Alexander Harris solicitors
Handling *with care*

the Reporter

Celebrating over a decade of successes and looking forward to the future

Summer Edition 2002

Welcome

to the Summer edition of the Reporter.

I am delighted to tell you of some exciting news, which has helped us to celebrate our 13th anniversary. Alexander Harris has opened an office in the West Midlands and has been joined by high profile claimant lawyer Richard Follis.

Richard, who has joined us from Irwin Mitchell in Birmingham, is regarded as a leading individual by Chambers Legal Directory which cites him as 'high profile' and 'first rate'. He is also highly regarded for the quality of legal work he carries out, and his consistent standard of notable client care. The new office in Solihull will focus primarily on clinical and dental negligence, personal injury and pharmaceutical product liability. Associated with these main areas are those of education and public law, mental health issues and human rights.

This exciting venture will further add to our nationwide presence by providing for the needs of our clients and referral sources in the Midlands. It is a wonderful opportunity, which reflects the growth of our other offices in the North West and Central London. In this our 13th year, we have seen our firm grow from strength to strength and the opening of our Solihull office reflects the growth nation-wide for specialist legal providers.

At Alexander Harris we remain committed to organic and managed growth and as such we are delighted to have appointed four new Associates. Clinical Negligence Solicitor Tim Annett and Personal Injury solicitor Jonathan Betts have been promoted at the firm's Altrincham office and Product Liability solicitors Kim Barrett and Jo Masters at the firms London office.

Both Kim Barrett and Jo Masters are part of the generic legal and science team working on the MMR (Measles Mumps and Rubella) Vaccine litigation, Jonathan Betts who trained with Alexander Harris works in the Personal Injury department for clients who have suffered serious injury in the UK and abroad and Tim Annett is a highly respected Clinical Negligence Lawyer who has been involved in both the Shipman and Richard Neale Inquiry's.

Our new appointments and the opening of our Solihull office present an exciting opportunity that will further enhance our ability to obtain the best results for victims of medical accidents and serious personal injury.

I hope you enjoy reading this edition of the Reporter. Please visit our website at www.alexanderharris.co.uk, for further information and all the latest news.

Code A

Ann Alexander
(Managing Partner)

Air Rage

-a terminal illness?

Over the past couple of years, there have been a number of high profile cases of air rage reported in the media. It would appear to the onlooker that the number of cases of air rage are increasing. Whether this is so or not remains to be seen. However, it is possible that these types of incident are being reported more fully as society becomes far less tolerant of this anti-social and unacceptable behaviour.

We all know that flying can be extremely stressful and coupled with the available alcohol this can fuel people's anxiety and distress. This stress, however, is not just confined to the flight itself. As Jacobs story shows, emotions can run high before even getting on to the plane.

Jacob works in the Customer Services Department at Manchester Airport for a leading International Airline. One of the airline's flights had been delayed whilst the passengers remained on board on the tarmac. Two hours later the flight was eventually cancelled. As a result, many people missed connecting flights at their destination airport, which caused them considerable inconvenience. Inevitably, the airline offered compensation and satisfactory alternative arrangements.

One of the passengers who had already flown to Manchester had unfortunately now missed a connecting flight to South America, as a result of this flight being delayed and then cancelled. Consequently, he wished to be flown back to his home in Scotland and then flown back the following day. The airline offered him quality overnight accommodation, advising that they could not be responsible for two additional flights. This was not acceptable to the passenger who continued to make his demands. Eventually, the Customer Service Desk staff called for their manager Jacob to deal with the situation.

Despite Jacob's attempts to calm the situation the passenger became increasingly frustrated and he punched Jacob on the jaw. This was plainly and simply a common assault occasioning actual bodily harm. Although the Police attended, the passenger only received a Police caution. In this situation an appropriate course of action would have been to charge the passenger with assault, contrary to Section 47 of The Offences Against the Person Act 1861. However the passenger faced no consequences of his actions under criminal law, save for the caution.

