



Animals and Divorce – New Ruling May Set Cat Among the Pigeons

Financial settlements on divorce normally involve making financial provision for any children but, in a recent case, the ex-wife of a wealthy man successfully argued that her love of horses was sufficiently important to her that substantial maintenance should be payable for their upkeep.



The unnamed couple from Gloucestershire were childless and divorced after 11 years of marriage.

The court heard that the wife had lost a baby in 2001 and regarded her three horses as substitute children. Her husband had bought her a foal as a tenth wedding anniversary present in 2004, when

she already had two horses that she had purchased with her own money.

When the marriage broke up, the wife claimed that she required financial assistance in order to be able to keep and maintain her horses and for eventing. She argued that her husband's past actions showed his awareness and understanding of the depth of her passion for horses.

The husband claimed that keeping three horses was an unnecessary extravagance and that his wife's needs could be met by having a house worth £600,000 and one horse that was put out to livery.

In the Court of Appeal, Britain's most senior family judge, Sir

Mark Potter, stated that "during the marriage the horses played a major part in the wife's life with the consent and encouragement of the husband." The Court upheld the award made by District Judge, Michael Segal, of maintenance of £80,000 a year, including £50,000 for the upkeep of the horses, plus £900,000 for a house with grazing land suitable for the animals.

Emotional ties to animals can be very strong. It remains to be seen how influential this decision will be on other cases involving animals.

For advice on Family law contact Anna Baptist on 01992 3003333.

New Disclosure Rules

The Companies (Trading Disclosures) Regulations 2008 came into force on 1 October 2008, making many changes to the requirements as to where and when company trading names, names of directors etc. need to be shown.

Statutory Instrument implementing the changes is both short and straightforward. It can be found at http://www.opsi.gov.uk/si/si2008/uksi_20080495_en_1.

In particular, Section 6 is important. It specifies that every company shall disclose its registered name on:

- Business letters, notices and other official publications
- Bills of exchange, promissory notes, endorsements and order forms
- Cheques purporting to be signed by or on behalf of the company
- Orders for money, goods or services purporting to be signed by or on behalf of the company
- Invoices and other demands for payment, receipts and letters of credit
- Applications for licences to carry on a trade or activity
- All other forms of its business correspondence and documentation

In addition, it requires that every company shall disclose its registered name on its website.

If you require advice on compliance with any aspect of company law, contact Richard Taylor on 01992 300333.



'I would like to thank you for your efficient handling of the case, you seemed to bring a commendable briskness to it, which was very much what was needed'

Covenant Rights Need Not Continue

A bungalow owner who wished to replace a flat roof with a pitched roof found himself in court recently when his neighbour sought to rely on a fifty-year-old covenant 'not to make any addition or enlargement or alteration' to the bungalow without the consent of the vendor. The covenant stipulated that such consent would not be unreasonably withheld. The sale documents also contained a covenant prohibiting the building of anything other than a single bungalow on the property.

In this case, however, the vendor concerned was the original owner of the bungalow and the adjacent property. The adjacent property had been sold to a new owner years previously and the covenant was not stated to extend to successors in title.

The question before the court, therefore, was whether the new owner of the adjacent property could enforce the covenant. He argued that the commercial reality of the covenant was such that the benefit of it must be intended to pass to successors in title. The bungalow owner argued that the covenant had been restricted to the original vendor (who had died in 1977) and thus was not enforceable by the new owner.

Looking at the documents of sale, the court found that these were tightly drafted and there were other references to successors in title where appropriate. The court was not inclined to re-write the contract. The original vendor had created the covenant to protect her

own position only. On her death, the covenant ceased to have any effect – otherwise, any future alterations to the bungalow would be rendered impossible because permission could not be given. The court described such a possibility as 'astounding'.

A covenant relating to land is normally written to include successors in title. However, in this case, the covenant was written in terms which clearly distinguished between the vendor and the successors in title to the vendor's land.

Accordingly, the distinction between the rights of the vendor and the vendor's successors in title was clear.

Says Chris Pease, "This case shows that when they are properly drafted,

covenants may be able to be used more flexibly than you might think."

Contact us on 01992 300333 for advice on all property and planning problems.



