

Your quarterly bulletin on news & views from Shentons Solicitors & Mediators

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MODERN SLAVERY

The National Crime Agency have stated that there are probably tens of thousands of victims of trafficking or 'modern slavery' in the UK at the present time. For the crime department this is an issue we have to have at the forefront of our minds when dealing with vulnerable people. Often victims of this kind of exploitation are the last to tell you the truth and evidence must be gathered from other sources.

This year we acted for Jon, a 16-year-old boy who had been accused of dealing drugs. At first the case seemed simple; when Jon was arrested he was in possession of a knife and a very large quantity of drugs that were clearly not for personal use. Jon himself would say very little about what had happened and seemed quite disengaged with the whole process; at this stage, another firm might have advised him to plead guilty.

Our team however, took the time to speak to Jon's mother, other agencies and to have a psychiatric assessment undertaken. It transpired that Jon had been 'groomed' by a London gang to work for them, as part of a scheme known as 'county lines'. This usually entails a gang selecting vulnerable people, who are sometimes as young as 12 or 13, taking them from their homes to another county and forcing them to sell drugs.

In this case, Jon was taken from his home in Hampshire and dumped in Gloucester where he was told that if he didn't sell the drugs, they would not return him home.

Working with Barnardo's Children's Charity, we were able to establish that Jon was a trafficked child in accordance with government guidelines; he was, essentially the victim



and we argued that he should not be criminalised. The expert assessment showed that Jon had severe mental health issues and he was therefore incredibly vulnerable to pressure and coercion from sophisticated criminals.

We submitted a legal argument that his case should be thrown out and eventually the Prosecution dropped the case.

OUR CHLOE JAY AND HARRIET PARKER
RECENTLY ASSISTED THE CHARITY
BARNARDO'S WITH A PRESENTATION ON
THE LAW ON THIS AREA.

IF YOU THINK YOUR CHILD COULD BE THE
VICTIM OF EXPLOITATION PLEASE CALL US.



WILL WISHES RESCINDED BY COURT



One powerful reason why you should always seek legal advice before making your will is to ensure you meet your responsibilities to those who depend on you financially. In one case on point, the High Court effectively rewrote the will of a wealthy landowner who cut his long-term partner out of his £1.5 million estate.

The couple had been living together as man and wife for over 40 years. When he was in hospital shortly before his death, aged 94, he had told her not to worry as she would be well looked after. However, he left her nothing in his final will – he had made about ten others previously – and instead bequeathed his entire estate to two of his tenants who had been kind to him during his final years.

In a letter of wishes attached to the will, he expressed a determination that neither his partner nor her four children

should inherit any part of his fortune. He stated, incorrectly, that she had her own resources and was financially comfortable. In fact, she had been left with modest savings of about £2,500 and was otherwise entirely dependent on benefits. In those circumstances, her lawyers launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, seeking reasonable provision from his estate.

In upholding her claim, the Court noted the duration of the relationship and the care that the woman had given to her partner as his health declined. She had worked without pay on his farm and in his business, and assisted in caring for his mother before she died. In those circumstances, the terms of his will failed to match up to the moral and legal responsibilities that he owed her as a dependant.

The Court ordered that a cottage worth £225,000 should be transferred to the woman from the estate. She was also awarded almost £190,000 in cash to cover the costs of refurbishing the cottage and other expenses. The Court noted that the tenants, as the man's chosen beneficiaries, would still inherit the lion's share of his estate.

IF YOU HAVE BEEN DEPRIVED OF BENEFITTING FROM THE ESTATE OF SOMEONE ON WHOM YOU WERE DEPENDENT, CONTACT US REGARDING THE POSSIBILITY OF MAKING A CLAIM.

INHERITANCE TAX - 'HOPE VALUE' RELEVANT TO PROPERTY VALUATIONS

When valuing a property for IHT purposes, is it legitimate to take into account its potential for enlargement or improvement – so-called 'hope value'? In a guideline ruling, the Upper Tribunal (UT) has answered that question in the affirmative.

The case concerned a maisonette in an attractive residential area. The property was in need of updating and had potential for extension. After its owner died, HM Revenue and Customs valued the deceased's 88.4% share in the freehold at £1,829,880. The son of the deceased appealed on the basis that the correct valuation was £1,113,840 and the matter was referred to the UT.

The UT noted that Section 160 of the Inheritance Tax Act 1984 required that the

property be valued on the basis of what it might reasonably be expected to fetch if sold on the open market. If the market was prepared to pay a price which included the prospect of an enlarged floor space, then it was right to take that into account.

The property – which had in fact been sold amidst a galloping property market for more than £2.5 million less than two years after the owner died – had been marketed as having great potential. It was clearly ripe for major reconfiguration and extension of the type that the purchasers subsequently carried out. After considering expert valuation evidence and other issues in the case, the UT found that the correct valuation for IHT purposes was £1,782,144.



If law is the question You've found the answer

POSSIBLE SEPARATION FROM MOTHER INTOLERABLE, RULES COURT

Relationships that start on the Internet are already leading to some interesting situations. A recent family case involved a British woman who had met a Pakistani man online and married him in the USA, where the couple had two children.