Jacob, through his employers, came to Alexander Harris seeking assistance. The purpose of their enquiry was not primarily to obtain compensation. Their primary objective was to attempt to illustrate that this kind of behaviour will not be tolerated by the airline and to attempt to ensure that this kind of incident does not happen to somebody else.

Story continues inside >>

(continued from front page)

Jonathan Betts, a Solicitor in the Personal Injury Department at Alexander Harris pursued the passenger for common law battery. This case has now been successfully concluded whereby Jacob received compensation for the injuries sustained and has also recovered his costs in pursuing the action. The passenger was responsible for payment of these sums personally.

Jacob and his employer hope that this case serves as a sobering illustration of how an inability to control frustration and tempers will not excuse an assault and that if this were to arise again, they would have no hesitation in pursuing the assailant to the full extent of the law.

Jonathan Betts who handled the claim mentions that, "There are ways in which to recover damages against the perpetrator of a criminal assault. This can be through the Civil Courts as in this case, or alternatively, a claim against the Criminal Injuries Compensation Authority (CICA) can be pursued. In this case, Jacob decided he did not want to call upon the state to recompense him for the injuries and instead wished to pursue the assailant personally (who was in a financial position to be able to pay damages)"

"This case acts as an important message to all travellers by making it clear that air rage, whether or not perpetrated in the air, will not be tolerated, and that airlines will support their staff in recovering damages against the assailants."

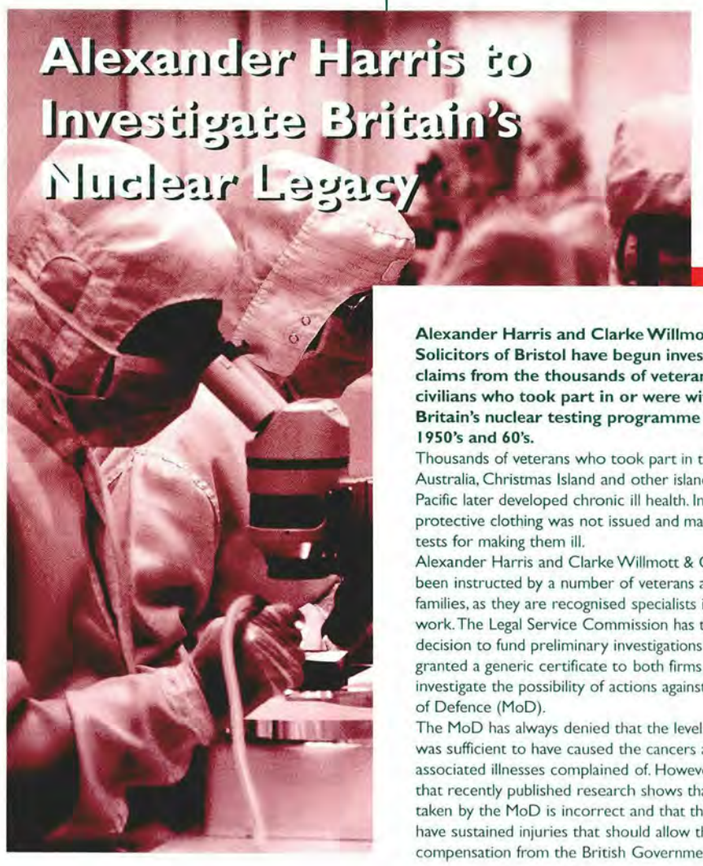
Recent Settlements

Alexandra is now 10 years old and suffers from cerebral palsy due to a delay in her delivery at the Leicester General Hospital. Following complications Alexandra was starved of oxygen during the birth and we believe that a caesarean should have been carried out once difficulties were realised. As a result of the delay and the subsequent starving of oxygen to her brain, Alexandra will be entirely dependant upon carers for all her needs and will never be capable of managing her own affairs. Alexandra's case was successfully settled by Clinical Negligence Associate Sue Taylor for £3.325million.

Janet suffered a head injury when she was knocked to the ground by truck at work. She suffered a fractured skull and although she made a good recovery she lost her sense of taste and smell and continues to suffer from memory problems. Janet's case was successfully settled for £255,000.

