



BETTER CONNECTED

We are delighted to announce that we are now one of 19 'hub' firms across the UK running Connect2Law, a referrals and support network for law firms.

As you can imagine, this is a high accolade, and only law firms recognised nationally as reputable and well respected by the rest of the legal sector are even considered. This is a testament to the consistently high standard of service that Stanley Tee maintains across all practice areas, and something of which as a firm we are understandably very proud.

The scheme was set up seven years ago by Pannone LLP in the North West and there are now more than 1,500 members nationally. We operate the hub in this region and are pleased to see our membership continue to grow.

One of the benefits of membership of Connect2Law for law firms is the ability to access and utilise CostController, which we can also offer to our commercial clients.

CostController offers you the chance to add your own buying power to that of several hundred other businesses, to achieve preferential prices in almost all areas of overhead expenditure. The service has been operating for over five years and on average can help businesses achieve direct savings in excess of 20% in areas such as print, IT, office supplies, telecoms, utilities, postage and mobiles, to name but a few.

For more information please contact Catherine Mowat on 01223 702304 or Sally Irving on 01279 710654.

BETTER CONNECTED

Stanley Tee joins the referrals and support network

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PUTTING RIGHT A WRONG DIAGNOSIS



Making medical negligence claims

Few of us would question a doctor's diagnosis of our ills, or would be competent to do so, yet research shows that the incidence of misdiagnosis in the NHS is higher than patients – or even doctors – might expect. For example, the Medical Protection Society reports that misdiagnosis is a factor in two-thirds of complaints against GPs (see below).

How does it happen?

In some circumstances, the error may be unavoidable. Diagnosis is not an exact science. There are a number of illnesses where symptoms are very similar, especially in the early stages, so it is not always possible to make a diagnosis immediately.

Nonetheless, there are many circumstances where the diagnostic error is avoidable. The vast majority of health professionals are highly dedicated and well intentioned. Even so, doctors and nurses are only human and mistakes will occasionally occur. In reality, lack of training and systemic failures (such as poor communication) account for many errors.

What action can patients take?

Many cases handled by Tee Lorimers' medical negligence team involve misdiagnosis or an unacceptable delay in making a diagnosis. Some patients would be perfectly satisfied with a simple explanation and an apology from the hospital or doctor concerned. Others, however, want compensation.

The fact that there may have been a diagnostic error does not automatically entitle the patient to compensation. Under the English legal system, compensation is only paid where the patient can prove that they have been injured because the treatment provided was so poor that no reasonable doctor would have treated them in that way.

Lodging a complaint

There are, however, other courses of action open to the patient, for example, lodging a complaint under the NHS complaints procedure, or, where the health professional has been guilty of professional misconduct, it may be possible to complain to their professional or regulatory body.

Tee Lorimers' casework often provides patients with the answers that they have struggled to obtain. Where there is a case, we work to ensure the patient receives proper compensation and, if appropriate, the care, rehabilitation and support they need.

Compensation, care and support

We provide a complete service, advising on Court of Protection matters, appointing dedicated care managers, assisting with accommodation and advising on personal injury trusts and other investment options.

Tee Lorimers Solicitors has an experienced medical negligence team, and is listed in

Legal 500 as one of the leading medical negligence firms in East Anglia. All clinical negligence solicitors belong to APIL (Association of Personal Injury Lawyers) and a number are also on the referral panel for AvMA (Action against Medical Accidents) and Headway (the brain injury association). The firm has also been approved as a provider of legal services by CBIT (the Child Brain Injury Trust).



Public funding

The firm holds a Legal Services Commission Franchise which enables it to pursue medical negligence claims with the benefit of public funding (formerly known as Legal Aid). In appropriate medical negligence cases, the firm also offers conditional fee agreements (no win, no fee) and can use a designated after-the-event insurance scheme.

Diagnostic errors – the facts

A recent American review about diagnostic error in developed countries suggested that up to 15% of all cases could be misdiagnosed. On the back of this article, the British press reported that as many as one in six or seven NHS patients are misdiagnosed.

Last year, the Healthcare Commission identified that diagnostic error was a significant source of complaints to the NHS. Of more than 9,000 complaints analysed, almost 10% related to a delay in diagnosis or the wrong diagnosis being made.

The charity Action against Medical Accidents (AvMA) has reported that it receives approximately 4,000 enquiries every year, and that of those involving primary care, approximately 50% involve diagnostic error.

The Medical Protection Society has confirmed that misdiagnosis is a factor in two-thirds of complaints against GPs.

Notwithstanding these anecdotal statistics, as there is no mandatory reporting of missed diagnoses the true scale cannot be known.