Her husband had been taken to the USA as a child, and is strictly an illegal immigrant, although he does not face deportation because as a child immigrant he has 'deferred action' status. However, were he to leave the USA, his readmission would be unlikely. His wife had irregularities associated with her time in the USA (which had originally been under a 90-day tourist visa) and she might not be allowed to re-enter the country.

The mother returned to the UK in December 2016 with the two children, who are dual-nationals. The father applied to have them returned to the USA. A judge decided that the

children should be returned to their father whether or not the mother could obtain a US visa.

She appealed against the decision and the Court of Appeal, applying the law set out in the 1980 Hague Convention on Child Abduction, concluded that the return of the children to the USA without their mother would enforce an indeterminate separation and that this was intolerable. The children would return to the US only if the mother were granted a visa.

The father was granted permission to return to the Court if the mother does not pursue a visa application.

ARGUMENTS REGARDING CHILDREN WHERE THERE IS AN INTERNATIONAL DIMENSION REQUIRE SKILL AND EXPERIENCE TO BRING TO A SATISFACTORY CONCLUSION. PLEASE CONTACT US FOR ADVICE ON ANY ISSUE RELATING TO FAMILY LAW.

EU'D BETTER GET READY

One of the lesser-known consequences of Brexit is that a European Commission decision made some time ago means that after 29 March 2019, UK companies that do not have a place of business in the EU will no longer be able to acquire or renew .eu domain names.

MORE THAN 300,000 .EU DOMAINS ARE REGISTERED TO UK COMPANIES. IF YOURS IS ONE OF THEM, YOU SHOULD CONSIDER THE IMPLICATIONS OF THE DECISION CAREFULLY.



SON'S CASUAL EMPLOYMENT PROVES EXPENSIVE FOR DAD



One area in which problems may not be anticipated is when a family member's status as a 'genuine' employee is disputed by HMRC.

For any expenditure to be deductible for tax purposes, it must be 'wholly and exclusively' made for business purposes. In the case of a claim by an employee

for a deduction, such expenditure must also be made 'necessarily'.

In a recent case, HMRC took a taxpayer to task over payments to his son, who was a university student. Specifically, HMRC claimed that £7,400 paid to him was not 'incurred wholly and exclusively for the purpose of the Appellant's trade and deductible against his self-employment income'.

When an HMRC enquiry was opened into deductions totalling more than £23,000 in the taxpayer's accounts, he was eventually able to satisfy them with regard to all the sums claimed except those payments made to his son. In point was the fact that the taxpayer did not actually record the 'wages' paid. HMRC took as their starting point the fact that the taxpayer was unable to prove that the payments had been made at all.

The taxpayer made protests, but the way his evidence was given probably did not help his case. The First-tier Tribunal concluded that the absence of evidence that the payments had been made on the basis of time records or some other methodology made it impossible to conclude that they were made wholly for business purposes. They were not, therefore, 'directly and solely referable' to the carrying on of the taxpayer's trade.

Casual arrangements such as these are fraught with potential problems. Not only can tax issues arise, but there may also be questions over failure to pay National Insurance Contributions or the National Minimum Wage, make pension contributions, hold appropriate insurance and so on. We can help you make sure you get it right first time.

Employment cases are subject to tight time limits, and delay in seeking legal advice can result in meritorious claims being dismissed without a hearing. However, in an important decision, the Court of Appeal has underlined the wide and unfettered discretion of Employment Tribunals (ETs) to extend time in deserving cases (*Abertawe Bro Morgannwg University Local Health Board v Morgan*).

The case concerned a psychiatric nurse who suffered from a depressive illness and had to take about 17 months off work prior to her dismissal. Lengthy proceedings culminated in an ET's findings that she had suffered harassment at the hands of a human resources adviser and that her NHS employer had failed in its duty to make reasonable adjustments to cater for her admitted disability.

Although her claim had been lodged outside the three-month time limit



specified by Section 123 of the Equality Act 2010, the ET found that it was just and equitable to extend time. The employer's appeal against the ET's decision was subsequently dismissed by the Employment Appeal Tribunal (EAT).

In rejecting the employer's challenge to the latter ruling, the Court emphasised that Parliament had granted ETs the widest possible discretion in deciding

whether or not to waive the full rigour of the three-month time limit. The exercise of that discretion should only be disturbed in cases where an ET had erred in principle.

The employer bore some of the responsibility for the delay in launching proceedings, which was also in part explained by the woman's acute mental health difficulties. The employer had suffered relatively little prejudice and, in the circumstances, the ET was entitled to find that it would be unjust to dismiss a good claim on grounds of delay alone.

The woman's case had already been the subject of two ET and two EAT hearings, and the proceedings had stretched over almost six years. A third ET hearing would be required to assess the amount of her compensation, but the Court urged both sides to adopt a sense of reality in achieving a final resolution of the matter.

COUNCIL TAX TO BITE ON EMPTY PROPERTY

In 2017, 205,293 dwellings in England were left empty for six months or more. With the housing shortage never far from the news agenda, steps to bring unoccupied houses back into use are being taken by the Government.

Under the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill, houses which are empty for more than two years will pay twice the usual rate of council tax.

There are, however, exemptions where there are legitimate reasons for properties being unoccupied, such as when the property is genuinely on the market for sale or rent or the owner is in residential care.

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