



## On your side, at your side it's got to be Gotelee

### Gotelee achieves new conveyancing quality standard

**The Law Society's new Conveyancing Quality Scheme (CQS) is a quality standard open to solicitors, but awarded only to those who achieve consistently high levels of service and advice in residential conveyancing work. As a mark of excellence for the legal conveyancing process and supported by the Council of Mortgage Lenders, the Building Societies Association, and the Association of British Insurers, the CQS helps home buyers to choose solicitors with added confidence.**

As buying a home is one of the largest purchases most people will make in their lifetime, it is essential that the legal work is carried out to a high standard. So, we are delighted that we have become one of the first legal practices in the area, as well as the largest firm in Suffolk, to gain this coveted award.

When buying or selling a property, our clients now have independent verification that Gotelee can be trusted to give a reliable, efficient service to the high standard recognised by the CQS.

There are many different conveyancing service providers out there, making it difficult for home buyers to identify those that can deliver safe and efficient levels of service. The new Law Society scheme will make it easier for home buyers and estate agents to pick out a solicitor they can trust and rely on. In a crowded market, we think that this endorsement of our quality of service, together with the fixed legal fees that we offer, sets Gotelee apart.

To secure CQS status, we successfully passed a rigorous and lengthy external assessment by the Law Society, which included thorough reviews of the efficiency of our procedures, the integrity of our personnel and the levels of client satisfaction achieved.

However, this award doesn't mean we will rest on our laurels. To maintain CQS status, the scheme also requires that our practices follow a stringent protocol and that we undergo regular assessments, compulsory training, random audits and annual reviews.



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### Wills - The Law in turmoil

**One of the key reasons solicitors always advise making a Will is to ensure that your inheritance goes to your chosen beneficiaries.**

A recent case could change everything about "testamentary freedom" which has long been a central theme of English law, giving you the right to make a Will where you control whomever you wish to leave your property and assets to. That is not the case in many other countries, such as France and Spain, where there are rules of compulsory succession.

A recent Court of Appeal decision has raised many questions about the principle of testamentary freedom and caused consternation amongst those involved in the law of Wills and the administration of estates. The case, *Ilott v Mitson* and others involved an elderly lady who made a Will leaving everything to three national animal charities. She had a daughter but disapproved of the daughter's conduct and

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## Personal injury claims: fair compensation or money grabbing?

**'No win no fee' is a phrase that features in most ad breaks on daytime television, but this is all set to change in 2012.**

There has been a lot of media coverage and interest in personal injury claims arising from accidents and from medical treatment by doctors and hospitals. Most of the coverage has been negative, with the people bringing the claims being reported as "money grabbers", or in some cases, dishonest. No doubt in a few instances this must be true. However, in our experience, the reality is that the majority of people who bring claims for compensation do so because they have had their lives seriously disrupted, or irreparably changed forever, as a result of events over which they had no control.

Contrary to the general public perception, this is not a new phenomena caused by a "compensation culture" and the right to claim compensation from another party has long been a feature of the law of this country. What has changed is the general awareness of this right and the ability to bring a claim. It is only relatively recently though, that solicitors have been able to advertise and there has been a growth in the last decade of claims management companies who are not solicitors, but advertise to attract victims of accidents and then pass their details to solicitors.

When the last government removed legal aid from personal injury claims in 1997, "no win no fee" agreements were introduced to finance personal injury claims and fill the gap. A "no win no fee" arrangement requires the client to take out an insurance policy that will pay the legal fees if the claim is unsuccessful. This combination of a better informed public and an affordable way of paying for a lawyer enabled people to pursue a claim where before they would have been shut out from the claims process.

Unsurprisingly, the insurance industry did not take kindly to this development and there followed a number of attempts by them to challenge the "no win no fee" regime and their obligation to pay additional legal costs under it. However, the insurers' legal challenges largely failed as the Courts were determined to make the new system work.

In 2010, the previous Labour administration instructed a High Court Judge, Lord Justice Jackson, to prepare a report on costs in civil litigation. He declared that costs, especially with regard to personal injury, were out of control and far too high.

