

Working Together

Issue 5 Spring 2009



**2009
LAW
UPDATE**

NEW YEAR SPECIAL

**Asbestos
Update p2**

**Legal expenses -
Are you covered? p7**

Interest rate cuts p9


**9 in 10 hospitals
failing on hygiene p10**

The Newsletter of  **Simpson Millar** ^{LLP}
Solicitors

Welcome to the first edition of Working Together for 2009! In this issue we give you our annual asbestos update as well as other changes in the law regarding employment and housing.

We hope you are keeping up with your New Year's resolutions and hope we can be of assistance if you have vowed to either write a Will, get your finances in order or finally make that compensation claim you've been putting off.

We aim to continue to improve our services to you throughout this year and maintain our reputation as an ambitious, forward-thinking and competitively priced legal services provider.



From all of us at Simpson Millar; we wish you a prosperous new year.

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ASBESTOS DO NOT CROSS

Asbestos Update

Recent figures released by the Health and Safety Executive show that 6 electricians, 3 plumbers and 6 builders die every week from previous exposure to asbestos. It is estimated that the deadly substance is now responsible for 400 deaths a year.

An increase in asbestos claims has been seen within our own industrial disease department including claims arising from environmental exposure and other non-manual employments. The insurance industry continued to campaign to avoid paying compensation for asbestos victims. For the past 20 years, insurers have paid compensation to victims of pleural plaques. Last year, however, the House of Lords reversed this decision finding in favour of the employers, a decision welcome by insurers who subsequently avoided payouts of around £1.4 billion in compensation.

A test case run between the insurers and employers listed in the High Court on the 31 July after a 9 week hearing. The case known as the “trigger issue” test case concerns a legal challenge that could deprive a number of mesothelioma victims of compensation. The decision will affect not only the ability of asbestos victims and their families to recover compensation, but it could also extend to other forms of occupational disease. The Judgement is now available. This confirms that the insurer who provided cover for the employer at the time of exposure should, meet any judgement and pay the damages. This is now, however, subject to further appeal in the Court of Appeal and is likely to delay payment of compensation once again. As soon as we know the result of the appeal this will be posted on our website.

The battleground for Claimants who pursue claims for damages after diagnosis of an asbestos related decision is likely to remain for the foreseeable future. Anyone diagnosed with an asbestos condition should seek immediate legal advice.

The decision in relation to the pleural plaques compensation is currently under early review by UK Government. In Scotland the Parliament is at a slightly more advanced stage of considering reversing the decision, but neither have reached a decision yet; further information is awaited.

For further information on asbestos claims please contact our free legal helpline on 0808 129 3320 or visit our website www.simpsonmillar.co.uk.

ASBESTOS DO NOT CROSS

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ASBESTOS



Had a trip or slip on the public highway?

Your local highway authority is legally responsible for the maintenance of all the highways in your area. If you are injured as a result of a defective paving slab, or a pot hole in the road or on the pavement and we are able to prove that this was caused by a failure on the part of the highway authority to take reasonable steps to ensure your safety, then you could be entitled to claim compensation.

It is becoming increasingly common for the highway authorities to seek to defend claims against them. If they can show, by way of inspection records, that they have reasonable inspections of maintenance and repair then they are more likely to successfully defend a claim for compensation against them.

It is therefore imperative that you choose a firm of Solicitors, like Simpson Millar LLP, who have a proven track record and strong experience of dealing with claims against highway authorities throughout England and Wales.

Simpson Millar LLP have a team of specialist personal injury solicitors who study such inspection records, with a view of finding weaknesses within their defences and are experts in obtaining compensation as a result of a trip or slip on the public highway on a 'No win, No fee' basis.

Following a trip or slip, you should:-

1. Obtain details of any witnesses to your accident and / or witnesses who are able to comment on how long the defect has been in that particular state.
2. Take clear photographs of the defect, making sure they are taken alongside a ruler so that the height or depth is easily visible and mark on the photograph the direction of travel and the exact point of impact.
3. Take photographs of the surrounding area, showing identifiable landmarks and street names.
4. Report the accident to the local authority responsible.
5. Seek medical advice immediately if you have sustained an injury and report the details of the accident to the hospital / GP to ensure it is recorded.

