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CITATION

MEDICAL MISTAKES– TIME FOR ACTION

While Britain has some of the highest medical standards in the world, sometimes our health professionals can make mistakes which can result in serious injury or worse.

This is referred to as Medical Negligence (also known as Clinical Negligence) and can give rise to a claim for compensation.

Medical Negligence is a complex area of law that requires the claimant to prove two separate things: negligence and causation.

Negligence: When you're treated by someone working in the healthcare profession, that professional owes you a duty of care. To establish negligence there has to have been a breach of this duty by the professional. This means that the standard of care provided by the medical professional fell below the level expected of a reasonably competent medical professional in that field. In order to establish negligence it will be necessary to obtain a report from an independent medical expert.

Causation: The claimant needs to show that the negligent treatment (rather than the underlying condition) caused the harm or made an existing condition worse. This may sound relatively easy, but it can be difficult, particularly when someone was already ill. The injury, loss and damage suffered must have arisen as a direct consequence of the negligence.

To help prepare for a Medical Negligence claim it is important to detail in full the impact that the negligence has had on the claimant's life so that any compensation claimed will cover all future needs. In addition you should keep a detailed diary of any expenses and losses that you incur as a result of the medical negligence and keep all supporting receipts.

Medical Negligence claims normally have to be started within three years of the date of negligence or of the date when you first knew (or should reasonably have known) that the injury/harm was as a result of Medical Negligence. Claims involving children have to begin within three years of the child's eighteenth birthday. It is crucial to get expert legal advice as soon as possible after the clinical/medical negligence took place in order that these time limits are not missed.

[GET IN TOUCH]

To find out more about the Medical Negligence claims contact Robert Cherry on E: robertcherry@cliftoningram.co.uk or on T: 0118 978 0099

[CORPORATE]

[CORPORATE]

SELLING YOUR BUSINESS OR COMPANY—ARE YOU READY?

During the recent economic downturn, many business owners put their exit plans on hold, concentrating on maintaining their businesses rather than thinking about how and when they might sell.

Increased growth and confidence in the economy has seen a marked increase in the number of corporate transactions that Clifton Ingram's Corporate Services Team has been involved with in the past 18 months.

There are many things to consider if you are thinking about selling your business; regardless of what structure you operate through – limited company, LLP, sole trader or partnership. Seeking professional advice at an early stage is essential as it will ensure that your interests are protected and that the right structure is put in place to achieve the best return for you.

So what should a prospective seller be thinking about?

Advice on pre-sale tax planning and, if necessary, a restructure of your business so that you can benefit from favourable tax treatment should be your first consideration. This will include advice on timing of the sale and whether entrepreneur's relief is available to you. Such tax advice will dictate (assuming you trade as a limited company) whether you sell the business or the shares.

Often a better sale price can be achieved if steps are taken in advance of any offer to put your 'house in order'. This will include ensuring that you have full copies of all customer, supplier and employee contracts, leases, shareholders agreements, compliance documentation such as accreditations and licences and that your company books and records are up to date and complete. A buyer will undertake detailed examination of your business and if this information is accessible and in good order it will help the process by avoiding delays and reducing management costs.

Whilst not a legal requirement, agreeing non-binding heads of agreement setting out the main terms of the proposed transaction often helps the parties set an agenda and gives the lawyers the basis for preparing the various documents required to record and effect the sale. Heads of agreement can include provisions giving exclusivity to the buyer to ensure that the seller does not progress negotiations with other potential buyers when the proposed buyer is incurring time and expense looking at the sellers business.

How can the seller ensure that sensitive business information is protected?

During the sale process the seller will give the prospective buyer access to confidential and sensitive commercial information about its business – customer lists, pricing, trade secrets etc. Often the prospective buyer will be a trade competitor and it is, therefore, imperative that this information is protected. Sellers should ensure that any potential buyer signs a confidentiality agreement placing the potential buyer under an obligation to keep confidential any information that they obtain as part of the pre-sale discussions.

How does the sale process work?

