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Legally Speaking - Judge & Priestley's Quarterly Legal Update for Private Clients

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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your family.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

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Refunds for some people who've taken out LPAs

The Ministry of Justice (MoJ) is to refund nearly £90m to thousands of people who've been overcharged when taking out lasting powers of attorney (LPA) in the last four years.

The errors occurred between April 2013 and March 2017.

In its annual report, the MoJ said: "More people have been registering for lasting powers of attorney in recent years. Increased volumes coupled with greater efficiencies in processing applications have resulted in fees being charged above the operational cost of delivering the service, without our having exercised the power provided by legislation to allow us to do this.

"Using that power, we have from 1 April 2017 set the fees for applying to register lasting powers of attorney and enduring powers of attorney, at a reduced level.

"Alongside this reduction in fees, we will also introduce a scheme for refunding a portion of the fee to customers who may have paid more than they should have during the last four years. Full details of the scheme will be announced in due course."

It means the fee for applying to register a lasting power of attorney (LPA) or an enduring power of attorney (EPA) has been reduced from £110 to £82. The fee for resubmitting an LPA for registration has been cut from £55 to £41.

One of the main reasons for the popularity of powers of attorney is that they offer you protection in case your health deteriorates to such a point in the future that you are no longer

able to make decisions for yourself about your financial affairs or your personal welfare.

An LPA helps prevent these problems because it enables you to nominate someone in advance to make decisions on your behalf if you ever lose the ability to do so yourself through illnesses such as dementia.

The property and finance LPA allows you to appoint someone to look after your financial affairs and the personal welfare LPA lets you grant an attorney authority over such matters as health care and the kind of treatment you receive.

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Wife can't include tiger trust assets in divorce settlement

A wife has been told that the assets of a trust she set up with her husband cannot be included in their divorce settlement.

The case involved a couple who had established a charitable trust to conserve South China's tiger population. It held land for conservation purposes.

The trust was fully discretionary and held considerable assets. The couple were not named as beneficiaries.

During divorce proceedings, the wife alleged that the husband had established the trust not only to advance the conservation project but also to provide financial benefit and support for himself and for her personally.

She claimed that this meant the trust was a post-nuptial settlement.

The judge found the husband's evidence more credible than the wife's and concluded that the trust was not a post-nuptial settlement.

The wife appealed saying that the judge had failed to deal with emails from a lawyer that potentially indicated the trust was used as a tax shelter. The judge had also failed to deal with an email from the husband, which appeared to anticipate trust assets being released to the couple on its winding-up.

The Court of Appeal dismissed the claims. It held that the judge had been entitled to conclude that the emails did not begin to carry the weight attached to them by the wife. In addition, an accountant's report prepared on the husband's behalf showed that the couple had not received benefits from the trust and there was no evidence to suggest that they ever intended to receive any benefits.

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Judge & Priestley's Landlord & Tenant team

Judge & Priestley's Landlord & Tenant team specialise in all legal matters relating to managing tenancies. The team offers a complete legal service to include advice and assistance from commencement of the tenancy right through to eviction and enforcement proceedings. Our specialists can deal with drafting/reviewing tenancy agreements, possession claims, enforcement proceedings, unlawful eviction claims and all matters regarding landlord and tenant disputes. Answers to some of the more common questions our team gets asked are outlined below.

The team is headed by Nitika Singh, and if you need assistance or want to find out about our competitive fixed fee pricing, please call Nitika on 0208 290 7347 or email nsingh@judge–priestley.co.uk

Q: How can I gain access to my property for inspections/works if the tenant is refusing to allow me access?

If your tenant is persistently obstructive in allowing access for non-urgent inspections, you should maintain a written record of all of your requests for access. You should also advise your tenant in writing that you will not be liable for any outstanding repairs at the property for which you have not been given access and/or any resulting injury due to damage in the property which has arisen as a result of the tenant's failure to provide access.

You may also want to consider applying to Court for an injunction order if you deem it necessary to gain access without delay e.g. where annual gas safety inspection is due, and also consider serving a section 21 notice to gain possession of your property. In the event that you have incurred any wasted costs for a scheduled appointment agreed with your tenant you should refer to your tenancy agreement as there may be a term in your tenancy agreement that entitles you to recover such costs from your tenant.

