

## Meet the new kids on the block



**S**tephen, Rivka, Lydia and Susannah (and from October our old friend Ray) welcome you to our first newsletter and are delighted to introduce you to the new kids on the block – Stephen Mason Solicitors.

Although a brand new company, we bring you over 25 years of experience in this area and are dedicated entirely to the travel industry and their insurers.

Since forming in May, our feet have hardly touched the ground. We hope you enjoy this newsletter, as we run through recent highlights in the Law which affect us all and highlights in our own lives.



## Lost luggage joy

**L**ost luggage claims – the case of *Warburton v JMC Preston* County Court August 2003 dealt with an interesting issue: the JMC booking conditions provided that claims for lost luggage were limited to the amount in the Warsaw Convention (£15.89 per kilo at relevant time).

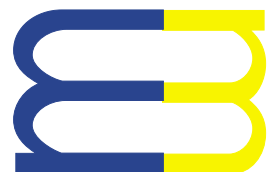
The District Judge had held that the Warsaw Convention could not apply to a holiday case. This was a holiday to the Gambia where a suitcase containing walking boots and photographic equipment (the claimants intending to spend their holiday walking and bird watching) was mislaid at Manchester Airport. The District Judge had further held that JMC were in breach of the statement in the brochure “our reps are

the best in the business”, because if the reps truly were the best, they would have located replacement walking boots etc for the customers. He awarded a full refund plus compensation. JMC appealed. The appeal was successful. The Circuit Judge held that the booking conditions made the Warsaw Convention limits applicable not only to the loss of the luggage, but also to any effect upon the enjoyment of the

holiday. Further more the statement “our reps are the best in the business” was mere advertising puff of no legal effect and in any event there was no evidence that walking boots and the like could be obtained in the Gambia.

This case shows yet again how important it is to draft booking conditions well. In contrast with this success, there is the case of *Akehurst v Thomson* and

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Stephen Mason  
Solicitors

The holiday law company

## Lost luggage joy

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Britannia (the Gerona crash case) Cardiff County Court 2003. Thomson had tried to argue that their booking condition saying “the carriers conditions of carriage apply” was enough to limit claims to Warsaw Conventions limits (in this case that would mean no claims were possible for psychiatric damage). The Judge held that the clause was not drafted clearly enough to achieve that object.

Finally, everyone will be aware that the Court of Appeal has rejected the Appeal by the claimants in the DVT test cases. DVT claims can not be brought against airlines because they are not an “accident” as covered by the Warsaw Convention. It is vital to note that tour operators can only have a similar defence if their booking conditions are adequately drafted. Contact Stephen on 0113 258 0033 for further advice.



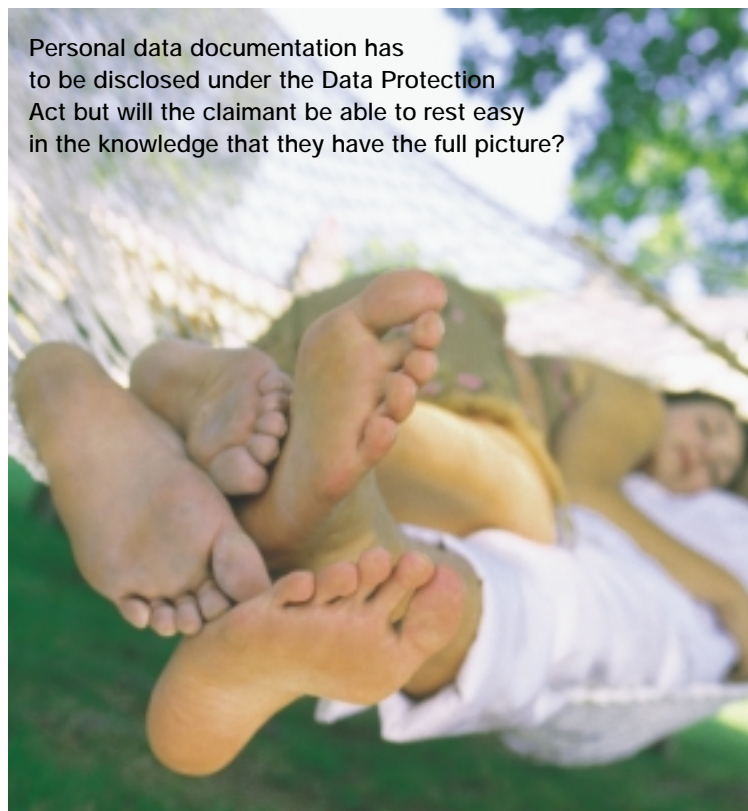
# DISCLOSURE a sneaky new t

**W**e have noticed a recent trend among claimants, which has been confirmed by an article in the *Law Society Gazette*. It is this: instead of seeking pre-action disclosure of documents in accordant with the protocols or court rules, the claimants are now seeking disclosure of all data documents by means of a data access request under the Data Protection Act 1998, which entitles any individuals to be told by an organisation that holds any personal information about him, on computer or in a manual filing system, what personal information is held and what was its source. It is a cheap and simple request to make with a maximum fee of £10. The data controller has 40 days maximum to reply.

Whilst material protected by legal professional privilege is still exempt from disclosure under the DPA, there are other advantages to a claimant.

