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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.

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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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## Include a power of attorney when making a will

People making or renewing their will are being urged to consider arranging a Lasting Power of Attorney (LPA) at the same time to protect their interests into the future.

It follows research carried out by the Law Society, which showed there had been an increase in the number of people drawing up a new will during the Covid-19 lockdowns.

Law Society president David Greene said this was because the pandemic has made people reflect on how vital it is to make sure their loved ones are taken care of if they were to die.

The move is to be welcomed but making a will is not the only way to put your affairs in order; LPAs can also help reduce potential problems for your family in the future.

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.

Both kinds of LPA must be registered with the Office of the Public Guardian (OPG), which administers the system.



Mr Greene said: "When writing a will, people should also consider making end of life provisions – which determine how they want to be treated medically at the end of their life – and lasting powers of attorney – which grants a trusted friend or family member the right to make financial and welfare decisions on their behalf if they lose mental capacity or become seriously unwell.

"68% of those surveyed did not make lasting powers of attorney or end of life provisions.

"Many do not know that lasting powers of attorney or end of life provisions can only be made whilst they are deemed to have mental capacity. Making these

arrangements alongside their will ensures people are able to make these important decisions for themselves – giving them peace of mind during the pandemic and going forwards."

LPAs are often used by older people to choose someone they know and trust to make decisions for them if they lose capacity in the future - but can be used by anyone at any age.

The number of registered LPAs has increased enormously in recent years to more than 4 million.

Please contact us if you would like more information about Lasting Powers of Attorney.

## Watchdog to ensure high standards for newly built homes

A new watchdog organisation has started work to protect consumers by ensuring that developers deliver high-quality homes.

The New Homes Quality Board (NHQB) is an independent body set up to introduce a new industry code of practice for builders and create the New Homes Ombudsman Service (NHOS) to support homeowners in disputes with builders.

The New Homes Conduct code will place increased demands on builders to support homeowners from the point of sale through to two years after purchase.



Developers will need to have a complaints procedure in place, including specified timelines for responding to queries from buyers.

The NHOS will be funded by the housebuilding industry through an annual registration fee. House builders will have to be signed up to the ombudsman service if they wish

to be involved in the new Help to Buy programme starting in April.

It will have powers to ban "rogue developers" and to order repairs for poor building work.

Housing Minister Eddie Hughes said: "It's crucial developers show more responsibility for the quality of their work while also acknowledging when things go wrong – this helps give vital confidence to buyers, especially at a time of general uncertainty."

Please contact us if you would like advice about the legal aspects of buying or selling a home.

# Help to Buy for new-build homes gets underway

First-time buyers interested in new-build homes can now apply for the new Help to Buy: Equity Loan scheme.

With a Help to Buy: Equity Loan, the government lends homebuyers up to 20% (40% in London) of the cost of a newly built home. Customers pay a deposit of 5% or more and arrange a mortgage of 25% or more to make up the rest. The equity loan is interest-free for five years.

Help to Buy (2021-2023) has regional price limits, set at 1.5 times the average first-time buyer price in each region in England.

This keeps the prices of new homes closer to the average regional first-time buyer property prices, reducing the amount that

first-time buyers need to borrow. Help to Buy homebuilders must agree to follow the Consumer Code for homebuilders, the New Homes Ombudsman, the Building Safety Charter and fulfil planning permissions and building regulations.

How much you can spend on your home will depend on which region it is in. In the North East it is £186,100; North West £224,400; Yorkshire and the Humber £228,100; East Midlands £261,900; West Midlands £255,600; East of England £407,400; London £600,000; South East £437,600; South West £349,000.

You must fund at least 80% (60% in London) of the sale price with a mortgage and put up at least a 5% deposit. Interest



fees start at 1.75% and rise each year in April in line with the Consumer Prices Index, including owner occupiers' housing costs, plus 2%.

Please contact us if you would like advice about the legal aspects of buying or selling a home.

## Covid creates surge in the number of employment claims

The Covid pandemic has led to a surge in the number of employees bringing claims to the Employment Tribunal, according to research carried out by Citizens Advice.

