

# Working Together

Issue 7 Autumn 2009



## Have you been ill or injured on holiday?

**Holiday Claims -  
Know your rights p2**

**What is  
Whiplash p4**

**Commercial Law p8**

**A day at  
the races p9**

The Newsletter of  **Simpson Millar** <sup>LLP</sup>  
Solicitors

Welcome to the autumn edition of Working Together, it's the season for change – and Simpson Millar has seen some changes too!

June saw the establishment of our Commercial Company and Property department which will go under the banner of 'SM Commercial'. We welcomed Deborah Powell, Philip Downing and Steve Esmond to the Simpson Millar team – Find out more on page 8.

In July we also opened our specialised Holiday Claims department in time for the end of holiday season. If you've been injured or ill on holiday, find out if you have a claim on pages 2 and 3.

This issue also includes an update on the proposed amendments to the Animals Act, a guide on how to make a complaint against a medical practitioner and a round-up of our latest charity news.

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# Illness on Holiday

Outbreaks of illness at hotels and onboard cruise ships involving large numbers of holidaymakers are unfortunately now commonplace.

Guests on these types of holidays often share the same facilities, swimming pools and meal services making contact with anyone who is infected inevitable and increasing the chances of sharing contaminated food and water. In these instances it is clear to see how if something goes wrong then it is likely that more than one person will be affected.

Tour operators are quick to claim that the cause of an outbreak is probably due to an 'airborne virus', a 'norovirus' or a 'bug'. They often claim that other guests or passengers introduce viruses which are then passed on like common colds.

However, our experience is that outbreaks of illness at hotels and onboard cruise liners are not usually viral but more often bacterial and caused by failings in food hygiene standards and water treatment.

We often find that serious breaches of food hygiene, especially in the preparation of food, can lead to contamination with bacteria including salmonella, ecoli and campylobacter being the most common causes of sickness.

We have heard stories which include wild birds feeding off buffet counters in restaurants in the Dominican Republic and reheated food being served lukewarm in Egypt. This failure to ensure that food is fit for human consumption is simply unacceptable and makes the tour operator responsible.

Swimming pools and water treatment plants are also common sources of infection and can harbour the cryptosporidium bacteria. Often water supplies become subject to faecal contamination. If an outbreak of sickness is not swiftly contained then the problem rapidly escalates and swimming pools become bacteria breeding grounds with any infected swimmers contaminating the water.

Tour operators claim outbreaks of illness are viral in order to escape their liability to compensate ill customers. This is because viral infections cannot be foreseen or avoided. Bacterial infections however can be prevented by, for example, cooking food thoroughly and ensuring that systems for hygiene control are adequate and procedures are in place to control any spread of infection.





Simpson Millar has extensive experience of assisting individuals and groups of holidaymakers who have suffered from illness abroad, particularly in countries such as the Dominican Republic and Egypt where sanitation and general health standards are not as high as we enjoy here in the UK.

If you have been affected by an illness at your hotel or onboard your cruise-ship then please contact us for free advice. Our Holiday Illness Solicitors offer a 'no win, no fee' service and guarantee that you will receive 100% of any compensation awarded. We will also give you £250 cash within 7 days of accepting your claim as a thank you for instructing Simpson Millar.

## Your Rights

- If your holiday was supplied as a 'package' holiday then your tour operator is legally obliged to ensure that your holiday is performed to a satisfactory standard.
- Should you have an accident that was not your fault or suffer from an illness caused by food poisoning or poor hygiene standards then your tour operator is responsible.
- In English law the Package Travel Regulations 1992 provide the consumer with legal rights and impose obligations on tour operators.
- The Regulations clearly state that the tour operator is responsible for the proper performance of the holiday contract whether or not the services that form the holiday are supplied by the tour operator, its suppliers or its subcontractors.

Therefore, if a holidaymaker contracts food poisoning at a hotel, or suffers an accident the tour operator is still responsible.

- Any claim for compensation can be pursued directly against the tour operator in the courts of England and Wales under English law.
- The law of England and Wales allows a person 3 years to claim compensation for personal injury or in the case of children three years from the date that the child attains the age of 18.

If you have had an accident that was not your fault or suffered from an illness due to food poisoning or poor hygiene standards whilst on holiday then contact our Holiday claims department for free advice on telephone number 0808 129 3320 or email your enquiry to [lisa.sheldon@simpsonmillar.co.uk](mailto:lisa.sheldon@simpsonmillar.co.uk)



# Our comment on Whiplash

By Jo Milne,

Road Traffic Accident Department

Whiplash is best described as a straining or stretching injury, sustained to the spine from a sharp or sudden jerking motion. This injury can be caused by various different scenarios including road traffic accidents, roller coasters and contact sports.