First of all, no arguments about relevance or proportionality are open to the defendant. Secondly, there is no need for any court application. So, for example, any reports made by a rep about the claimant would have

Personal data documentation has to be disclosed under the Data Protection Act but will the claimant be able to rest easy in the knowledge that they have the full picture?



to be disclosed, and indeed any records which mentioned the claimant, including those retained in the overseas office.

On the other hand, we believe there are documents that are not personal data documents and, therefore, would not be disclosed under the DPA, but might be under normal court rules. For example, a pre-season inspection of a hotel, or a report of a Health and Safety consultant, might be highly relevant to a claimant, but do not appear to be personal data, especially as they are unlikely to refer to the claimant at all.

## Hourly rates

**T**ake a look at our hourly rates and compare them for yourself.

- Stephen's rate is £149;
- Rivka's rate is £75;
- Lydia's rate is £65; and
- our assistant solicitor will be £110 per hour. Watch out for further announcements.

# rick



## Where have the last three months gone?

**W**e have had an exciting whirlwind of a time in our first three months at Stephen Mason Solicitors. Among the highlights was the publication of the new third edition of *Holiday Law*.

As usual, it was co-written by Stephen with Professor David Grant. It is now the only current and up-to-date text book on the subject and includes all the up-to-date case law in Holiday Claims and personal injuries against travel companies, plus Trading Standards cases, as well as the current law on topics ranging from stop now/enforcement orders, to the new Montreal Convention replacing the Warsaw Convention. Price is



To obtain the latest edition of *Holiday Law*, priced £24.95, telephone publishers Sweet and Maxwell on 0207 393 7000 or log onto [www.amazon.co.uk](http://www.amazon.co.uk)

£24.95 and it can be obtained from Sweet and Maxwell telephone: 0207 393 7000; or on the internet from Amazon ([www.amazon.co.uk](http://www.amazon.co.uk)).

There is over 100 pages more material – it really is a major re-write!

On the subject of holiday law, Stephen had the honour recently to join about half a dozen other people at a dinner with the Master of Rolls, Lord Phillips. As most of you know, he is the same Judge who 12 years ago decided the vital case of

Wilson v Best Travel, the case that decides that local safety standards, and not British ones, apply when assessing claims against tour operators arising out of an accident in a foreign hotel. To our surprise, Lord Phillips remembered the case well and we are delighted to report his trenchant observation that if the same case were to come before him today in the Court of Appeal, he would decide it exactly the same way.

## Don't blame the tour operator!

**T**he recent spate of arrests of 'high-spirited' young holidaymakers in Rhodes leads to a wicked thought – can you sue a tour operator who sells a product on the basis – scarcely concealed – of sex and excess, if you get arrested for behaving exactly as advertised?

On the whole the answer is no. Courts have always encouraged the idea of personal responsibility, and have discouraged any claims that it was someone else's fault that you were drunk.

In August 2003 the House of Lords (in Tomlinson v Congleton BC) said: "The pursuit of an unrestrained culture of blame and compensation has many evil consequences... of course there is some risk of accidents arising out of the joie de vivre of the young, but that is no reason for imposing a grey and dull safety regime on everyone".

Mr Tomlinson suffered serious injuries when he dived into a lake in a country park. His claim was rejected.



# Important – and helpful! – changes to protocols

There have been three important developments in the area of pre-action protocols:

1

The personal injury protocol has been amended. First of all, it no longer covers disease and illness claims (see right). Secondly, it has responded to the complaints by defendants that there was no provision for defendants to complain that they had not received sufficient – information to enable them to investigate the claims. This has been dealt with in two ways: new clause 2.9 requires that the letter of claim provide "sufficient information for the defendant to assess liability. Sufficient information should also be provided to enable the defendant to estimate the likely size of the claim". Clause 3.6 has been expanded so that in the letter of acknowledgement which the defendant sends within 21 days (42 days for foreign accidents), the defendant should now "if necessary identify specifically any significant omissions from the letter of claim".



2

There is a new Disease and Illness protocol. In some ways this is unsatisfactory for holiday claims, because the whole wording of this new protocol appears to have employers' liability cases in mind; but it quite clearly and expressly covers our type of cases

(e.g. outbreak of illness in foreign hotel). Once again, Stephen was successful in obtaining amendment to the protocol, so that investigation time is extended to up to six months where the relevant events occurred outside England and Wales. The good news is that the

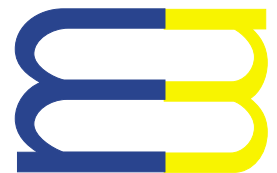
whole tenor of this protocol should make it easier for defendants to have their own expert evidence on liability and damages. The protocol says "decisions on whether an expert might be instructed jointly should rest with the parties and their advisors".



3

The third development is relevant to ordinary holiday claims (not injury or illness). A new Practice Direction came into force earlier this year setting out the timetable and details for pre-action behaviour by the parties in any case not covered by a protocol. Among many other things, the claimant should ask for a prompt acknowledgement followed by full written response within a reasonable stated period. It is indicated that normally a month may be reasonable. In its acknowledgement the defendant should state when a full response will be given, giving reasons if that time is longer than the claimant stated.

It now seems that a dedicated Holiday Claims Protocol is unlikely.



Stephen Mason  
Solicitors

2 Bachelor Lane,  
Horsforth, Leeds  
LS18 5NA

Tel: 0113 258 0033  
Fax: 0113 258 8833  
E-mail:  
stephen@travlaw.co.uk  
rivka@travlaw.co.uk