Age Discrimination and Job Advertisements

Although many businesses are contemplating downsizing, owing to the worsening economic situation, if you are recruiting staff, it is important to remember that the Employment Equality (Age) Regulations 2006 make it unlawful to discriminate on grounds of age, including when advertising to fill a vacancy.

The case of *Rainbow v Milton Keynes Council* illustrates the danger to employers, when placing a job advertisement, of specifying the number of years' experience required by applicants as this can be indirectly discriminatory. In some instances, this will be because potential candidates may have the necessary skills required for the job but be too young to have gained the qualifying length of experience or, as was the case here, because they are of an age where they are likely to have more years' experience than stipulated in the advertisement.

Ms Rainbow, aged 61, had 34 years' teaching experience and was therefore on a higher pay scale than a younger teacher. In October 2006, a full-time post became available at the school where she worked part-time. The job advertisement said that the post would suit 'candidates in the first five years of their career'. Ms Rainbow applied for the post but was not short-listed for interview. She was told that the school wished to appoint someone on the same pay scale as the teacher who was leaving.

The Employment Tribunal (ET) found that the school had indirectly discriminated against Ms Rainbow because of her age. It had applied a practice that put her at a disadvantage, as someone over 60 is likely to have more than five years' experience, and had provided no real evidence to justify the discrimination. The Council had sought to justify the practice on cost grounds, citing as its reason the financial constraints under which the school operated. However, it did not produce compelling evidence to show that it was forced to take the discriminatory action. For example, it had not investigated alternative cost saving measures.

The ET held that if an employer wishes to rely on cost as a factor

when justifying discriminatory treatment, it should not be the sole factor.

Employers are advised to take extreme care when drafting job advertisements. It is important to focus on the requirements of the post and the type of experience necessary to fulfil the role. Apply these criteria when short-listing candidates and keep a record to show that decisions have been reached on an objective basis. It is unlikely that cost alone will be sufficient reason to justify an indirectly discriminatory practice.

Contact Richard Gvero on 01992 300333 for advice on avoiding all forms of discrimination when recruiting staff or making redundancies.

'I can't thank you enough for helping me get through this period. You are a credit to your profession and you will be highly recommended to any unfortunate person who I know who finds themselves in a similar situation'.

Trustee Advice – Charity Act Changes

The Charity Commission has recently updated its advice for charity trustees to take account of The Charities Act 2006, which allows charity trustees to be paid for providing their charities with goods and services.

The advice deals with questions relating to payments to charity trustees, such as;

- When trustees can be paid for supplying goods and services
- What to do about accountability and management of conflicts of interest
- When it might be appropriate to pay a trustee for their trusteeship
- What do and do not count as reasonable expenses

In principle, the concept of unpaid trusteeship is still paramount.

However, the Act permits trustees to be reimbursed for their expenses from the funds of the charity and to be paid for their services where it is appropriate. The range of expenses which can be reimbursed is wide.

Clearly, the major issue is that of managing potential conflicts of interest. The guide also suggests that, as good practice, a trustee board should review regularly the performance of each trustee.

This is particularly important where a trustee is receiving a payment from the charity.

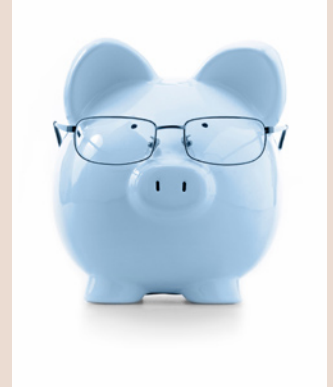
The Guide, CC11, can be downloaded at [http://www.charity-](http://www.charity-commission.gov.uk/publications/cc11.asp)

[commission.gov.uk/publications/cc11.asp](http://www.charity-commission.gov.uk/publications/cc11.asp).

Trustee directors of charities that are incorporated or which run trading subsidiaries should also be aware of the implications of the Companies Act 2006, which has been implemented in stages since 2007.

Some aspects of the Act, particularly those which came into force in October 2008, have significant implications for director trustees.

For advice on your individual circumstances, contact Graham Field or Richard Horwood on 01992 300333.