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ISA ALLOWANCE INCREASE GOOD NEWS FOR SAVERS AND INVESTORS

Following Alistair Darling's announcement in the spring 2009 Budget, the annual ISA (individual savings account) allowance was increased from £7,200 to £10,200. Individuals over the age of 50 were able to top up their ISA by £3,000 from 6th October last year, providing some relief for pensioners who have seen their incomes reduced by falling interest rates and who often rely on ISAs to supplement their pension income. For those aged 18 to 49 the new ISA allowance comes into effect from 6th April 2010.

A stocks and shares ISA is essentially a tax protected wrapper within which you can hold a range of non-cash assets including unit trusts, investment trusts and open-ended investment companies (OEICs), individual shares, exchange traded funds (ETFs), bonds and gilts (including index-linked) with at least five years to maturity.

Profits from shares held in an ISA are not subject to capital gains tax, which means any capital growth on investment is completely tax free. There are some further tax savings on income, as the income on interest-bearing investments such as gilts, bonds and some ETFs is paid gross, with no further tax to pay whatever tax band the investor falls into. ISAs make particular sense to higher-rate taxpayers who gain from holding dividend-producing shares in an ISA, as they pay tax at 10% rather than the 32.5% which is payable on non-ISA investments. It is also not necessary to declare ISA income on your tax return.

It is sensible to use as much of the annual allowance as possible, as investors are unable to accumulate it and carry it over into the next tax year. For investors who have made full use of their ISA allowance every year since their launch in 1999, they could have sheltered £77,400 from the taxman before the inclusion of income and capital growth.

Following this move by the Chancellor to help investors make more of their money, informed investors are taking advantage of the potential long-term returns from investments in a tax privileged wrapper. In this historically low interest rate environment it is certainly worth considering taking advantage of all of your tax allowances.

Tee Financial plc is an authorised stocks and shares ISA manager. If you wish us to construct an ISA for you, we will first assess your requirements, attitude to risk and ascertain your other investments, and then construct a portfolio within our ISA wrapper accordingly. Please note that this is not simply 'another fund' and no two clients will have the same ISA – it is a unique selection of investments to match your own personal requirements.



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FOR RICHER, FOR POORER?

Meeting maintenance payments in reduced circumstances

Married couples contract to stick together through the good and lean times, and share their fortunes – or financial reversals. But do the same rules apply to divorced or separated couples (and their families) where maintenance is paid and received?

In these straitened times, many find that they can no longer meet their obligation to pay maintenance at the level set by the original court order, or in the case of the recipient, can no longer make ends meet on the maintenance received.

To simply inform your ex-spouse that your circumstances have changed and you can't keep to your existing arrangement is not, unfortunately, enough, however reasonable your case may be. You will need to make formal application to vary your maintenance order, otherwise you could find yourself in arrears and in breach of the court order.

Below we set out some of the legal options open to those paying or receiving maintenance including child support and 'spousal' maintenance.

How do I apply for a reduction in maintenance payments?

Early legal advice must be sought with a view to negotiating a reduced maintenance figure with your ex-spouse and their advisor if you can no longer afford to meet an existing obligation. If agreement is reached, the court should record this and this reduced figure will be your obligation from now on.

If a timely application is made to reduce maintenance payments, the court can sometimes 'remit' (extinguish) arrears – but this is not guaranteed.

Alternatively if no timely agreement looks likely, then bringing a 'variation application' back to the court which made the original order is the only option. Failure to pay the maintenance or to apply to vary (ie doing nothing) will result in a mounting arrears situation, which could result in enforcement action being taken by your spouse (see below).

In all cases where a variation of maintenance is sought, the court will require both ex-spouses to produce evidence to support their financial position, and in the case of the payer the evidence will have to show that there has been a significant reduction in income that justifies

the maintenance being reduced or, in some cases, even terminated. By the same token, if the recipient's fortunes happen to have improved (new, better-paid employment, inheritance being received) this may well persuade a court to reduce or perhaps even to terminate maintenance.

With maintenance provision for children, if the court order was made more than one year ago (but made post March 2003), then you have a choice to abandon the court order and apply to the Child Support Agency/Child Maintenance Enforcement Commission for an assessment. Broadly speaking, the CSA currently bases the maintenance calculation on a set percentage of the payer's net income (1 child = 15%, 2 children = 20% and 3 children or more = 25%), although some discount is applied if the payer has other children (perhaps stepchildren) living in their home – or also if the payer's children regularly stay overnight in the payer's home. The assessment does not take into account the income or income needs of the recipient – it is a set tariff.

If considering the CSA route, you should take expert legal advice as to whether the assessment is likely to result in a lower amount being paid. Also note with caution that once the CSA takes over the child

support assessment, they will deal with it from then onwards – applying their percentage formula, even in times of plenty – which could include awarding a percentage share of cash bonuses.