It says that if claims continue to increase at the current rate, the number could soon pass 500,000.

Even this could be a conservative estimate, the charity is warning, as it does not include a potential rise in employment tribunal cases following the wave of redundancies expected as the furlough scheme ends.

Citizens Advice's research has previously shown that disabled people, those asked to shield, and parents and carers are at least twice as likely to be facing redundancy as the rest of the working population.



For many workers caught in the coronavirus redundancy crisis, employment tribunals will offer the only route to protecting their rights.

The charity has raised concerns over potential employment malpractice cases which could lead to a tribunal, including a person who was told

they had to come into work despite needing to self-isolate because they lived with someone who had tested positive for coronavirus.

They also highlight a parent who believes they are more at risk of redundancy than their colleagues because their childcare responsibilities mean they can't work overtime.

In another case, a worker was told they had lost their job by text.

They had been with their employer for more than two years and were entitled to a fair redundancy process, including a meeting.

Please contact us if you would like information or advice about employment law issues.

## Children can be vaccinated despite mother's objection

A father has been granted a court order for his children to be vaccinated despite objections from their mother.

The children were aged six and four. The parents had separated, and the children lived with the mother.

The parents were involved in proceedings for a child arrangement order under the Children Act 1989.

The mother opposed vaccination because she said her extensive online research showed that the MMR vaccine did not offer lifelong immunity, whereas if the children contracted the diseases, they would then become immune



### Family Law

naturally. She also argued that the MMR diseases were generally mild in healthy children, she ensured her children were well-nourished to boost their immune system, and there was a serious question mark over the efficacy and probity of vaccinations for children.

The father favoured vaccination as the safer option and the Family Court found in his favour. It held that as the parents were unable to agree, the court was

required to determine the issue. The medical evidence showed that it was in the best interests of both children and for the public good to make a specific issue order requiring them to be given each of the vaccines that were currently specified on the NHS vaccination schedule.

The views of parents always had to be considered, but the weight given to them depended not on the vehemence with which they were expressed but on their substance.

Please contact us for more information about the issues raised in this article or any aspect of family law.

# Beginning divorce proceedings - first key move

It may be the hardest decision you ever have to take in your life. It would not be surprising if you agonised for months, even years, over whether your marriage is salvageable.

You will probably have talked over your relationship with your spouse, tried to reconcile differences and maybe even tried counselling or mediation. If all that fails, however, you may feel you have no choice but to separate and divorce.

Once you've decided, it's important that you get the best advice right at the outset to ensure everything is done correctly and the potential for heartache and stress is kept to a minimum.

There are so many things to consider such as: what are your grounds for divorce, how do you begin proceedings, what will happen to your children, how will you cope financially, how do you find your way through the paperwork?

At this point, the key thing you need to do is consult a solicitor who specialises in family law and divorce proceedings.

A good solicitor will hold a meeting with you in a relaxed atmosphere so they can help you assess your situation and explain your options.

You will need to confirm what your grounds for divorce will be. There are currently five reasons for being granted a divorce: adultery, unreasonable behaviour, desertion, two years separation if both agree to the divorce, or five years separation, even if the husband or wife disagrees.

These reasons are currently being reviewed by the government, but your solicitor will be able to advise you if there are changes in the future.

You'll be asked for key dates such as when you and your spouse separated, or key events that triggered the breakdown of the marriage.

Your solicitor will want to get a full picture of your circumstances. For example, do you have children? Have you considered what will happen to them after the divorce? Do you expect them to live with you or with your partner? Have you discussed child arrangements with your spouse?



Are you broadly in agreement or are there likely to be disputes about residence and contact?

You will also be asked about your financial situation. The law starts from the principle that marital assets should be split equally and that both partners have a responsibility to contribute to their children's upkeep. In practice, however, equality and fairness can be difficult to assess.

Your solicitor will need to ask questions about you and your spouse; your incomes, assets, savings, future pension provisions and so on.