Q: I have a 2 bedroom flat that I rent out and I am looking to rent out each room separately. Do I have to charge the same rent since one room has an ensuite and is a bigger bedroom?

The short answer is no you don't have to charge them the same rent. If you are planning to offer two separate tenancy agreements it is a matter for you as the landlord and the individual tenant to agree the amount of rent applicable for each room. Based on your description of the property and the room sizes you will be justified in charging a higher rent for the bigger bedroom.

Q: Can I evict a tenant without a Court Order?

No you cannot evict a tenant without a Court Order. You can terminate a tenancy by mutual consent between both the landlord and tenant but if your tenant is not willing to leave you will have to apply to Court for a possession order.

Q: Do I need to have a written tenancy agreement to allow somebody to stay in my house if I want to charge rent?

If you are proposing to remain in your property and let out a room you do not need to have a formal tenancy agreement but we would strongly advise that you do have some form of written agreement as it is often better for both parties to have clarity as to what is expected of the arrangement and this would help in the event of a dispute. If you propose to let out multiple rooms you may also want to investigate as to whether the rules relating to Houses in Multiple Occupation (HMO) would apply. These will vary from one local authority area to another.

Government to ban leasehold sale of new houses

The government has announced plans to clampdown on unfair practices involving leasehold homes.

The measures include a ban on new build houses being sold as leaseholds as well as restricting ground rents to as low as zero.

Leaseholds generally apply to flats with shared spaces, but increasingly, developers have been selling houses on these terms.

Ministers say change is needed because the terms of some leases are becoming increasingly onerous to those purchasing a leasehold flat or house. For example, some people have been told they need to pay thousands of pounds to their freeholder to make simple changes to their homes.

Recent cases include:

- a homeowner being charged £1,500 by the company to make a small alteration to their home
- a family house that is now unsaleable because the ground rent is expected to hit £10,000 a year by 2060
- a homeowner who was told buying the lease would cost £2,000 but the bill came to £40,000.

Communities Secretary Sajid Javid said: "It's clear that far too many new houses are being built and sold as leaseholds, exploiting home buyers with unfair agreements and spiralling ground rents. Enough is enough.

"Our proposed changes will help make sure leasehold works in the best interests of homebuyers now and in the future."

Other measures, which are subject to the findings of a public consultation, include protecting people by closing legal loopholes– such as leaving some leaseholders vulnerable to possession orders, and by changing the rules on Help to Buy equity loans so that the scheme can only be used to support new build houses on acceptable terms.

We shall keep clients informed of developments.

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Families pay a record £5 billion inheritance tax

Families in the UK have paid more than £5 billion inheritance tax in a single year for the first time ever.

The record figure reflects the increasing value of estates, largely fuelled by rising house prices.

HMRC says that £5.1 billion was collected through inheritance tax receipts in the 12 months to May. That was a rise of 9% over the same period last year.

Figures released by the Office for Budget Responsibility (OBR) show that the number of family estates liable to inheritance tax has risen fourfold since 2010 from 10,000 to more than 40,000.

Inheritance tax is set at 40% and becomes payable once the tax-free threshold of £325,000 has been passed.

The government has recognised that more and more families are being caught by inheritance tax and has introduced an additional main residence allowance of £100,000. It came into effect in April and only applies to a person's home, not the rest of their estate. It will rise gradually to £175,000 by 2020.

When added to the £325,000 nil-rate band for inheritance tax, this will provide a combined tax-free band of £500,000 by 2020. Married couples can combine their allowances. When one partner dies, their share of the estate is passed on to their spouse free of any inheritance tax.

This means that by 2020, a married couple could have a combined allowance of £1m.

There are also other steps people can take to reduce the burden.

One helpful way to pass money on without inheritance tax implications is to adopt the 'little and often' approach. This allows you to give away £3,000 per year tax free. It's a useful way to give money to your children without them running the risk of having to pay tax on it when you die.