What will affect the court's decision?

Recent case-law shows that the court's primary concern in most cases (except 'big-money/substantial asset' cases) is, purely and simply, the need of the recipient. To echo the words of Lord Justice Thorpe in the 2008 case of *North v North*, "in any application under s.31 the applicant's needs are likely to be the dominant or magnetic factor. But it does not follow that the respondent is inevitably responsible financially for any established needs."

In big money cases, there is good, recent authority to state that on maintenance variation applications, courts shall not limit the recipient to budget and that the recipient can receive a surplus over needs (cases of *Cornick (No.2)* [1995] 2 FLR 490 2 FLR and *Lauder* [2007] 2 FLR 802).

The reality is, in most cases, needs will need to be looked at flexibly, which means that a payer will not be required to 'prop up' bad investments or bad financial decisions made by the recipient of maintenance since the original order was made.

Aside from need the court will look at:

Whether it might be possible for the recipient's maintenance claims to be 'capitalised', thereby providing her/him with a lump sum and thereafter putting a 'clean-break' into effect so there can be no future claims.

The scenario where the payer simply has no obvious income at all from which to pay the maintenance – and yet the recipient has a very clear and established need. In such circumstances, the court is not likely to let the payer off the hook and is more likely to substitute a 'nominal' order of say £1 per year until the payer is in better financial health, when the maintenance can be varied upwards again.

How can I claim back arrears?

Where maintenance has dried up, how best to enforce and get funds flowing again can be tricky as there are various different options which are wide ranging in their effects.

Registration in a Magistrates Court

A cheap way is to register the maintenance order with the Magistrates Court. The magistrates will then take over the chasing and enforcement of your maintenance order. The payer will from then on have to make the payments to the Magistrates Court, which basically acts as an administrative collection centre. If there are arrears (unpaid maintenance), you need to provide a summary to the court as to how much. The magistrates will then summon the payer to court to explain why they have failed to pay.

Attachment of earnings

If the payer is employed, a simple application form can be completed to apply to the County Court in which the maintenance order was made, requesting the court to begin to deduct maintenance payments from earnings. There is a court fee payable of about £65. Details need to be given as to the identity of the payer's employer and any other significant details, including the level of arrears. Care must be taken to make a timely application, as the court may disallow claims for arrears which are over 12 months old.

Third party debt order

This enables the court to freeze a specific bank account held by the payer and is done without notice initially to the payer – but the bank or building society with whom the account is held will be served with an order, freezing the account so that the appropriate arrears can be recovered.

Warrant of execution against goods

An application can be made to the County Court for an order requiring court bailiffs to seize personal possessions owned by the

payer to allow these goods to be sold to make up the unpaid maintenance amount.

Once the order is made, a date will be set for the goods to be removed and the payer notified. The payer who is in arrears can make an application to suspend the warrant – but this is only likely to succeed if a proposal to pay the arrears is put in place.

Enforcement applications brought by the recipient will be put on hold by the court if there is a pending application made by the payer to vary the order downwards to await the outcome of the variation application.

For further advice, please contact our family law team.



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TOWARDS A CHILD-FRIENDLY WORKPLACE



New employment law update

Care providers and others who work with children or vulnerable adults will be required to comply with a new Vetting and Barring Scheme introduced by the ISA and Criminal Records Bureau (CRB) in October 2009.

The new scheme follows the formation in 2008 of the Independent Safeguarding Authority (ISA). ISA's purpose is to help prevent unsuitable individuals from working with vulnerable groups which include children and vulnerable adults.

The new scheme introduces stricter controls to determine who cannot work with children or vulnerable adults. The current barring lists will be replaced by two new barring lists controlled by ISA. Checks of these two new lists by employers will need to be made by an Enhanced CRB check rather than the old Standard CRB check. There is a cost of £36 to carry out this Enhanced CRB check as opposed to the fee of £26 for the Standard CRB check.

New employees working with vulnerable adults and children (including volunteers) will also need to apply via the CRB to become ISA registered from 26 July 2010 before employment can begin. There is a fee of £64 to register an individual on the ISA Register.

From November 2010 it will be a legal requirement that new employees or those changing jobs working in regulated activity positions must be ISA registered. An employer will be committing an offence if they fail to check that a prospective employee/volunteer is ISA registered.

To be ISA registered means that no information is known to ISA that demonstrates that the person poses a risk of harm to children or vulnerable adults. The registration status is continually monitored and if new information comes to light (including a relevant caution or conviction or if information from the employer is provided to ISA) then they will reassess the person's potential risk to children and vulnerable adults and will decide whether or not it is appropriate to allow continuing registration.

