

THE LEGAL FIRST-AID KIT

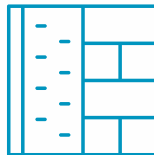
FIRST STEPS TO TAKE WHEN YOU ARE CAUGHT IN A LEGAL STORM



Authored by: James Carroll and Lucy Gledhill-Flynn - Russell Cooke

As a reader of the HNW Divorce Magazine, you might be expecting practical advice and technical knowledge of the titular subject, or at the very least, about the wider spectrum of family law issues. However, as legal professionals we are no strangers to our clients encountering a myriad of issues in their daily lives and then reaching out to us for guidance as their trusted port of call. It may well be issues that clients experience themselves or that when they call their lawyers about their divorce, they end by asking a question about their sister's impending redundancy at work.

We all want to put our best foot forward in any legal dilemma. Being able to show our clients that their problems are our problems (divorce related or not) is crucial to demonstrating good client care. With that in mind, we've put together a legal first-aid kit for some common issues we've encountered over the last year. These solutions may not solve the entirety of a legal problem in one fell swoop, after all we must all stay in 'scope', but they may go some way to offering some immediate reassurance craved in a moment of panic.



I'm a leaseholder and I've just been told that my apartment contains unsafe cladding. What should I do?

Not all cladding on all buildings would pose an issue. Find out from your landlord what steps have been taken by the building owner to ascertain the materials used in the 'external wall system' ("EWS") and whether an EWS1 form has been obtained and if so, what rating. The EWS1 form sets out whether remediation is required to address any defects and is frequently required by mortgage lenders and building insurers. If remediation works are required, check if your landlord has submitted a claim to the building's warranty provider.

It is important to establish the height of your building for a number of reasons. Historically more stringent building

regulations and guidance apply to buildings of a height of 18 metres or more. This may play a part in any recourse available to your landlord against the building's developer in the recovery of any remediation costs.

Firstly, if your building is over 18 metres high and there are defects found in the EWS that require remediation, check with your landlord if an application has been made to the Building Safety Fund for the costs of the remediation works. The Government is also planning to launch a separate fund for buildings over 11 metres high but under 18 metres.

Secondly, leaseholder protection measures relating to remediation costs introduced by the Building Safety Act 2022 apply to buildings of a height of 11 metres or over. If your building benefits from these measures, find out if your landlord is associated with the developer of your building. If not, then check whether you are eligible for other leaseholders protection measures under the Act which is dependent on the length of your lease, whether you own more than 3 properties in the UK and the value of your property.



Something Defamatory has been posted about me online. What should I do?

There has been much media focus on high profile online spats this year. Clients may be tempted to think they also should be taking similar such action if offended online. The first step is to ascertain if an online statement is actually defamatory. Think: does the statement or content lower you in the estimation of 'right thinking members of society' generally? Will it have a substantially adverse effect on the way people will treat you? Has it caused or will it likely cause serious harm to your reputation?

If yes to the above, you should first contact both the person who made the statement and the social media platform it was posted on to request that that the offending is taken down. If they refuse, you should issue a formal notice to the owner of the webpage for it to be removed reserving the right to issue proceedings seeking relief for defamation.

If this fails, you could consider issuing proceedings against the platform and/or the person(s) who made the statement. However, the threshold to succeed is very high – as are the costs (so a costs benefit analysis is always needed). The Supreme Court has set a higher threshold than previous when determining the “serious harm” test. Key though is that defamation claims have a 1 year limitation period (starting from the date of the action, i.e. the publication of the defamatory content) – do don't delay if action is proposed.



I have been asked by my employer to take part in a formal interview about my conduct. What should I do next?

The first step would be to check if the formal interview will be an investigation meeting or a disciplinary hearing. If it's an investigation meeting, you will not always be given advance warning about what is going to be discussed. It's important to give truthful answers

and to bear in mind that the answers you give may lead to formal disciplinary proceedings (either in relation to the initial concerns, or in relation to any untruthful answers). If you are not sure about something you should ask for the time and opportunity to check the position before responding.

In contrast, a letter inviting you to a disciplinary hearing should make that clear and state the range of potential disciplinary outcomes. It should also set out very clearly the allegations and evidence in support being relied on against you and you have the right to object if this has not been done. It is always worth preparing very carefully for such a hearing and you should be given adequate time to do this and to take legal advice.



I have been served with a statutory demand, what should I do next?

A client's first instinct may be to panic: will the value of the debt increase if immediate action is not taken?

However, there is time – a statutory demand should be addressed within 21 days: options include:

- 1) Challenge it, for example, because you do not agree that you owe the money being claimed from you, then you can apply to Court to have it set aside though this option must be carried out within 18 days (not 21 days) of receiving it;
- 2) Pay the debt in full if you agree it is due and you can afford to do so;
- 3) Engage with the creditor to negotiate an agreement. This may include agreeing to pay the debt by instalments, asking them to agree to reduce the amount being claimed or offering them security on property you own. But make sure this is all properly documented!

It is crucial not to ignore the statutory demand. Failure to take any steps within the 21 day deadline can lead to bigger problems and will permit the creditor to commence bankruptcy proceedings against you to recover the money they claim is owed to them. So don't simply ignore it.



I am a landlord and I need my tenant to vacate the premises, they are refusing. What can I do?

There are various different ways to obtain possession of your property, even if the tenant is refusing. Before you can determine what your options are, you will need to determine the status of the arrangement. Is it a fixed term tenancy? A periodic tenancy? If so, what is the frequency? Short term lets are often regarded as “assured shorthold tenancy agreements” for which there are specific regulations in place.

Also determine whether there has been a breach of any of the tenant's obligations during the duration of the tenancy. Common breaches include rental arrears or unlawfully sub-letting the property. The circumstances may provide you with alternative options and grounds for seeking possession. With most types of tenancy agreement, you will need to provide the tenant with formal notice to vacate. If the tenant fails to do so, you could consider issuing possession proceedings. This is a last resort, since it is costly and there remain significant delays at court due to the existing backlog and general increase in landlord & tenant litigation post pandemic.



In conclusion: don't panic

It is completely normal to fall down a worm hole when encountering an unfamiliar legal issue. What's often needed is an individual to offer some quick guidance and support; with an understanding nod and steer in the right direction.

Knowing a little about a lot can help to steady a panicking individual as they attempt to weather any unexpected legal storm.