Whilst crossing the road as a young boy, Ben was knocked down and suffered a severe brain injury. Sadly, the Judge found that Ben had been 75% responsible for the accident, but never the less Alexander Harris were able to settle the claim for a total of £1.9million.

Phil lost part of the fingers on his dominant hand in a woodcutting accident at work. He went to another firm of solicitors who felt that the case was too risky to run so he consulted the PI team at Alexander Harris who were happy to help. We have just settled Phil's claim for £70,000.



Alexander Harris to Investigate Britain's Nuclear Legacy

Alexander Harris and Clarke Willmott & Clarke Solicitors of Bristol have begun investigating claims from the thousands of veterans and civilians who took part in or were witness to, Britain's nuclear testing programme in the 1950's and 60's.

Thousands of veterans who took part in the tests in Australia, Christmas Island and other islands in the Pacific later developed chronic ill health. In many cases protective clothing was not issued and many blame the tests for making them ill.

Alexander Harris and Clarke Willmott & Clarke have been instructed by a number of veterans and their families, as they are recognised specialists in this type of work. The Legal Service Commission has taken the decision to fund preliminary investigations and has granted a generic certificate to both firms to investigate the possibility of actions against the Ministry of Defence (MoD).

The MoD has always denied that the level of exposure was sufficient to have caused the cancers and associated illnesses complained of. However we believe that recently published research shows that the stance taken by the MoD is incorrect and that the veterans have sustained injuries that should allow them to claim compensation from the British Government

During the cold war years both Britain and the US detonated a large number of nuclear devices at various locations in the Southern Hemisphere. Tens of thousands of troops both from the United Kingdom and Commonwealth countries were exposed to the atomic radiation resulting from the tests Many claim that health side-effects were apparent within days. In the ensuing years, many have died from forms of radiogenic cancers.

David Harris, Senior Partner said "The British servicemen who witnessed the nuclear testing in the 1950's and 60's have fought for a long time to obtain compensation for the injuries that they have suffered. We are investigating their claims and also the claims of New Zealand and Fijian veterans who are suffering from a similar range of health problems. We will be looking at the scientific and medical evidence which is now available to establish whether a link can be made between the ill health that these people are suffering and the nuclear testing which took place."

What Next for Mental Health?

Yee Fon Sit, Associate and Head of Mental Health highlights her concerns about the draft Mental Health Bill...

A new Mental Health Act has been promised for many years. However, the draft Mental Health Bill discussed in Parliament on 25th June falls far short of what is needed to reform Mental Health Law.

Unfortunately, the spirit of the Bill places too great an emphasis on the protection of the public rather than the treatment of a vulnerable part of society. In 1998, the Government commissioned a Committee of Experts in Mental Health chaired by Professor Genevra Richardson to consider the reform of Mental Health Law in England and Wales. The Committee was given less than a year to submit to the Government their proposals for an extensive overhaul of the Mental Health Act. The Government published their Green Paper for the new Mental Health Act in 1999 and this was followed by the White Paper "Reforming the MHA" in 2000. The Bill was finally announced last month and has brought about overwhelming support against major proposals within the framework of the Bill.

The Bill is designed to meet two primary needs :

1. To provide a legal structure for requiring mentally disordered people to submit to compulsory treatment, without necessarily requiring them to be detained in hospital.

2. To bring the law more closely into line with modern Human Rights Law, as defined by developing Case Law arising from the European Convention of Human Rights.

Key Changes

Definition of Mental Disorder

• The Bill introduces one broad definition of mental disorder - "any disability or disorder of mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning". The single definition of mental disorder in the new Bill is a fundamental change from the 1983 Mental Health Act which distinguishes between a person suffering from "mental impairment" or "psychopathic disorder". There are overwhelming concerns that this broad definition of mental disorder can lead to thousands of patients being detained unjustly. There are further concerns that patients suffering from severe personality disorders could be detained indefinitely, even if they have not committed any offence. In broadening the definition, the Department of Health is hoping to close a loophole that will seek to minimise such cases as Michael Stone and Christopher Clunis. However, the Royal College of Psychiatrists have attacked this part of the Bill as "ethically corrupt" and "morally indefensible". The Royal College of Psychiatrists object to their members being used "as agents of social control".