A road traffic accident where a vehicle has been hit in the rear can result in a typical whiplash injury, caused by the sudden deceleration of the vehicle which leads to the occupant/s suffering a backwards then forwards motion of the head, causing strain and stretching to the neck muscles.

Similarly, although not as well known is that whiplash injuries can be caused in a road accident wherever the vehicle is hit, because even a sideways motion can cause occupant movement and a resulting strain on the neck and / or back.

The nature of whiplash is that it has a slow presentation in most cases, therefore symptoms will usually be worse in the 24-48 hours after rather than immediately after an incident.

Pain and stiffness after long periods of non-movement are common, such as upon waking in the morning. Also raising the head and/or arms will cause discomfort and the patient is unlikely to be able to undertake any heavy lifting or manual work for a period. However, sufferers of whiplash are advised by medical practitioners to continue movement to a usual degree if possible whilst taking care with any heavy duties, because avoiding movement will cause an increase in immobility as the muscles cramp and stiffen.

Whiplash can be treated with painkillers and anti-inflammatories which help to reduce swelling. Additionally ice packs or heat packs may also help.

In more extreme cases where whiplash does not resolve naturally or with the above treatment within a reasonable time, manipulation such as physiotherapy treatment can help. Physiotherapy is not effective in all cases and some patients may find that they are more suited to chiropractic or osteopathic treatment, the difference mainly being that chiropractic treatment is usually focussed on the neck, shoulders and back and involves significant manipulation, whereas osteopathic treatment comprises more of a whole body manipulation which tends to be more gentle.



The common symptoms of whiplash include:

- neck pain and stiffness, particularly upon waking in the morning
- neck swelling
- tenderness along the back of the neck
- a reduction in or loss of movement in the neck
- headaches

Other symptoms of whiplash can include:

- lower back pain
- pain, numbness or pins and needles in the arms and hands
- muscle spasms
- dizziness
- tiredness
- difficulty swallowing
- blurred vision
- vertigo (the sensation that you are moving or spinning)
- tinnitus (ringing in the ears)
- memory loss
- poor concentration
- irritability



## Why make a claim?

According to the Association of British Insurers (ABI) the number of people with cause to make a whiplash claim has increased by 25% over the last five years and leads to nearly £2billion per year in compensation payments. However, the so-called “compensation culture” has produced a great deal of negative feeling about whiplash injuries. The vast majority of claimants enter the process in an apprehensive and tentative manner, and it is central to the solicitor’s role to reassure a claimant that their claim is a valid one, and that they are justified in pursuing damages.

If you have been in an accident and think you may have suffered whiplash, even if your suffering did not continue for a long period of time, you are still entitled to make a claim. Compensation is not just about getting money which you are entitled to, but also about putting you back in the position you were in before an accident, and feeling like you have been given something in return for the suffering and inconvenience you have sustained. Claimants have a range of needs and requirements and Simpson Millar aim to provide a comprehensive and flexible service to all.



## Proposed change to the Animal Act may leave victims unable to claim.

**The government wishes to amend the Animals Act in order to protect keepers of animals who have taken all reasonable precautions to prevent their animals from causing harm. Although this may be good news for animal owners, it could adversely affect the claims of victims who have (responsible for the damage or loss regardless of fault) been attacked.**

Currently owners of animals which are 'of a dangerous species' are strictly liable for their actions, and any injury that may result from an animal's actions. The government wishes to amend the Act to clarify its application to the keepers of animals which are 'of a non dangerous species' such as horses and dogs. Conflicting case decisions, and disagreement as to how the Act should be interpreted, since the Animals Act was passed has been the reason for this proposed change.

It is being put forward that re-wording of the act should refer to an animal's 'conditional' or 'unusual' characteristics. Unusual characteristics are those that are not shared by the species generally. The owner of the animal would automatically be at fault in cases where an unusual characteristic was the cause of the damage or injury and the owner of the animal must have known of the characteristic in the animal.

Conditional characteristics are those that are shared by a species. For example an animal may be aggressive when protecting its young. If an owner can show that when the incident took place there was no reason to expect that the particular circumstances that provoked the conditional characteristics would arise, they will not be at fault.

The government believes that the law relating to non dangerous animals will be easier to understand and apply. Currently Judges interpret and apply the Animals Act differently. This way the it will be easier for victims of animal attacks to anticipate the outcome of any court action.

However the implications for victims could mean that many are unsure as to whether they will be able to bring about a claim for compensation. It can be argued that strict liability should apply in all cases involving harm or injury by animals. Such a system exists in France where animal keepers are expected to take out insurance to cover the actions of their animals. This promotes greater responsibility for the animal and its welfare.

