Tax exiles lose residency battle

Court of Appeal rules in favour of HMRC on 91-day UK residence rule

The Court of Appeal has upheld the right of HM Revenue & Customs to tax a wealthy businessman who has lived in the Seychelles since 1976.

Robert Gaines-Cooper complied with HMRC rules to spend no more than 91 days in the UK per year. However, the court ruled that tax exiles have to show they have really left the country before the 91-day rule applies. If they have continuing connections with the UK then the rule does not apply.

In the linked cases of *R (on the application of Davies and James) and R (on the application of Gaines-Cooper)* [2010] EWCA Civ 83, the judges found that HMRC's interpretation of tax guidance booklet IR20 was correct, and that Gaines-Cooper had not sufficiently severed his ties with the UK. They rejected claims that HMRC has changed the rules on non-resident status.

Photo: © Getty.com

Seychelles vs HM Revenue & Customs: Paradise lost?

Lord Justice Moses said: "[Mr Gaines-Cooper] needed to establish a distinct break from social and family ties and the Revenue asserted, and maintains its assertion that he did not make that break either in 1976, when he claims to have left permanently, or thereafter."

In the linked judicial review, Robert Davies and Michael James unsuccessfully argued that they should be treated as non-resident under IR20 for the tax year 2001-2002 because they were in full-time employment in Belgium for a year from April 2001. Moses LJ said that people would be treated as not resident if their "absence from the UK and employment abroad both last for at least a whole tax year". He held that, in Davies and James' case, they did not gain non-resident status.

Sean Drury, international mobility partner, PricewaterhouseCoopers, says: "The judgment clearly emphasised that HMRC should rely on UK tax residency guidance as outlined in IR20 and that employees were not required to sever family or social ties with the UK. Although the taxpayers lost on the facts of their cases, the court ruled that the guidance HMRC had issued was binding on HMRC."

Health & saftey

Publicity threat looms

Companies convicted of corporate manslaughter could be forced to advertise their conviction, under new government measures introduced this month.

The new regime means courts can now hand out Publicity Orders to firms and public bodies where gross corporate health and safety failures have caused a person's death. Companies can already be hit with an unlimited fine or be forced to improve safety in the workplace. The orders could be used to compel companies to publicise details of the case, the fine imposed, and any remedial work they have undertaken. Local authorities, hospital trusts and police forces could be forced to inform residents about the conviction.

Gerard Forlin, barrister at 2–3 Gray's Inn Square, says the intent is to deter companies from entering into behaviour that could lead to a prosecution in the first place. "This will have an impact because companies will worry about what their shareholders think, higher insurance premiums and difficulties with tendering for future work, although the newspaper reports would cover the large corporations anyway.

"The biggest impact will possibly be felt on smaller, more localised organisations where the publicity may not otherwise have been so widely disseminated," he says.

Social care overhaul

Social welfare

Adult social care law would be reformed and incorporated into a single statute and code of practice under new Law Commission proposals.

In their consultation paper published this week, *Adult Social Care*, the commissioners set out their plans to reduce red tape, delays and litigation, and save public money.

Decision-makers such as courts and social services directors would be required to consider a fundamental set of principles set out in the statute when making a decision or taking action. Local authorities would have a statutory duty to produce a care plan for any person assessed as having eligible needs, including carers. A code of practice on adult social care would be published, providing guidance for practitioners and individuals.

Local authorities would have a legal duty to investigate and intervene where there is an "adult at risk".

Frances Patterson QC, the Law Commissioner leading the project, says: "It is unacceptable that people should have to look at more than 38 Acts of Parliament, plus thousands of pages of guidance, to work out what the system is for delivering these essential services.

"We are seeking to bring clarity to the system of social care. We are not seeking to change existing entitlements. A clear, modern statute will save time and money wasted on operating the current time-expired system."

SRA fee shifting proposals

40/60 split will shift fee burden of 15% from in-house sector onto private practice

The practising certificate is to be split 40/60 between individuals and law firms under Solicitors Regulation Authority (SRA) proposals approved last week.