Introduction of a "Mental Health Tribunal"

• The Bill requires all applications for compulsory treatment for mentally disordered people to be approved by an independent judicial body. The current Mental Health Review Tribunal whose current remit is to hear applications from patients, their relatives or references by the Secretary of State to review the criteria for a mentally ill patient's detention. The Mental Health Tribunal will, under the Bill, not only approve of an application for compulsory treatment but also maintain its powers to discharge patients from detention. This additional function will significantly increase numbers of Tribunals which sit and this raises the question as to whether the Tribunal's resources will increase to provide for these Hearings. The Tribunal system is already overstretched in certain parts of the country, particularly for instance in the South East. In March, the High Court found in the cases of the Queen on the applications of KB, MK, JR, GM, LB, PD and TB and the Mental Health Review Tribunal and the Secretary of State for Health that under Article 5 of the European Convention for Human Rights, the state is under a duty to ensure speedy Hearings of detained patients' applications. The High Court held that the government was under a duty to provide resources to ensure that Hearings were heard speedily. Besides the problem of lack of resources, there is also a national shortage of Tribunal medical members. It is well known that there is a national shortage of consultant psychiatrists and that in 2000, at least 10% of posts for Consultant Psychiatrists within the NHS sector were vacant.

The Three Stages for Compulsory Detention

Stage 1 - preliminary examination and consideration of the use of compulsory powers.

• Under the new Act, anyone will be able to make a request for a preliminary Mental Health assessment.

• Two doctors and an approved Mental Health professional will consider whether a person meets the conditions for the initial use of compulsory powers

During this stage, patients may not be treated without their consent except in an emergency.

Stage 2 - formal assessment and initial treatment under compulsory powers.

• A patient's needs will be considered and a preliminary care plan prepared.

• Patients will be able to choose a nominated person to help represent their interest and they will also have access to new specialist Mental Health Advocacy services.

• Assessment may take place in hospital or in the community.

• This period of assessment and treatment will be limited to a maximum of 28 days unless renewed by the Mental Health Tribunal or by the Court.

• Patients may challenge decisions to treat them within the first 28 days by making an application to the Mental Health Tribunal.

• Treatments requiring special safeguards (such as ECT) must be authorised by the Mental Health Tribunal or Court during this time, except in an emergency.

• Patients may be treated without consent during formal assessment on the basis of their individual Care Plan.

Stage 3 - treatment under a Mental Health Order

• The Mental Health Tribunal may approve of a Treatment Order for up to six months which can be renewed for a further six months and again annually.

• Mental Health Act Orders will specify the compulsory elements of the Care Plan and any conditions with which the patient has to comply.

• Patients may also apply for discharge from liability to assessment and/or treatment for an application to the Mental Health Review Tribunal.

Further proposals under the new Act -

• Creation of a new Health Care Inspectorate to replace the current Mental Health Act Commission whose remit will be to scrutinize the proper application of the new Mental Health Act.

• Duty of Co-operation - there will be a general duty of co-operation in the supply of information in relation to risk management and assessment.

• Information for victims - there will be provision in the Bill to provide the same rights to the victims of mentally disordered offenders as to the victims of criminal offenders to receive basic information about the management of offenders including being informed when a patient is discharged from hospital.

THE NEXT STEPS

A formal 12 week consultation period now follows. This is due to be completed by September. A coalition of over 50 organisations who share common concerns regarding the government's proposals to reform the Mental Health Act have formed the MENTAL HEALTH ALLIANCE and plan to formally lobby Parliament.

Watch this space ...

Public Inquiries

- an endangered species?

Clinical negligence specialist TIM ANNETT examines the future of Public Inquiries. Tim has been involved in representing the families of the victims and alleged victims in the Shipman Inquiry and acting in the judicial review of the Secretary of State's decision to hold the Inquiry into the Richard Neale case in private.

