see no reason why, in appropriate cases, compensation should not include a sum for distress, humiliation and

damage to reputation in the community or to family life. In this case Mr Dunnachie had claimed for humiliation and injury to feelings suffered over several months before his alleged constructive dismissal. The House of Lords has however now confirmed that employees cannot recover compensation for non-economic loss so we remain as we were. If upheld, the change would have increased the level of compensation employers would have faced in unfair dismissal claims and generally made the litigation process more complicated.

So while these decisions may be just a few among many, every little bit of assistance from the courts for employers is a help!



To order a copy of our new Employment Law Leaflet call 01442 261731.

For more information or to contact Ian or Jill on a specific matter, call the Hemel Hempstead office or book your place and meet them at the seminar.

CAUTION

People at Work!

Health and Safety advice is a new product offered by Pickworths complimenting our services to employers.



An Andover manufacturer was recently fined £25,000 for failing to implement safety measures – despite risk assessments that identified hazards. The resulting accident caused significant injuries to an employee. This is just one case* that proves employers *must* act effectively to reduce risks. The additional cost of the court case, loss of reputation and of implementing safety procedures must have been immense.

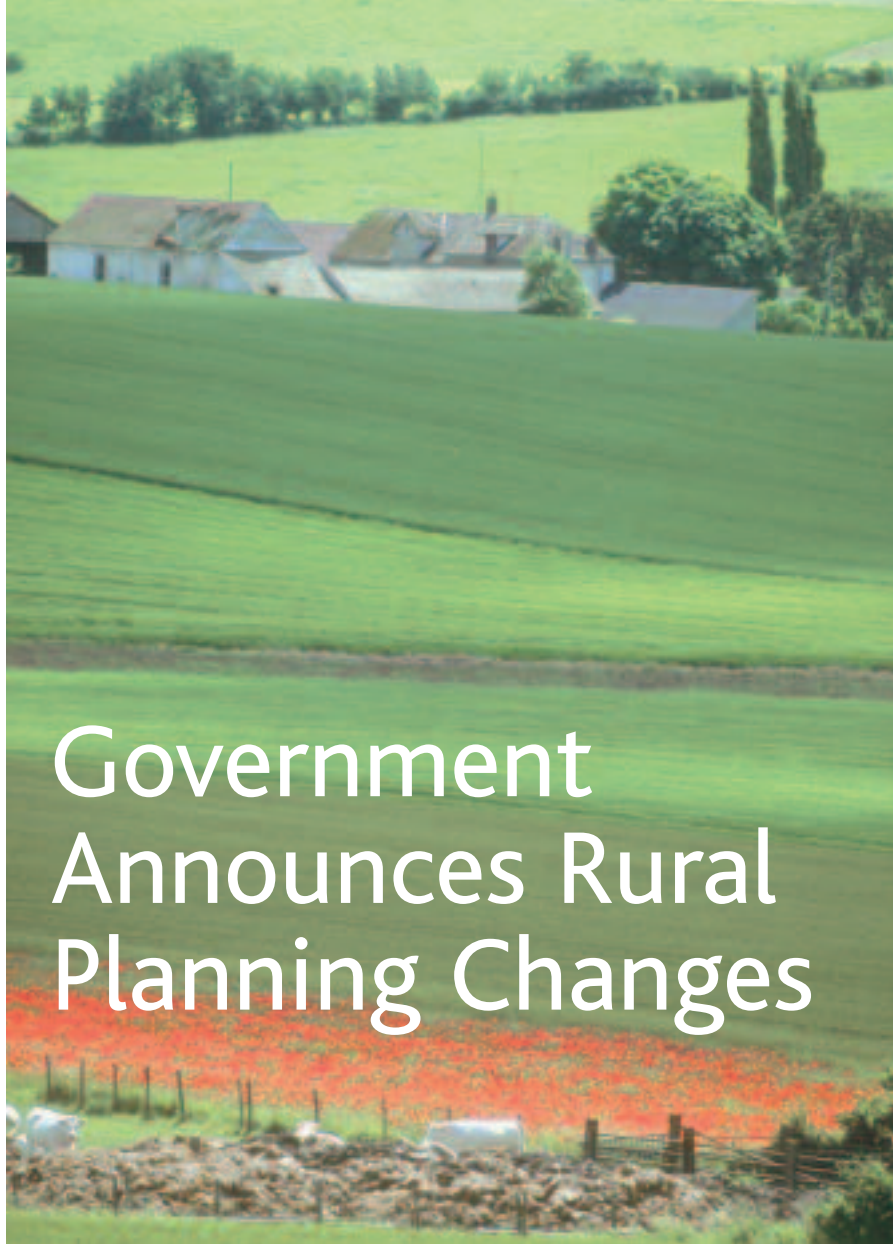
The very words 'Health and Safety' suggest unnecessary, meddling safety nonsense to many employers – surely safety is just about common sense. Well 'Yes' and at the same time emphatically 'No'. Whilst such an opinion may appear justified, the reality is that without the regulation that H&S law delivers, the safety of your employees may be compromised by others and you may find yourself legally responsible. H&S laws are for your protection as well as your staff.