Currently the ability to pursue a successful case depends upon whether they can show any fault on the keeper of the animal in negligence or that they can show that the circumstances that caused the injury fell within the scope of strict liability in the Animals Act. The proposed amendment means that some people may not be able to claim who can currently do so.



Conditional characteristics are defined as those that are shared by the same species but only in particular circumstances. The danger is that 'particular circumstances' is not defined in the bill and it would be for the courts to decide what constitutes them in the light of the details of cases brought before them. Again there is scope for Judges to differently interpret 'particular circumstances' and provide conflicting case decisions which will not simplify or clarify matters to assist victims of animal attacks in claims for compensation.

The government does not believe that strict liability should apply in cases where damage has been caused by non dangerous animals which are not known to possess dangerous characteristics.

A number of people will be adversely affected by the proposed changes as they may not be able to claim compensation for injuries sustained in genuine accidents where no fault or liability is involved and where there is no alternative route to compensation through insurance or litigation. If the proposed changes to the law are successful they are likely to come into force from the 1st October 2009. The Act applies in England and Wales only.

If you or someone you know, has been injured by an animal and is not at fault you may have a claim. Call 0808 129 3320 today.

# Simpson Millar establishes Company Commercial Law Department: SM Commercial

Simpson Millar LLP has launched its Company Commercial Department by welcoming partners Philip Downing, Deborah Powell and Steve Esmond to its Leeds office.

Philip has joined the firm as a Company Commercial Partner after spending eight years with Leeds firm Brooke North. He has experience in all aspects of non-contentious private company matters.

As a Commercial Property Partner, Deborah has joined Simpson Millar from Eversheds in Leeds where she was a Real Estate partner and deals with all aspects of commercial property work.

Steve is an experienced employment lawyer having previously worked for Hammonds in Leeds and Shoosmiths in Nottingham, and joins the firm as an Employment Partner. Steve deals with the full range of employment law issues.

Simpson Millar's Managing Partner Peter Watson said of their appointment:

**"This is a significant move for us – to welcome three people with such extensive experience from large corporate firms is a testament to our commitment to expand the practice and build our client base.**

"Although a solid infrastructure is crucial to delivering consistently good and competitive legal services, this is still a people business and right now there are a lot of good lawyers out there looking for somewhere to make their mark.

"As many firms continue to cut back, we maintain an ongoing investment in the practice – building on our reputation as a forward-thinking national firm with opportunities for people and quality legal services for clients that provide value for money."

About the decision to join the firm and plans for the future, Deborah said:

"I am very confident about what we can offer to the firm's existing clients, but particularly important is our offering to companies that want quality legal services but without a hefty price tag. As a team, we have the experience and the expertise to offer top quality legal advice on a wide range of commercial, property, corporate and employment matters, but at a very competitive price."



L-R Deborah Powell, Phil Downing, Steve Esmond.

**At the end of June Simpson Millar hosted its very first corporate race day at Doncaster racecourse as a thank you to its most valued clients. The day was a great success and gave the firm an opportunity to further build the strong relationships it has with its long-standing clients; including the Communication Workers' Union (CWU) who Simpson Millar have been providing legal services to for over 75 years.**

Simpson Millar invited 100 guests to the event who had the chance to watch races such as 'The Simpson Millar family Law Service Maiden Stakes' and 'The Simpson Millar Sound Investment Advice Novice Stakes'. The firm also named one race in support of the CWU's current campaign against the government's proposal to privatise the Royal Mail; the 'Keep the Post Public Handicap Stakes'.

Managing Partner Peter Watson said: "It was a great day and a great opportunity to bring some of our most loyal clients together. As a firm we recognise the importance of attracting new business but also know that it is vital to look after those we already have on board.

A great day was had by all – even by those who didn't manage to back a winner! It was also a great opportunity for our three newly appointed partners to meet staff from other offices. As the firm grows we hope to attract many more loyal clients giving us the excuse to have many more events such as this one."

**Your company, organisation or union could benefit from the legal services provided by Simpson Millar. Visit [www.simpsonmillar.co.uk](http://www.simpsonmillar.co.uk) or call 0844 858 3200 to find out how.**



**A day at the races**

# Compensation to injured patients rises by 18 per cent

Statistics recently released claim that deaths arising from negligence within the medical profession have risen 60% over the last 2 years. Critics claim that NHS care has suffered as medical staff are pressurised to hit targets aimed at reducing waiting times. **Janet Johnson**, partner in the Clinical Negligence department at Simpson Millar says “If you are unhappy with the treatment that you or others have received from a hospital, doctor, dentist or any other NHS service, then you can make a complaint about it. The NHS Complaints Procedure will not be used for instigating disciplinary action against any member of staff although this could be the result of the complaint. Making a complaint may provide explanations for you and highlight problem areas for the organisation. Complaining about your medical treatment will not affect your entitlement to future care.”