EPCs - End of Transitional Provisions

Property owners are reminded that the transitional arrangements governing non-domestic Energy Performance Certificates (EPCs) came to an end on 4 January 2009.

Prior to that date, as long as the seller of a property was able to show that it was being actively marketed on the relevant commencement date (6 April 2008 for buildings of more than 10,000 square metres, 1 July 2008 for buildings of more than 2,500 square metres and 1 October 2008 for all other commercial buildings), then an EPC was not required until a contract for sale/lease was being prepared. From 4 January, that is longer the case.

For further information on measures to improve the energy performance of buildings, see <http://www.communities.gov.uk/planningandbuilding/theenvironment/energyperformance/>.

Contact Liz Gallop or Heinrich Ferreria on 01992 300333 for advice on any commercial property or landlord and tenant matter.

Auditors Pay Price for Incorrect Share Valuation

An ex-director of a company has been awarded substantial damages against the company's auditors, after he showed that the firm had negligently undervalued his shareholding when he was required to sell the shares back to the company on ceasing to work for it.

The man claimed the valuation placed on the shares by the company's auditors was far below the proper market value at the time and that there were factors which the auditors should have taken into account in their valuation, including likely future outcomes, which they did not.

"This case raises two points that are worthy of mention," says Richard Taylor. "The first is that had a mechanism setting out how the shares were to be valued when being repurchased been agreed and documented at the outset, there would have been no ground on which to bring an action. Secondly, it is important when giving an expert opinion to be careful to make sure it is both objective and well thought out"

Contact Richard Taylor on 01992 300333 if you need advice on any corporate law matter.



Our Department for the Older Client

Nichole Giddings has worked in Longmores' Private Client Department for over ten years and is a member of Solicitors for the Elderly, The Alzheimer's Society and Chairman of Age Concern Hertfordshire. Her work relates to all aspects of Law for the older Client and, since the changes in October 2007, she has specialized in subjects relating to the Mental Capacity Act 2005 (MCA 2005). This can include Lasting Powers of Attorney and Court of Protection work, but also involves direct work using the MCA 2005 to assess whether someone has capacity to make a decision for themselves.

As Nichole says "sometimes people find it difficult to make a decision but, with support, they may have capacity to make it. One of the main principles of the MCA 2005 supported by the Code

of Practice is that everyone should be given all the help and support they need to make a decision before a conclusion is made that they cannot make their own decision about a particular matter".

An assessment of a person's capacity must be based on their ability to make a specific decision at the time it needs to be made, and not their ability to make decisions in general. You will need to think about these things for both 'big' decisions on the one hand, such as where to live and what treatment to consent to, and for everyday decisions on the other, about what to eat or what to wear.

When a decision needs to be made, try:

- Asking the person at a different time of the day when their understanding is usually better

- Taking more time to explain the information
- Explaining or presenting the information in a way that is easier for the person to understand
- Finding someone else to help communicate the information.

It is important to try to take all possible steps to help people make a decision for themselves. The following questions from the Code of Practice are designed to help you in this process.

- Does the person have a general understanding of what decision needs to be made?
- Do they have a general understanding of the consequences of the decision?
- Can they weigh up this information and use it to make a decision?
- Is there any way you could help

them to make the decision for themselves?

- Is there any way you can help them communicate their decision or their wishes and feelings?

If the person cannot do any of the first three things, they can be treated as unable to make the decision. You will then have a 'reasonable belief' that the person lacks capacity to make that decision and you will then be in a position to make that decision for them. Any decision you make for and on behalf of that person, must be made in their best interests.

Nichole would be pleased to talk to anyone about this subject or on any matter that affects the older client. Just telephone her on 01992-300333.

Longmores - Event



Our 'Keep it in the Family' Seminar

On Friday 27th March 2009 at 11.30 am we are holding a FREE Seminar in our Conference Room at 24 Castle Street, Hertford, followed by a buffet lunch.

The Seminar is aimed at anyone concerned about their retirement years suggesting ways in which assets might be protected from Inheritance Tax and nursing home fees.

We would be delighted to see you; simply telephone Nicole Windross on 01992 300333 or email her on nicole@longmores-solicitors.co.uk with our details and she will send you an invitation.

Contact Us

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