As a result, the Government has tabled a new piece of legislation called the Legal Aid Sentencing and Punishment of Offenders Bill. It is proposed that the existing regime is replaced and that any successful claimant in a personal injury of clinical negligence claim will have to pay for any success fee and insurance premium themselves from their own compensation, at the end of the case.

This represents a significant change for claimants and will undoubtedly lead to many people being unable to pursue a claim because they will not be able to find a lawyer who is willing to take on their case.

The Government has said that the majority of people will not be any worse off under their proposed reforms. Whilst this may be true of all of the low value claims made, it is not the case when looking at the more serious and complicated claims. At Gotelee we specialise in dealing with the more serious types of injury claim, where compensation exceeds £25,000. In these cases, each and every claimant will be worse off under the proposed reforms than they are under the current regime.

One specific area of personal injury in which this firm specialises, is acting for individuals and their families who have been negligently exposed to asbestos during the course of their employment. Sadly, these cases are invariably brought on behalf of widows whose husbands have died as a result of their illness.

It does not seem right that people in this situation should have to pay from their compensation for the right to make their claim, when in all other areas of litigation the loser has to pay the whole of the winner's costs. Under the proposed reforms, they will have to pay up to 25% of their compensation towards their legal fees.

If you, or a family member, are considering making a claim for injury as a result of an accident or medical treatment, you should consider doing so within the existing funding regime, where you will keep the whole of any compensation awarded, rather than having to pay a proportion towards your solicitors costs. For further advice or assistance please give me a call.



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### Wills - The Law in turmoil continued...

had been estranged from her for more than 20 years, so she left her out of the Will. The daughter made a claim against the estate and the Court found that the Will had failed to make "reasonable financial provision" for her and that she was therefore entitled to receive a share of the estate.

The decision has caused great uncertainty as to the circumstances in which an adult child who is in reasonable health and capable of work is able successfully to make a claim against their parent's estate. Some have seen it as undermining the principle of testamentary freedom.

Claims disputing the terms of Wills are becoming more common, but in fact it has been possible for an adult child to make a claim ever since legislation was introduced as long ago as 1938. At first, in order to qualify, it was necessary for the child to have a physical or mental disability, but that restriction was removed in 1975. Since then there have been Court decisions which have suggested that there must be a strong moral obligation on the part of the parent or exceptional circumstances in order for the claim of an adult child to succeed. The *Llott* case confirmed that there are no such preconditions and it is basically a question of weighing up all the circumstances in order to decide whether "reasonable financial provision" has been made.

Arguably the *Llott* case has not changed the law at all, but some have seen it as opening the floodgates to claims by able-bodied, possibly undeserving, adult children. It has even led to the suggestion that people should consider putting their property and assets in trust in order to head off the possibility of a claim.

If you have a difficult family situation and need advice on making sure your Will reflects your wishes and will be sufficiently robust to limit any claim on your estate, please contact Peter Crix.



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## Do you believe in together forever or are you the cautious type?

**It is an unfortunate statistic that one in three marriages will end in divorce. Divorce and separation is a difficult enough time for the couple and any children involved, but sorting out financial matters can significantly add to the stress.**

Drawing up a Pre-Nuptial or Cohabitation Agreement could ease some of the difficulties that can arise if the relationship doesn't work out as planned. Setting out how the assets should be divided in the event of the worst case scenario can prove to be a useful investment and can help limit the stress.

### Pre-Nuptial Agreements

A Pre-Nuptial Agreement can refer to property that you own individually prior to the marriage and any assets that are jointly held, or which may be accrued during the course of the marriage. This may be particularly relevant where one spouse has inherited wealth or amassed their fortune and assets before the marriage. It may also be relevant where both parties have been previously divorced and wish to preserve their assets for their children and grandchildren in the event that their second marriage does not succeed.

Pre-Nuptial Agreements are not currently automatically legally binding on the parties at the time of a divorce, but a recent high profile case has given these greater weight.



In practice, there is now a presumption that the Court should acknowledge Pre-Nuptial Agreements as long as they meet certain criteria, which include:

- The Agreement has been freely entered into by each party with a full appreciation of its implications

- The longer in advance of the wedding date that the agreement is made the better
- The content must be fair - what constitutes "fair" will depend on the particular facts of the couple
- Both parties should take independent legal advice.