The above information is essential for the local authority to consider your claim and also crucial for us to prove that the local authority have failed in their legal duty to protect all users of the highway.





Something Old, Something New:

Grievance Procedures, Disciplinary Procedures and The Employment Act 2008



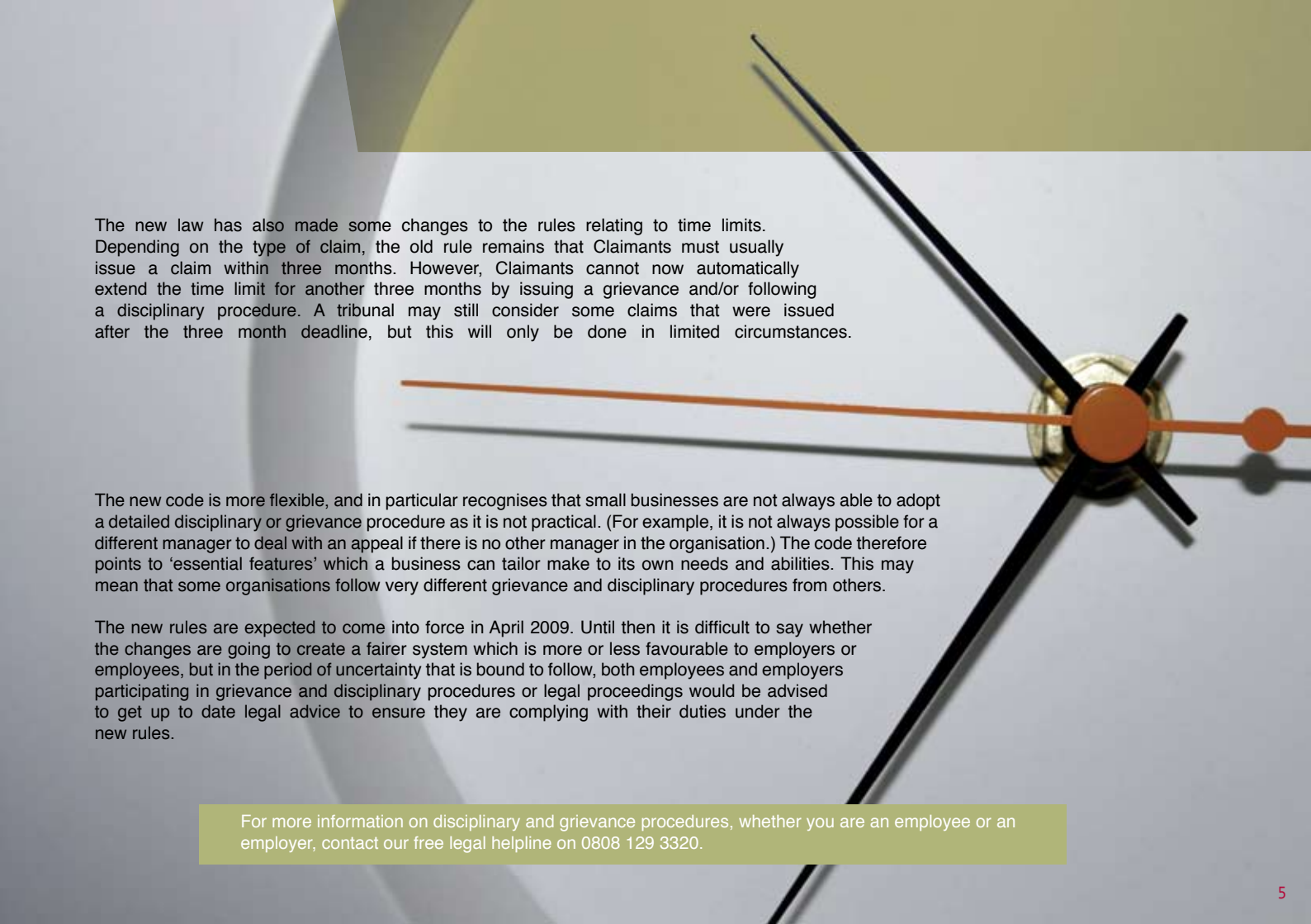
The Employment Act 2008 received Royal Assent on 13 November. Among many other changes, the Act has abolished previous laws relating to disciplinary and grievance procedures.