Following the case of R v Secretary of State ex p. Wagstaff it was widely thought that public inquiries would become more common. However, much has changed since the judgments recently handed down in R v Secretary of State for Health, ex p. Wright-Hogeland ("the Neale case") and R v Secretary of State for Environment, Food & Rural Affairs, ex p. Persey & Others. This article will concentrate on the Neale case, although it raises substantively the same legal issues as Persey.

The Wagstaff case involved a challenge brought by a group of families of the alleged victims of Harold Shipman against the Secretary of State's decision to hold an inquiry into Shipman's activities in private. It was argued that if evidence was heard in private, the families' right to hear information put forward by others to the inquiry would be infringed - thus engaging Article 10 of the ECHR.

The Court found that there was "what really amounts to a presumption that [inquiries] will proceed in public unless there are persuasive reasons for taking some other course". Several reasons were advanced as being material in deciding whether an inquiry of this sort should be held in public. The Court also accepted that "There are positive known advantages to be gained from taking evidence in public".

A uniform practice seemed to be emerging, and against this background the Neale case was brought. It relates to the Secretary of State for Health's decision to hold an inquiry into the activities of Richard Neale, a former Consultant Obstetrician & Gynaecologist, in private.

The principal ground for the judicial review in the Neale case was that the Secretary of State's decision to hold the inquiry in private was unreasonable or irrational. In addition, it was argued that the decision it breached the Claimant's right to freedom of expression under Article 10 of the ECHR.

In relation to the irrationality argument the Court took the view that the decision as to whether an inquiry should be held in public or in private was one of policy. It was stated that:-

"If the Secretary of State thinks a private inquiry would best suit the aims he wishes to promote, and justifies one on that basis, anyone seeking to strike his decision down as irrational is likely to have an uphill struggle in the courts."

In Wagstaff and in the Neale case the point had been made that if a witness did not wish to give evidence in public, they could ask the Chairman to make special arrangements, such as hearing their evidence in private session.

However, in the Neale case the Court did not accept that there was any presumption in common law and/or under Article 10 that inquiries such as these would be held in public, unless there was justification for doing otherwise. It also found that the right of freedom to expression asserted by the Claimant was really a right of access to information. This seems to place an unduly narrow interpretation on the wording of Article 10, which it is believed gives the public and the media a presumptive right to receive and impart information in any way they wish - subject only to any restrictions lawfully imposed under Article 10(2).

The result of the Neale case though, is that the decision taken by the Secretary of State was non-justiciable. This seems to be in conflict with cases such as Shanagan v UK, but for the time being, at least, the position is clear. The government is able to dictate the nature, purpose and scope of inquiries and the courts have taken the view that they can do very little about this. This does not sit well with Clarke LJ's Interim Report into the Thames Safety Inquiry. In that report reference is made to a passage from Sheen J's report into the capsize of the Herald of Free Enterprise, which states:-

"In every formal investigation it is of great importance that members of the public should feel confident that a searching investigation has been held, that nothing has been swept under the carpet and that no punches have been pulled."5

As a result of these latest decisions thought it now seems likely that number of public inquiries will be limited. The arguments about speed, cost and candour that were raised by the government in all of these cases had been roundly dismissed in Wagstaff. In the wake of the Neale and Persey cases these arguments are likely to be put forward by the government in opposition to any future calls for public inquiries.

This article is a summary of a fuller article that can be found at www.alexanderharris.co.uk

WWW.INNING Website

A new report published has identified the best solicitor websites, explained why they can be the most effective business tool and has given firms advice on how to achieve the highest return from their investment. 48 solicitor's websites were audited on 3 criteria, content, usability and design. The marks awarded in each category were added up to give a total percentage score to identify the best websites and those that could be most improved. Alexander Harris Solicitors scored an impressive 92%, and were particularly noted for their content and additional features. The site,

www.alexanderharris.co.uk is up-dated on a daily basis and boasts a variety of interactive, user-friendly areas. The site receives in excess of 30,000 individual visitors per month, from British and International users. The latest addition to the website concentrates on the area of birth injury including case studies and videos.

If there is a medical topic which you would like to see featured on our website, please e-mail emma.smith@alexanderharris.co.uk.

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