For existing staff and volunteers, there will be a phased registration programme over five years to become ISA registered beginning in 2011.

As such, employers who are going to be affected by the scheme may need to revise recruitment and employment procedures to ensure that the requirements for the new ISA registration scheme are met.

Things to consider may include:

Who will have responsibility for carrying out the checks and ensuring ongoing compliance?

Who will bear the cost of the application for registration with ISA – the employer or the employee?

What will happen to employees who are unable to obtain registration?

Making offers of employment conditional upon the employee obtaining registration.

Stanley Tee's Employment department can offer further advice and assistance in relation to the new Vetting and Barring Scheme. Please contact Rob Whitaker or Katherine Jameson:

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TRUST TAX THREAT MORE BARK THAN BITE

A proposed hike in trust tax announced in the Budget could prove an empty threat if appropriate action is taken to avoid it.

The figures may look frightening – from 6th April 2010 tax rates for trusts will increase by 10% to 42.5% on dividends and 50% on all other income.*

However, in the right circumstances there is a way for trustees to avoid the increase in income tax whilst still retaining the control over their assets and the income tax advantages that the discretionary trust vehicle provides.

Simply put, the trustees can appoint a revocable life interest to one or several beneficiaries of the trust. These beneficiaries are then entitled to the income of the trust but not the capital. The trustees only pay tax at the lower rates of 10% and 20%. And because the appointment is revocable, it can be changed very simply at any time.

This approach may not be suitable for all trusts, but tax savings can be made by

restructuring investments held by the trust and in reviewing the distribution policy of the trust.

If you are the trustee of a trust with annual income of more than £1,000 you will be paying higher rates of tax from 6th April 2010. If you would like some advice to mitigate this cost, please approach your usual contact in our private client team.

* The situation can be even worse for trusts receiving dividend income, as then there can be an additional tax charge on income distributions of a further 12.5% as a result of shortfall that occurs in the tax pool, resulting in an effective tax rate of 55%

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New staff



Mark Carter

Partner

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Partner in our Commercial Property Department, Mark has experience in Commercial and Residential Property and Landlord and Tenant matters. He enjoys running, cycling, walking and skiing and is a keen football and rugby supporter.



Simon Gummer

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Simon is a Fellow of the Institute of Legal Executives and is the Senior Matrimonial Lawyer at Tee Lorimers having worked previously for Stanley Tee for 22 years. He is a member of Resolution and a trained collaborative Lawyer and Mediator. Outside of the office, Simon, a retired semi professional footballer and radio presenter, enjoys watching football, rugby and cricket. Simon also enjoys listening to music.



Darren Perks

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Darren joined Stanley Tee after relocating from Manchester. Darren deals with all types of Civil and Commercial disputes. He also specialises in Property matters. Darren has represented clients on a number of Human Rights and Public Law actions. In his spare time Darren enjoys walking, travelling and socialising.



New CEO raises sights at Stanley Tee

As with many successful businesses, one of the strengths of Stanley Tee has been the continuity of management excellence and the security of long term succession planning.

The next chapter in our progression is now taking shape, as we welcome Paul Stothard who has been appointed to the role of Chief Executive.

Although Paul formally joins the business on 22nd March, he is currently working with Managing Partner David Redfern in setting the objectives within our continuous programme of growth, development and improvement.

David formally took on the role of Managing Partner 10 years ago, and has helped steer the firm in achieving an impressive three-fold growth in that time, working alongside the last three Senior Partners, Rodney Stock, John Donovan and current incumbent Richard Tee. The business has implemented major innovation and seen a considerable rise in its reputation since the turn of the century.

From 1st June, David Redfern is moving to a joint Senior Partner role with Richard whilst working very closely with Paul on the strategic plans for continued excellence of service and future growth.

Paul is a Fellow of the Institute of Chartered Accountants and brings to the



Chief Executive position considerable experience of law firm management. He has worked in the legal profession for 14 years, having previously been Chief Executive of Townsends (now Thring Townsend Lee & Pembertons) and Shoosmiths, the award winning national firm.

Whilst Paul's financial expertise will be invaluable to Stanley Tee, it is his passion for people development and outstanding client relationships that will be most keenly felt within the firm. Commenting on his move, Paul said "I have been incredibly impressed with the culture of Stanley Tee and the underlying commitment to client service that underpins everything the firm does. I am looking forward to being part of a strong team that will build on the excellent reputation that the firm rightly commands for customer service."

Paul is married with three grown up children and finds time for the (very!) odd round of golf, riding his motorbike and supporting the Diocese of Peterborough through membership of the Bishop's Council and his Reader Ministry.

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