Under the old rules, almost anything in writing could be a grievance letter. Some have argued that this encourages employees to raise new grievances about disciplinary decisions instead of following the correct procedure and appealing the decision. This means that new grievances are raised within appeals, which can unnecessarily overcomplicate any potential claim that an employee may have. Employers have argued that this is unfair as all grievances (even if they were made by mistake) have to be dealt with in order to avoid an increase of 50% in the compensation given to a Claimant in a Tribunal.

Employees have also been caught out when not raising grievances within the strict time limits set by the old rules, with the result that employees have not been able to issue a claim or have lost large amounts of their compensation.

The new act aims to simplify matters by avoiding a strict procedure for raising grievances. Instead of deciding whether or not a set procedure has been followed, Tribunals will now be allowed to refer to the new ACAS code of practice on discipline and grievance when making decisions, and adjust compensation by up to 25% if it is found that a party unreasonably failed to follow the code.

All eyes are now on the new code to see what employers and employees have to do to avoid being penalised. The new code aims to give practical guidance on how to deal with grievances and disciplinary issues, and some of the guidance is very similar to the original legislation. For example, it is still recommended that (if an employee is not able to resolve a grievance informally), they should raise the grievance in writing with their employer.



The new law has also made some changes to the rules relating to time limits. Depending on the type of claim, the old rule remains that Claimants must usually issue a claim within three months. However, Claimants cannot now automatically extend the time limit for another three months by issuing a grievance and/or following a disciplinary procedure. A tribunal may still consider some claims that were issued after the three month deadline, but this will only be done in limited circumstances.

The new code is more flexible, and in particular recognises that small businesses are not always able to adopt a detailed disciplinary or grievance procedure as it is not practical. (For example, it is not always possible for a different manager to deal with an appeal if there is no other manager in the organisation.) The code therefore points to 'essential features' which a business can tailor make to its own needs and abilities. This may mean that some organisations follow very different grievance and disciplinary procedures from others.

The new rules are expected to come into force in April 2009. Until then it is difficult to say whether the changes are going to create a fairer system which is more or less favourable to employers or employees, but in the period of uncertainty that is bound to follow, both employees and employers participating in grievance and disciplinary procedures or legal proceedings would be advised to get up to date legal advice to ensure they are complying with their duties under the new rules.

For more information on disciplinary and grievance procedures, whether you are an employee or an employer, contact our free legal helpline on 0808 129 3320.

Planning and Energy Act 2008 receives Royal Assent

The Planning and Energy Act 2008 received Royal Assent on 13 November 2008 and is now in effect.

The Planning and Energy Act 2008 will enable local planning authorities in England and Wales to set requirements for energy use and energy efficiency in local plans.

This will give local authorities the power to include policies that impose reasonable requirements for:

- a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development;
- a proportion of energy used in development in their area to be low carbon energy from sources in the locality of the development; and
- development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations

The Act encompassed the “Merton Rule” in Law which is a planning policy which requires commercial developments over a certain size to source at least 10% of their energy from on-site sources of renewable energy ranging from wind turbines and solar panels to heat pumps or biomass systems.

Some developers have expressed concern about this rule in the past and believe the requirements and policies that local authorities have power to impose under the Act must be “reasonable”. The Act does not provide a definitive answer to what is classed as “reasonable” but does state that the policies must not be inconsistent with relevant national policies.

Ultimately, the “Merton Rule” is seen as providing a middle step towards tough new requirements under the building regulations, which will require “zero carbon” domestic buildings from 2016, and commercial buildings from 2019.





Our Comment on... Legal expenses. Are you covered?

Joy Drummond explains why legal expenses cover on insurance policies could be the key to funding a wide range of legal disputes.

Many of you may not be aware of the benefits of having the optional extra cover for legal expenses on your household or motor insurance policies.

Legal expenses insurance (also known as Legal Protection insurance) can protect you and provide you with the funds to cover the costs of employing a solicitor to act on your behalf.

For example, what if you were in dispute with your employer concerning unfair or wrongful dismissal; discrimination; redundancy; pensions; equal pay; harassment or victimisation?

Your insurance policy could provide the answer to all your worries about adequate representation and advice.

Legal expenses cover is usually sold as an add-on to household or motor insurance policies and covers the consequences of events that have not yet occurred eg employment disputes or other litigious circumstances, for example boundary disputes.