The prospective buyer will carry out a detailed fact finding exercise (known as due diligence) on the target business or company and will require detailed warranties (statements given by the sellers in favour of the buyer confirming the state of affairs of the company or business). The purpose of the warranties is to draw out any potential problems with the target business or company that the buyer will want to be aware of prior to completing the purchase. If the sale is completed and any of the statements turns out to be untrue and a disclosure was not made against such statement, this may form the basis of a claim by the buyer against the sellers. The sellers will, therefore, require advice on the warranties so that they understand what assurances are being given to the buyer. The sellers will also need guidance on how disclosures can be made against the warranties to avoid liabilities arising after completion of the sale.

The sale agreement will also set out how and when the purchase price is payable to the seller and may include earn-out provisions linked to the performance of the business after completion. It is important to ensure that such provisions are carefully drafted and that advice is taken on securing any payment of the purchase price that is not paid to the sellers on completion of the sale.

Each sale agreement will be tailored to the transaction at hand and early engagement of legal advisors to guide the seller through the process is essential.

Clifton Ingram's Corporate Services Team regularly advise both buyers and sellers on business sales and purchases, share acquisitions and disposals and management buy outs.

[GET IN TOUCH]

For more information contact Barry Niven in our Corporate Services Team on E: barryniven@cliftoningram.co.uk or on T: 0118 978 0099

[EMPLOYMENT]

A WEIGHTY ISSUE

After some speculation, the decision is in: the effects of obesity can sometimes amount to a disability.

The European Court of Justice (ECJ) reached this conclusion following a referral from a Danish court in Kaltoft v Billund. The case concerned a child-minder who claimed that his obesity was a factor in his redundancy.

The ECJ said that if someone's obesity causes them to have a physical or mental impairment which satisfies the legal definition of disability, they could be protected by discrimination legislation. Therefore, while obesity, by itself, doesn't confer legal protection, its effects could render a person disabled for employment law purposes.

A UK tribunal has been quick to rely upon the ECJ decision, with a Northern Ireland Industrial Tribunal finding in February, in the case of Bickerstaff v Butcher, that an obese employee was disabled and consequently upheld his claim for harassment. The tribunal was satisfied that Mr Bickerstaff had been "harassed for a reason which related to his disability, namely his morbid obesity condition".

Not every obese person will be disabled. However, those who are unable to participate in professional life on an equal basis with other workers could well be. This will need to be assessed on a case-by-case basis, focusing on the effect of a person's obesity, rather than the cause or extent of the obesity itself.

What does this mean in the work place?

Employers may need to become more aware of the way in which obesity affects their workers and possibly take greater steps to promote healthy lifestyles for the obese. Also, on a legal as well as a practical and mindful level, employers should consider making reasonable adjustments to working conditions so that overweight workers are not at a disadvantage compared with other workers. It could mean reconfigured workstations, parking spaces or new working patterns. The solution will be dictated by the circumstances. Ultimately, it's about levelling the playing field.

[GET IN TOUCH]

For more information contact Alison Gair in our Employment Department, on E: alisongair@cliftoningram.co.uk or on, T: 0118 912 0300

[PROPERTY]

DEMANDING DEVELOPMENTS

A shortage of new homes being built and a renewed demand for new housing has put pressure on local government to allow applications on land which may not have been deemed suitable for residential development in the past.

As a result, more landowners are being approached by developers offering to promote land for development.

Option Agreements

Traditionally, landowners are approached by a developer who offers to seek to obtain planning permission for development of the land in question in return for the right to purchase the land at a discounted purchase price, (usually 10-20% of open market value) once they have obtained the grant of planning permission—this arrangement would be formalised in a document known as an option agreement.

The term of an option agreement is commonly 5–10 years but it can be less or more depending on state of the local authority housing plan and the level of optimism for the opportunity. A non-returnable but deductible option fee is payable to the landowner upon exchange of the agreement and the landowner's legal costs involved are usually met by the developer.

Once the developer has obtained satisfactory planning permission they can choose to exercise their option to purchase the land but there is no obligation on the developer to proceed with the purchase. If they do proceed, the purchase price is usually determined by calculating the open market value of the land and applying the pre-agreed discount percentage. This is the point where the developer and landowner may be at odds as the developer will try to suppress the open market value and the landowner will try to maximise the open market value.