The answers to these questions will determine whether the divorce can go ahead in an amicable, straightforward way. If not, your solicitor may suggest you and your partner try mediation or arbitration to help you settle any disagreements. If that doesn't work, it may be necessary to begin court proceedings.

Your solicitor will be able to advise the best course of action and begin the divorce proceedings. This starts with the filing of a divorce petition and ends with the granting of the Decree Absolute, meaning your marriage has formally ended.

How good a settlement you receive, and how smoothly the divorce proceeds, will depend on the choices you make in consultation with your solicitor, so it is essential to ensure you get the right advice at the right time.

Please contact us if you would like advice about starting divorce proceedings or any aspect of family law.

## Pregnant woman told to resign is awarded £18,000

A customer service assistant who said she was told to resign after her employer discovered she was pregnant has been awarded £18,000 after making a discrimination claim.

The case involved Mrs N Agarwal and St John Freight System UK.

Mrs Agarwal had worked for the company since 2017.

The employment offer, in the form of a letter, stated that she would work in the company's office between 9am to 3pm, and from home between 4.30pm to 5.30pm.

Both parties agreed that working from

home had not been ideal because she needed access to the computer in the office.

Despite this, nothing was done about her working arrangements until she became pregnant.

She experienced bleeding and left the office to go to hospital. She rang her manager to explain why she was absent and informed him that she was pregnant.

At that point, her manager informed her that she would have to start coming into the office full time and if she were unable to do so she should resign. She brought a claim to the Employment

Tribunal, which ruled that she had been treated unfairly and that St John Freight had discriminated against her by changing her hours and work location without her agreement.

Judge Catrin Lewis said that the requirement to work in the office full time between the hours of 9am to 5:30pm would not have been imposed on her if not for the pregnancy.

Agarwal was awarded £18,405 to cover both loss of earnings and injury to feelings.

Please contact us for more information about the issues raised in this article or any aspect of employment law.



# Update your will to include all your digital assets

People are being urged to update their wills to include their digital assets as a way of preventing problems for their family after they die.

Research by the Law Society shows that only a quarter of those surveyed know what happens to their digital assets when they die.

An overwhelming 93% had not included any digital assets in their will.

Law Society president David Greene said. "Technology is a huge part of modern life and our digital assets include everything from photos stored online to online banking and email accounts.

"Photos, social media accounts and emails from loved ones are often just as treasured as physical possessions – and yet very few people understand what happens to their digital assets or why it is important to make sure they include them in their will.



"With many social media platforms only created in the last few decades, it is all too easy to overlook your digital assets when making a will.

"However, this can leave family members unable to access family photos saved on the deceased's online accounts or close their loved one's social media accounts.

"It can also leave them unable to access information they might need for

probate which is stored on the deceased's email or online banking accounts.

"Writing a digital will and keeping a clear record of online passwords ensures that your loved ones are able to access your digital assets and are not faced with any additional stresses during probate.

"Our research shows that just 29% of those surveyed have an up-to-date will. I would encourage anyone who hasn't already done so to write a will which includes their digital assets.

"A solicitor will be able to advise people on how best to include both their physical and digital assets in their will – ensuring people's estates are inherited exactly as they wish and preventing a whole raft of problems landing on loved ones when they are grieving."

Please contact us for more information about the issues raised in this article or any aspect of wills and probate.

## Wife in divorce case granted search order against her son

A wife in a divorce case has been granted a search order against her son following allegations that he had helped his father put matrimonial assets out of her reach.

The wife said her son had assisted the husband in dishonest schemes that were intended to prevent her from obtaining the financial settlement awarded by the court. She had obtained a worldwide

freezing order and ancillary disclosure orders against the son in July 2020.

An order was made requiring him to deliver up and provide access to his electronic devices and cloud storage accounts for forensic examination.

He alleged that all his devices were lost in transit when he was seeking to comply with the order.

The High Court granted the search order.

It said it was satisfied that there was an extremely strong prima facie case against the son and that the damage was very serious for the wife.

Please contact us if you would like information or advice about family law issues.



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