Do you have legal expenses insurance cover?

If you have a problem and you think you may need legal help we advise you to find out what insurance cover you have and details of how to make a claim on that insurance policy.

Alternatively download the appropriate form from our website and return it to us, we will make the necessary enquiries for you free of charge.

Please note that as well as contacting us your insurance company will probably require that you use their legal helpline and take their advice.

If it becomes necessary to lodge a claim you have the right to select an independent solicitor of your choice to act on your behalf rather than a solicitor from the insurance company's own panel, if you so wish.

Carbon Monoxide

As winter and spring bite hard we are all firing up our heating systems to warm up those long dark nights. Now is therefore a good time to think about carbon monoxide.

Most people know that carbon monoxide is a dangerous gas. However too many people still do not treat it seriously enough. Estimates of the number of people who are killed by carbon monoxide poisoning as a result of faulty heating appliances each year varies between 20 and 50. Many more people suffer the effects of breathing in non-fatal amounts of carbon monoxide.

Carbon monoxide is produced as a result of burning 'fossil fuels' such as gas, oil, wood or coal. If heating appliances are working properly then they should be perfectly safe. If for some reason they are not burning the fuel properly or there is a blockage, then carbon monoxide may be produced and leak into your home or workplace.

One of the reasons why carbon monoxide is so dangerous is that it is very hard to detect. You cannot see it, smell it or taste it. Often the first someone knows about being affected by carbon monoxide poisoning is when they feel the symptoms it causes.

It is a mistake to think that it is only gas appliances that can give off carbon monoxide fumes. Any fossil fuel can emit carbon monoxide if it is not burnt safely. At Simpson Millar, for example, we have dealt with a number of cases involving wood burning fires with blocked flues.

What should you do to protect yourself from carbon monoxide?

The most important message is to ensure that you have heating appliances serviced regularly – at least once a year - and that you fit a good carbon monoxide detector. If you are in rented accommodation then your landlord (whether it is a local council, housing association or a private landlord) has a duty to service gas appliances every year. Tenants are also entitled to ask for and receive a copy of a gas safety certificate for their home.

There are many websites which provide more information about avoiding the dangers of carbon monoxide poisoning. Visit the Simpson Millar website for more information at www.simpsonmillar.co.uk where there are also links to other organisations.



If you or someone you know has suffered the effects of carbon monoxide poisoning you may be able to claim compensation. Contact **Bryan Nott** on 0844 858 3500 to find out more.



Our Comment on...Interest Rate Cuts

Britain is in the midst of an economic downturn, businesses are struggling to get bank loans, mortgage lending has slowed, and recent figures show a rise in unemployment and a fall in consumer confidence.

Over the last couple of months we have seen the government intervene to try and prevent Britain from falling further into recession by using interest rate and VAT cuts to stimulate the economy.

Interest Rate Cuts

The Bank of England has recently cut interest rates to 1.5% in an attempt to prevent the downturn deepening.

The Government is putting pressure on Banks and Building Societies to pass on rate cuts to their mortgage customers.

For anyone with a variable rate mortgage this could mean significant savings on mortgage repayments. Taking into consideration all rate cuts over the last year it is estimated that on a typical £100,000 repayment mortgage the monthly repayments have dropped from £650 to £450, this of course depends upon the mortgage lenders in question and the term of the loan.

This may not help existing mortgage customers with tracker products. Some lenders have a floor clause which means that if the interest rates fall below a certain level, the cut is not passed on.

Customers on a fixed rate deal will not benefit from the rate cuts during the initial fixed period.

There is also concern for savers, as they will see a cut in the interest rates paid to them on their savings.

Price & VAT Cuts

Many retailers have tried to combat the fall in consumer confidence by cutting prices dramatically to attract customers.

In another attempt to encourage spending the Government has reduced VAT from 17.5% to 15%. Many analysts believe that this reduction will have an insignificant effect on spending whilst the economy is struggling and unemployment is rising, as consumers are being prudent with their money.

It is feared that we are heading for a much deeper downturn than was originally envisaged, and only time will tell whether the Government intervention will provide any relief.



Health Care Trusts Still Failing to achieve Government Hygiene Standards

46 of the 51 health care trusts have failed to meet the standards set by the Government a new review has recently reported.