Any dispute may be referred to expert determination but in any event it is essential from the landowner's point of view that a minimum price is agreed and incorporated in the option agreement in order to protect the landowner.

Promotion agreements

A promotion agreement involves more of a cooperative approach between the landowner and a developer or promoter of the land. The landowner enters into an form of promotion agreement which has similar characteristics to an option agreement in that the promoter agrees to seek a planning permission.

It is important that the landowner deals with a suitable promoter who has the necessary experience and financial strength to obtain a permission—a process which could take many years and involve an expenditure of many hundreds of thousands of pounds. The promoter will be obliged to work to promote the land through the local planning process in accordance with an agreed promotion strategy with a view to obtaining planning permission for development that maximises the development value of the land.

If and when satisfactory planning consent is obtained, the landowner and promoter together implement an agreed marketing strategy which hopefully leads to a satisfactory sale of the land on the open market. Once sold, the net sale proceeds are shared between the landowner and promoter so that the promoter receives reimbursement of its planning and promotion costs (usually limited to a certain amount) together with an agreed percentage of the sale proceeds.

The principal advantages of a promotion agreement over an option agreement is the element of control that can be retained by the landowner and the reassurance that the landowner and promoter are working together to maximise the value of the land. The promoter's fee is based on the actual sale price and therefore both the promoter and the landowner will be attempting to maximise the value of the land as opposed to the developer being inclined to try to suppress it.

A hybrid agreement may also be appropriate where the promoter is given an opportunity to either sell the land or take its share or to purchase the land itself once a satisfactory planning consent has been obtained. The promoter may also be given an opportunity to purchase in circumstances where the land is not otherwise successfully sold on the open market.

In conclusion, whilst the more traditional option agreement is still the industry norm when it comes to promoting land for development, a promotion agreement should always be considered as a possible alternative although careful selection of the promoter is important to ensure that the objectives of the landowner have a reasonable chance of being met.

[GET IN TOUCH]

For more information please contact Tim Read on E: timread@cliftoningram.co.uk in our Commercial Property Department or on T: 0118 978 0099

[PENSIONS]

PASSING ON THE PENSION POT

The government pension reforms in 2014 have changed pension rules in significant ways which will come into effect in April, the biggest being the proposal to allow individuals aged 55 or above to take the whole of their pension pot as a cash lump sum.

Whilst the press concentrated on the dangers of people 'blowing their pension pot' on yachts and world cruises (not without some justification as studies show that in Australia, where similar legislation was introduced in 1992, one quarter of people who had accessed their pension pots at 55 had spent all the money by the time they were 70), these changes will be positive for many as it allows them actively to think about how they would like to use the money in their pension and consider the choices that are available to them.

Being able to take out all of your pension savings in one lump sum represents a significant tax break. Frequently, however, it has been assumed that the whole of the pension fund can be accessed without a tax liability. This is not so. Tax would be charged on withdrawals over the 25% tax free allowance and great care needs to be exercised to keep your tax bills to a minimum in managing your pension. It is seldom likely to be a good idea to access the entire fund, therefore.

One further option is considering how to pass some of your pension pot on to the next generation without being hit by a tax bill, indeed by careful planning a pension can be used as a vehicle to pass family assets to the next generation with minimal tax liabilities. Previously very high tax charges (55%) fell on lump sum payments on the death of a pensioner but these will not now apply. All individuals' circumstances are different but this new flexibility emphasises the need for family "pilot" trusts to hold funds received from pensions on the death of a pensioner, or, for some, the suitability of retaining the pension fund structure to benefit the family in a tax efficient manner long after the original pensioner has died.

[GET IN TOUCH]

For further information please contact Peter McGeown, Partner in charge of our Tax Planning Wills and Probate Department on E: petermcgeown@cliftoningram.co.uk or T: 0118 978 0099

[FAMILY]

THE RISE AND FALL OF THE PRE-NUP?

Pre-nuptial agreements have been around for a long time but were generally associated with the very wealthy seeking to protect their wealth from poorer spouses.