### Cohabitation Agreements

If you are not contemplating getting married, you can look to protect your assets before you start living with one another by entering into a Cohabitation Agreement. This will primarily deal with avoiding any future claims on property.

Similar factors to those that relate to Pre-Nuptial agreements will be relevant to the enforceability of such an agreement e.g. openness and independent legal advice.

Our experienced Family Law team is on hand to provide help and advise on the preparation of a Pre-Nuptial Agreement or Cohabitation Agreement.



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## Home Care Funding: A Clearer Future?

**The Commission on Funding of Care and Support which was set up in July 2010 as an independent body, to review the funding system for care and support in England, has submitted its final report.**

In a letter to the Government which coincided with the report's release, Andrew Dilnot, the Chairman for the Commission, outlined 'a new partnership between the individual and the state'.

The existing system for funding long term care is complex, difficult to navigate and subject to a means test, which often results in the spending of life savings or the sale of the family home to raise the money required.

In the light of this, the Commission has recommended the following changes:

- The means test upper limit of eligibility for publicly funded care should be increased from the present £23,250 to £100,000

- Where people have to pay for their own care this would be capped at £35,000, with a general living cost contribution of £10,000
- Social Care assessments should be consistent across the country and portable when people move. Disability benefits should continue as they are now.

As everyone with over £100,000 worth of capital would have to contribute £35,000 towards their care and make a contribution towards their living costs, the report envisages new financial products that will enable people to save and plan for this potential expenditure in the future.

It is clear that if the recommendations are accepted, there will be major questions as to how they will be funded. The report does not shy away from pointing out that, historically social care has been under-funded and that the funding has failed to keep pace with

demographic changes. The estimate for implementing the proposals is £1.7billion. The report also suggests that this might be paid for through additional taxation, perhaps with a specific tax on those over State Pension age.

The report stresses repeatedly that the current system is perceived as unfair, that it is unnecessarily complex and in many ways, unsustainable.

If you are a family member already caught in the maze of care funding, or about to become embroiled in it, our private client team are able to help guide you through.



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## Internal promotions strengthen the team



*From left to right, Ivana Radovic, Siân Mullane, Howard Bush, Rhonda Pryke and Marie Allen.*

**Gotelee has further strengthened its senior team through the promotion of five members of the firm. The promotions recognise the loyalty, as well as each individual's depth of expertise and experience in the legal areas they work within.**

Ivana Radovic has been promoted to Partner, bringing the family team at Gotelee's to three Partners and one Associate. She specialises in matrimonial and family law, and is a member of Resolution (a body that is committed to the constructive resolution of family disputes),

### **Four lawyers have been promoted to Associates:**

**Howard Bush** has been with Gotelee since 1985 and specialises in personal injury claims; **Rhonda Pryke** specialises in residential conveyancing and first joined

Gotelee in 1973; **Siân Mullane**, who also specialises in personal injury claims, joined Gotelee in 1988; **Marie Allen** is a solicitor specialising in employment law, with a particular interest in business immigration, and joined Gotelee in 2005.

Martin Whitworth, Managing Partner commented: "Ivana's promotion to Partner highlights the unusually high level of experience in the family law team. Howard, Rhonda and Siân are all very long serving lawyers and the first Legal Executives in the firm's 130 year history to become Associates. This has been made possible by changes to legal practice rules and allows us to give thoroughly deserved recognition for their contributions to the firm. Marie's promotion is in recognition of her level of experience and achievement in employment work, advising both employers and employee clients.

## Do your bit for your local school

**The world of education is a fast changing place with many exciting challenges on the horizon. Schools are being encouraged to change to academy status and being given the independence to develop their own curriculum and Gotelee is fast developing a sound reputation for assisting schools to become academies.**

However, there are ways for us all to become involved and put something back into the local community. Schools are often looking for governors to sit on the board and

help give them a valuable insight of the world outside the education environment. As five of our solicitors know from being involved as governors, it is a very worthwhile position and you don't have to have children at school to be involved.

If you are interested in becoming a governor and want to have a completely independent chat as to its responsibilities, or you are a governor and want to know more about academy status, then please contact either Emma Woollard or Victoria Judge for more information.

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