## The NHS complaints procedure has two stages:

### 1. Local Resolution

- You tell the people responsible for the service that you wish to make a complaint. You have six months from the date of the incident to make a complaint. This can be extended if there are good reasons; however this is at the discretion of the healthcare provider.
- **Who should you complain to?** For GP's, dentists, opticians and health centre workers, this is the Practice Manager. If you wish to complain about a hospital or ambulance service then contact the Complaints Manager or Chief Executive of the Trust. You can make your complaint by letter or in person. Unfortunately there are no limits on how long the Healthcare provider can take to deal with the complaint.
- Your complaint will be investigated and then there may be a meeting. Once the investigation is finished you will receive a letter containing the summary of your complaint, what the investigation found and details of the next stage.
- If you remain unhappy with the reply from the Complaints Manager then you could take your complaint to the Parliamentary and Health Service Ombudsman.

### 2. The Health Service Ombudsman

- If your complaint could not be resolved during Local Resolution or you are unhappy with your response, you have the right to appeal to the Health Service Ombudsman. The Ombudsman is independent of the NHS and the Government.
- You must submit your complaint to the Ombudsman no later than 12 months after the date of the event you are complaining about. A member of the Ombudsman's staff will assess your case and review all the documentation involved. This investigation may last for months. A detailed report will be sent to all the parties involved and the Secretary of State for Health.
- If you remain unhappy with the Ombudsman's conclusion you may ask them to review your concerns again. This will not be an in-depth review. There is no appeal after the second review and then the NHS procedure has come to an end.



## PRIVATE TREATMENT

There are no rules relating to complaints within the private sector. They are usually dealt with in accordance with the in-house complaints system of the organisation.

If you are unhappy with private treatment you should complain directly to the healthcare professional or hospital either verbally or in writing to the person responsible for managing complaints.

There are organisations that can help you make a complaint:

### **The Patient Advice and Liaison Service (PALS)**

Nearly all Trusts have a PALS department. They provide information, advice and support to patients and their families. They can also help to raise your concerns informally. More details at [www.pals.nhs.uk](http://www.pals.nhs.uk).

### **Independent Complaints Advocacy Service (ICAS)**

ICAS is independent of the NHS and is available all over England. They can help you to write letters; prepare you for and support you at meetings; explain the options available to you and contact any necessary third parties for you.

If you have you have a complaint against a medical practitioner you may be entitled to make claim. For a free consultation please call 0808 129 3320

## Simpson Millar sends staff on humanitarian convoy

This September, two employees from Simpson Millar LLP will travel nearly 4,000 miles delivering aid to include toys, clothes and equipment to help thousands of abandoned children by taking part in an aid convoy to Bulgaria. After last year's successful convoy, whereby £250,000 worth of relief was taken to local orphanages and care homes, this mission is aiming to take as much as their ten trucks will hold. This year the firm is waving off first timer Sean Innes, and a more experienced convoy driver Amanda Davis, who has already travelled with convoys to Moldova and Ukraine.

Amanda, who lives in Surrey and Sean from York are following in the footsteps of Simpson Millar's managing partner Peter Watson, who took part last year. Sean and Amanda will be part of the 20-person convoy that will provide relief to over-crowded, under funded care homes in Bulgaria.

Organised by the Communication Workers Union Humanitarian Aid (CWUHA) charity, the annual ten-vehicle convoy will deliver goods such as clothing, toiletries, medical equipment and toys directly to Bulgarian orphanages. The vehicles are loaned to the cause for free from Parcelforce, Royal Mail and BT.

Although it is only Sean and Amanda who are making the trip with the convoy, all of the staff at Simpson Millar are getting involved in the fundraising for the charity. Five solicitors took part in the Great Manchester Run in May and raised over £2000 (see picture), Nine more employees took part in the Clumber Park Bike Challenge and cycled 20 miles to raise over £300 to add to the fund and all offices are continuing to donate weekly by taking part in 'casual Friday' and paying to by dress down each week.

### Other Charity News:

A team from the Leeds office took part in Quizaid in support of Christian Aid and raised over £100.

In May, the firm raised over £100 for Headway, a charity providing support for brain injury survivors, families and carers.

Independent financial adviser James Mann was part of a team that raised £20,000 for The Stroke Association by taking part in the Yorkshire 3 Peaks Challenge in June



Warming up for the Great Manchester run

This newsletter contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated in to this material. This newsletter is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice.

Simpson Millar LLP is a limited liability partnership registered in England and Wales: No OC313936.  
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Members of the Law Society's Personal Injury and Clinical Negligence Panels  
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