However in the last 5 years, following the land mark case of Radmacher v Granatino, there has been a real sea change, such that we have seen a significant rise in the number of pre-nuptial agreements we prepare. The Radmacher case involved a very wealthy heiress whose family sought to protect her millions by way of a pre-nuptial agreement. The case went all the way to the Supreme Court and her pre-nuptial agreement, in essence, was up held. However the court was very careful to make clear that it retained its over-riding duty to achieve fairness.

There was, and still is, no automatic requirement on the court to follow the pre-nuptial agreement; instead it is a factor which the Court takes into account in achieving fairness. Provided that it was agreed an appropriate way (including both parties taking legal advice) so that both parties knew what they were signing up to at the time, and were not under any undue pressure, it is more likely than not that the court will follow the terms agreed provided they meet the parties needs. Where there is a pre-nuptial agreement those needs may be more harshly interpreted than if the Court was able to use its unfettered discretion. Where the pre-nuptial agreement fails to address a party's needs appropriately then the Court reserves the right to vary it to make it fairer. Even in Radmacher v Granatino the relatively poor husband received funds to enable him to provide a home to facilitate visits with the children and keep them (and thus him whilst they were young) in a manner to which they were accustomed.

If Baroness Deech gets her way, in her Bill —Divorce (Financial Provision)—the Court's discretion is likely to be significantly curtailed. As currently drafted the Bill would mean that, in future, pre-nuptial agreements will be binding on the parties so long as they received independent legal advice, they shared proper financial disclosure and the agreement is signed at least 3 weeks before the wedding.

For some this will make having a pre-nuptial agreement even more attractive, but it may also make them more difficult to agree. Whilst at present the more disadvantaged party can take comfort in the knowledge that the Court retains its over-arching duty to ensure fairness at the end of the marriage, if it becomes law, this Bill will effectively remove that safety net. Ironically the result may be that couples planning to marry may become more reluctant to become embroiled in difficult negotiations about what should happen if their marriage fails, knowing that if one of them gets it wrong there will be no means to seek redress from the court.

Whether this comes to pass only time will tell; we will keep you posted. Many a revolutionary Bill has come to naught. In the meantime the interest and demand for pre-nuptial agreements, rightly, persists.

[GET IN TOUCH]

For more information contact Anne Deller E: annedeller@cliftoningram.co.uk or Kate Grant E: kategrant cliftoningram.co.uk T: 0118 978 0099 in our Family Department.

HELPING SME'S REACH THEIR POTENTIAL

Over 100 business owners and entrepreneurs gathered at an event for SME's hosted by Clifton Ingram Solicitors, Lloyds Bank and Wokingham Borough Council in February 2015.

Entitled 'Helping SME's Realise their Ambitions' the event brought together a panel of experts talking about business growth—how to foster in it, how to harness it and how to understand it.

The speakers included:

- The Rt Hon John Redwood, MP for Wokingham
- Tim Smith, Chief Executive Thames Valley Berkshire LEP
- Sue Elliott, Director, Vital Six
- Rhys Herbert, International Macroeconomist Lloyds Bank
- Graeme Batstone, SME Financial Markets Lloyds Bank
- Jonathan Davis, Chairman, Clifton Ingram LLP Solicitors

The presentations focused on the importance of SMEs planning for growth through alternative finance, risk and opportunity management, economic and financial market forecasts and the political perspective. The event was also a great opportunity to network with other local businesses and professionals

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EVENTS IN 2015

We have a number of free events coming up this year, tackling a broad range of legal topics. To ensure you are on the invitation list please let us know which of the subjects below interest you, and email your contact details to melissabaxter@cliftoningram.co.uk

- **Wealth Management**
  Feel like the tax man gets more than his fair share? This event will bring together a unique mix of experts from financial planning, Wills, trusts and probate law.
- **Employment Law Update**
  Our popular roundtable events give you a practical insight into on-going developments in employment law and how they affect the work place.
- **Buying or Selling a Business**
  Business mergers, sales and acquisitions are all major and complex events. This seminar will provide an overview of the key financial and legal issues to help you plan and prepare.
- **Landlord and Tenant Issues**
  This event will address the crucial areas of landlord and tenant law allowing you to protect yourself against financial risk and ensure your legal compliance.
- **Improving your Credit Control and Dealing with Debt**
  Simple steps to minimise unpaid invoices and prevent them from becoming bad debts.