There is also a 'seven-year gift rule' which allows a person to give money or assets of unlimited value. The recipient will not pay inheritance tax as long as the person lives for at least seven years.

If the person dies within seven years of making a gift then the recipient could be liable to pay the 40% inheritance tax, depending on the value of the estate.

These are just some of the ways you could reduce inheritance tax liability. A little planning now could save your families thousands of pounds in the future.

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£18,886 for mother sacked because of disabled daughter

A mother who was sacked because her employers felt that caring for her daughter was more important to her than her job has been awarded £18,886 in compensation.

Maria McKeith started working part-time for the Ardoyne Association in Northern Ireland in 2010 while also acting as primary carer for her daughter. She was dismissed in 2015.

The Employment Tribunal found that the dismissal was unfair under the Disability Discrimination Act and that the association "did not put forward any convincing or coherent explanation for its decision".

It said that her managers took the view that because she "had a disabled child, her position was not properly in the workplace. Her daughter was her priority".

The judge said: "That is not the legal position. People who are disabled

themselves, or who are the primary carer of a disabled person, have a right to work within the protection afforded by the 1995 Act."

The Court of Appeal upheld that decision.

Speaking after the hearing, Ms McKeith said she was left in shock when she lost her job. "I did not ask for any special treatment and I did not welcome it.

"I enjoyed coming to work, meeting people and being able to advise and help them and I knew my daughter was being cared for while I was at work."

Dr Michael Wardlow, of the Equality Commission, said the Disability Discrimination Act not only protects people against discrimination because of their disability, it also protects people in Ms McKeith's position, who have a role as primary carer.

He said: "In this case, Ms McKeith was denied the opportunity to work as a result of her daughter's disability. The law makes such discrimination unlawful.

"It is important also, as was referenced in these proceedings, to highlight that the purpose of the law is to assist disabled people and their primary carers to obtain work and to integrate them in to the workplace."

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Move to bring law on will making into 21st century

The law governing the writing of wills needs to be updated to reflect modern understanding of dementia and mental capacity.

The government should also introduce electronic wills and reduce the age for making a will from 18 to 16.

Those are some of the recommendations from the Law Commission in a public consultation about how the will writing process should be brought into the 21st century.

Law Commissioner Professor Nick Hopkins said: “Making a will and passing on your possessions after you’ve died should be straight-forward. But the law is unclear, outdated and could even be putting people off altogether.”

Currently 4 out of 10 people don’t make a will, which means their estate may not be distributed to relatives and friends in the way they would like.

The Commission is particularly concerned that the law is out of date in the way it assesses whether a person has the mental capacity to make a will that truly reflects their wishes.

A Commission statement said: “It focuses on “delusions” of the mind; doesn’t reflect the understanding of conditions like dementia where mental capacity can be changeable; and differs from the modern test for capacity in other areas of decision-making – the Mental Capacity Act 2005.”

These are some of the main proposals the Commission has put forward to improve the will making process:

- an overhaul of the rules protecting those making a will from being unduly influenced by another person
- applying the test of capacity in the Mental Capacity Act 2005 to the question of whether a person has the awareness to make a will
- providing statutory guidance for doctors and other professionals assessing whether a person has the required mental capacity to make a will.

We shall keep clients informed of developments.

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Homeowner wins right to walk on neighbour's driveway

A homeowner has won the right to walk over her neighbour’s land to inspect her gas and electricity meters and maintain her property.

The case involved two detached houses separated by a driveway.

The meters for 96 were set into the wall that was built along the boundary with 98. The driveway ran beside the wall on 98’s side.

The legal documents for 96 contained two rights in the owner’s favour. Paragraph 3 provided the right “to erect and maintain gutters and downspouts” over 98’s driveway.

Paragraph 4 provided the right “to enter with workmen, tools and materials on adjoining land to carry out maintenance, repair and decoration”.

The owners of 98 said these rights did not extend to walking on their driveway merely to inspect the meters or check if maintenance work was required.

The Court of Appeal ruled against them. It held that it would be absurd if there were no right to inspect the property.

It could not have been the intention that the purchaser of 96 would be unable to read the meters. Even if a right of access to read the meters was not spelt out, it was implicit.

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