Under the new regime, due to come into effect in October, individual solicitors will pay 40% of the overall amount, and law firms will pay 60%. This will result in a shift in fee burden of 15% from the in-house sector onto private practice firms. Solicitors in commerce and industry and government posts will only pay the individual fee, likely to be about £511. Firms will pay according to turnover, calculated on a banded basis.

Under current draft SRA board proposals, not yet agreed, there would be ten bands, A-J. Firms would pay 0.67% on the first £20,000, 0.59% on the next £20,000 to £150,000, and 0.54% on the next level up to £500,000. Turnover between £1m and £4m would be charged at 0.8%. Individual solicitors will be required to put £9 towards compensation fund fees, while firms will contribute £140.

Legal consultant Simon Young says: "Overall, the burden for private practice will rise considerably as they mop up the 60% from the public sector and commerce and industry.

£511
Likely practice fee for solicitors in C&I and government posts

£9
Amount solicitors will be required to put towards compensation fund fees

"Those with a high ratio of non-solicitor fee earners to solicitors will be affected the most. If you have two or three solicitors and 40 legal executives then you are going to have to pay a considerable amount more. Whether the 60/40 ratio is correct remains to be seen, and the SRA has acknowledged this, but we have to start somewhere. This may be quite painful for some firms but they've all been given plenty of notice."

Splitting the practising certificate fee between entities and individuals was recommended by Lord Hunt of Wirral in his 2009 review into legal regulation. The Legal Services Act 2007 required the Law Society to adopt firm-based regulation as well as regulating individual solicitors. The SRA board considers the current fee charging system to be unfair on in-house solicitors.

2011 launch for ABSs

Profession

Legal professionals will be able to apply for licences to run alternative business structures (ASBs) from the middle of next year.

The Legal Services Board (LSB) has confirmed the timetable for reform, setting October 2011 as the start date for the new business models. LSB chairman, David Edmonds said the timetable would give regulators time to prepare their licensing frameworks.

"This will ensure they are focused on outcomes for consumers, rather than over-complicated rules that stifle innovation and better value," he adds..

Negligence

Hard to say "sorry"?

Clinical negligence claims are both increasing in number and rising in value, according to a report by Penningtons Solicitors LLP.

Since 2007, the number of clinical negligence claims has risen by 12.2% to 6,088 in 2009.

The value of damages payments made by the NHS Litigation Authority in 2009 was £769.2m, a 21% increase on the 2008 sum of £633.3m.

The NHSLA estimates that it has further potential liabilities of over £13.3bn.

Meanwhile clinicians continue to ignore advice to apologise for their errors even though research shows this can reduce the chances of being sued.

NEWS IN BRIEF

Mortgage fraud charge

Two solicitors have appeared at City of London Magistrates' Court in connection with a series of commercial mortgage frauds worth £50m, according to the Serious Fraud Office. Mark Knights and Kamran Malik are charged with three counts of obtaining a money transfer by deception contrary to s 15A(1) of the Theft Act 1968. The proceedings relate to a police investigation that resulted in six individuals being charged in December 2009. At the relevant time, Mark Knights was employed at Mace & Jones Solicitors, Manchester and Kamran Malik was a partner in A&H Solicitors, Birmingham. Neither of the defendants is currently employed by Mace & Jones Solicitors and A&H Solicitors.

Foxtons' Unfair Terms

The Office of Fair Trading (OFT) has secured a final high court order against Foxtons Ltd preventing it from using certain terms in its letting agreements with landlords. The high court ruled in July 2009, in proceedings brought by the OFT under the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083), that Foxtons' renewal commission terms were not transparent, represented a trap and were unfair. Foxtons' renewal commission term where a tenant remained in the property following a sale, and its sales commission term where a property was sold to a tenant, were ruled unfair and therefore not binding. The OFT is writing to letting agents and industry bodies to remind them to operate within the law.