Last year alone, 9,500 people died of hospital acquired infections.

What are the main culprits?

The 2 main 'superbugs' are MRSA (Methicillin-Resistant Staphylococcus Aureus) and 'C. diff' (Clostridium difficile). These infections were responsible for 8,000 deaths in England & Wales in 2006; an increase of 2,700 from 2005.

C. diff is a species of bacteria which naturally reside in the body. The problem starts when they become overgrown: The overgrowth is harmful because the bacterium releases toxins that can cause bloating, constipation and diarrhoea with abdominal pain, which may become severe. Symptoms can also mimic flu.

18,000 people have died from C-diff in the past 10 years. Over 1,100 hospitals, hospices and nursing homes had at least 1 death from C diff in the last 5 years.

C. diff is particularly difficult to deal with because it is airborne and it forms spores which can survive for a long time in the environment such as on floors and around toilets.

MRSA is a naturally occurring common bacteria that most people carry in their throats. 17 different strains have already been uncovered. MRSA infections cover a broad range of symptoms depending upon the body part infected – resulting in swelling and tenderness over the infected site. MRSA was responsible for 1,625 deaths in 2006.

The reason why hospitals are such hotbeds of infection are that so many different strains are being thrown together, that the population in hospitals tends to be weaker (and older) than the general population and there are a great many people living in close quarters.



Over 1,100 hospitals, hospices and nursing homes had at least 1 death from C diff in the last 5 years

Doctors are now reducing their reliance on antibiotics

What can be done?

Until recently, patients going to see their doctor with a bacterial infection would be prescribed antibiotics. It is now known that many infections are becoming increasingly resistant to antibiotics and doctors are now reducing their reliance on them.

If you *are* given antibiotics, it is still important you finish the prescription. If you don't then you won't kill all of the bacteria and those that remain are those that are most resistant to antibiotics both then and in the future.

In hospitals, washing hands between patients is a must. Rigorous cleaning with warm water and detergent is the most effective means of removing spores from the contaminated environment and hands. It is disputed by trusts that dirty wards as opposed to dirty hands are responsible for the spread.

The future

New superbugs are developing. VRSA (Vancomycin Resistant Staphylococcus Aureus) has acquired resistance to the drug previously considered to be the last line of defence. PVL MRSA (Panton-Valentine Leukocidin) has now appeared in the UK and it is particularly powerful.

Some experts have tried to argue that MRSA and other drug resistant superbugs are in decline due to better infection control. Others say that it will take a breakthrough like the discovery of penicillin before we regain the upper hand over these superbugs.



If you, or anyone you know, has been a victim of a hospital superbug and would like to get some legal advice contact Simpson Millar LLP free on 0808 129 3320 or visit the website at www.simpsonmillar.co.uk.

Simpson Millar expands into the North East



Simpson Millar LLP has acquired North East firm Peter Maughan & Co expanding the firm's presence in to the North East. Peter Maughan himself will continue his ongoing work as a Partner with Simpson Millar and brings with him all members of staff.

Simpson Millar's managing partner, **Peter Watson**, said:

"We have been looking to expand into the North East for a while so as to offer a better service to our existing clients in the region and fill a geographical gap in our national coverage. There are plans to expand further in the North East through recruitment and relocation of other members of staff.

"We welcome Peter Maughan into the Partnership. He is well respected by both his clients and his peers and is, with his long-standing reputation and network in the region, an asset in himself."

Peter Maughan has been practicing law for over 30 years and regularly lectures in the region's universities. He specialises in clinical negligence but has wide ranging experience in other areas. He said:

"I am very excited about the prospects of developing our presence in the region under the Simpson Millar brand. It was extremely important for me to make a deal with a reputable, honest and Lexcel accredited firm, but also one which is ambitious and forward thinking."

The deal is part of an ongoing expansion strategy in terms of widening the firm's geographical cover and growing its market share in existing regions and sectors.

Charity News

Alexandra Newman, Simpson Millar's office manager in Manchester, took part in a 10K run for Cancer Research at the end of last year and raised a total of £230 for the charity

For Christmas 2008, two of our offices took part in the NSPCC Christmas card appeal and raised £100 by donating to charity instead of distributing Christmas cards.

Simpson Millar staff raised over £130 for Children in Need's 2008 appeal.

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.

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