Of course, some people apply H&S regulations with such rigor that the effect is to strangle business. At Pickworths we take a different approach. The key is Risk Assessment – i.e. we consider the *level of risk* represented by a particular activity, equipment, substance or environment and respond in *line* with that assessment. This means that we don't institute protections where none is required. We do apply safety procedures where necessary.

Effective implementation protects staff and directors from personal liability that could potentially land them with a fine and/or imprisonment. It also protects your business reputation.

For practical Health and Safety advice contact Kim Hobbs in Hemel Hempstead, or meet him at the Employment Seminar.

(*As reported in the Safety and Health Practitioner August 2004, page 8)



Government Announces Rural Planning Changes

"Sustainability and Rural Affairs" is the title given to a new PPS (Planning Policy Statement PPS7) issued by Office of the Deputy Prime Minister in August.

Key issues for readers living, working or owning land or property in rural areas, are noted below. The policy aims to:

1. Encourage Local Planning Authorities (LPA) to **support economic activity** in rural areas, especially if it is focussed on existing settlements.
2. Encourage **small scale community activities** and support them with good public transport.
3. Encourage **housing in existing settlements** and not in isolation.
4. Maintain the **'Country House' exception** whereby, planners may allow a single isolated house if the design is particularly innovative.
5. Encourage **re-use of buildings** in the countryside, primarily for business purposes, but also for housing.

6. Allow **replacement of rural buildings** with new buildings to make the buildings more appropriate for modern use. However, if the intention is to use them for housing, then the LPA will adopt a stricter approach to new build.
7. Encourage **agricultural diversification, tourism, leisure, business uses etc.** It particularly encourages use of farm buildings for equestrian purposes for up to 10 horses. Following on from this, the policy allows agricultural dwellings and dwellings needed for other business uses (eg horses) in the countryside provided a need can be shown for it. Again, this could be of particular use for those running equestrian businesses.

If any of these issues affect you please contact Belinda Walkinshaw or David Forbes in St Albans.

Pickworths Plans Your Future!

With the recent appointment of tax planning and wills/probate expert, Kathy James, Pickworths has proved its commitment to cater comprehensively for the needs of private clients.

Kathy joins us from respected Buckinghamshire solicitors, Allan Janes LLP where she was a solicitor in the private client team. With her knowledge of complex inheritance tax issues and her depth of experience of contested probate, Kathy is a key figure in our plans to develop our private client services.

We look forward to further updates on Kathy's work in future editions of *Briefing*.

If you require assistance with preparing your first Will or updating your current Will, inheritance tax planning or completing an Enduring Power of Attorney please do not hesitate to call Kathy. Indeed, if you represent an employer and are looking to recommend a will-making service to staff, as part of your HR products, then email or speak to Kathy in our Hemel office.

SPOTLIGHT ON...

Kathy James

Services for Private Clients

We are delighted to introduce Kathy James. She has just joined Pickworths to lead our private client services department covering wills, inheritance tax planning, Enduring Powers of Attorney (EPA), receivership orders and the administration of estates.

Originally born in Cardiff, Kathy was brought up in Aberystwyth and subsequently attended the University College of Wales to study law. She tells me that she chose this subject because it fascinated her rather than for any plans regarding her career.

"The law affects us all, it controls our lives even though we don't always realise it. I decided it was worth learning more about this," commented Kathy.

Whilst at university Kathy met and married her husband and had two of her five children. Despite such responsibilities, Kathy

finished her degree and was planning to take the Solicitors Final Exams but instead took a career break to bring up the family when they moved with her husband's job.



Some ten years later Kathy joined Allan Janes LLP where she completed her training, was admitted as a solicitor and immediately specialised in Private Client work.

When I asked her what fascinated her about her work, Kathy responded:

"We should all plan for the future for both ourselves and for our families. I see my role as assisting people to ensure that their wishes will be carried out in the best way possible. It is an interesting and challenging field, particularly in recent years when the government has indicated its intention to look closely at inherited wealth and is introducing changes to keep us all on our toes".

LEGAL MILESTONES

The following Acts of Parliament may affect you, your family or your business.

ACT OF PARLIAMENT	WHO IT AFFECTS	THE IMPACT
The Disability Discrimination Act 1995 (Amendment) Regulations 2003.	All employers and employees.	The 2003 regulations come into force on 1st October 2004 . The regulations place duties on employers to make reasonable adjustments in relation to the physical features of their premises and any barriers to access.
The Commonhold & Leasehold Reform Act 2002 – Commonhold parts implemented.	Initially only builders/developers but in due course leasehold property owners, managers, flat and apartment owners should all benefit.	Due to come into force 27th September 2004 but has been subject to delays. From then on flats may be offered as for sale 'commonhold' rather than leasehold – for details see article on page 2.
Employment Act 2002 (Dispute Resolution) Regulations 2004.	All employers and employees.	From 1st October 2004 employers are required to institute procedures in accordance with the regulations. The Government hopes to promote dispute resolution in the workplace as opposed to either side resorting to the Employment Tribunal.

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www.pickworths.co.uk

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