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

WINTER
2014

Judge & Priestley Raise in Excess of £325,000.00 for Will Aid 2013

During November last year Judge & Priestley took part in Will Aid 2013. The purpose of this fund raising initiative was to promote charitable donations and legacies whilst signifying the importance of making a will.

The money raised goes straight to Will Aid and is shared by the nine partner charities which include British Red Cross, NSPCC and Sightsavers and is used to help people across the world and here in the UK.

Under the Will Aid scheme, instead of paying the solicitors their usual fee the clients donated to Will Aid. In total, Judge & Priestley have raised in excess of £325,000 in donations and legacies.

David Chandra Partner at Judge & Priestley specialising in Wills and Probate said: "We are delighted to have raised such a sum to support the vital work of the nine Will Aid charities and to have used our skills and expertise to help people in the community."

We were inundated with enquiries from local residents who were interested in seeking professional expertise when making their will.

Making a will is often perceived to be a time-consuming and expensive process but in fact, with the proper advice, is usually quite straightforward and delivers great peace of mind."

Will Aid 2013 has now come to an end. Judge & Priestley offers competitive fixed fee services for preparing Wills and Lasting Powers of Attorney. If you are considering making a will or would like further information about our services please contact David Chandra on 0208 290 0333.



Judge describes couple's divorce as 'financial suicide'

A couple have been told they are committing financial suicide by running up huge bills in a fight over which country should deal with their divorce.

Aloke Ray and Charoo Sekhri married in 2009 and lived in London, but later moved to Singapore. They have one son.

The relationship broke down and Dr Sekhri issued a divorce petition in London in 2012. She wanted proceedings to be conducted in the UK but Mr Ray objected. The couple have since spent an estimated £860,000 between them disputing the matter.

The High Court has now ruled that as the couple are both living in the UK, Dr Sekhri can pursue her petition here.

However, the judge, Mr Justice Holman, expressed concern at the spiralling costs of the case, which he said amounted to financial suicide. He said: "They have each spent the staggering sum of about £430,000 on worldwide legal costs."



Mediation can reduce conflict and tension

This, of course, is an extreme case but it is not unusual for people to behave in a way that appears irrational if they allow their emotions to get the better of them.

That is why the Government is trying to encourage more people to use mediation to help them reach an amicable settlement instead going to court.

Mediation is an informal process in which a trained mediator such as a

solicitor helps the couple to resolve difficult issues. The mediator's role is to act as a facilitator to help the couple share information and reach an agreement. It is not to offer advice or favour one side or the other.

That is why it is best for each side to retain their own solicitor so that they can get legal advice in between sessions.

Once the couple reach agreement, the mediator will record it in two summaries. Both husband and wife should then give those summaries to their respective solicitors so they can form the basis of a consent order.

Mediation may not be suitable for everyone but it can certainly help to diffuse tension, and as it enables couples to reach agreement more quickly, it can often help to save money as well as reduce trauma and heartache.

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The young 'should consider powers of attorney'

The government wants a broader range of people including the young to consider lasting powers of attorney (LPA).

LPAs are legal documents that enable you to nominate someone you trust to make decisions about your welfare and financial affairs if you lose mental capacity at some point in the future. There are more than 700,000 LPAs registered in

the UK. More than 90% of them are for people aged over 60, and more than half are for people over the age of 80.

Justice Minister Lord McNally said: "Making a lasting power of attorney is as important as making a will - it can save people unnecessary trauma and expense and makes sure their own wishes are followed whatever happens."

continued on page 2



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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The young ‘should consider powers of attorney’

continued from page 1

“It is crucial for people of all ages, yet very few under-60s have one registered and we need that to change.”

LPAs have to be registered with the Office of the Public Guardian, which ensures that safeguards are in place to prevent vulnerable people from being exploited.

The government is now consulting on ways to improve the system of registering LPAs. It has put forward a number of proposals including digitising the application process, simplifying the forms and improving the supervision of those appointed to manage people’s affairs.

The new proposals are expected to come into effect within the next 12 months. They follow a reduction in the LPA application fee from £130 to £110, which came into effect in October.

LPAs are very important documents which can have a major effect on your life and how decisions are made on your behalf. They need to be drawn up correctly with expert help from a



solicitor to ensure they fully reflect your wishes and protect your interests.

[For more details contact](#)

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Vegetarian mother ‘must let former partner see his son’

A court has been told how a vegetarian mother prevented her former partner seeing their son for more than a year because she feared he would feed the boy meat.

She was also concerned that the father called the five-year-old by a different name and didn’t make him wear a seatbelt.

The father took legal action to assert his right to have contact with his son. The High Court ruled that he should be allowed to see the boy at weekends and on occasional overnight visits. The judge warned the mother that a residence order would be made in favour of the father if she failed to comply.



The mother appealed on the basis that allowing the father so much contact after the boy had not seen him for more than a year was “too sudden and too steep a progression”. It would cause both her and her son emotional harm.

The Court of Appeal has now ruled in favour of the father. Lord Justice Underhill said the boy’s welfare outweighed the mother’s fears over issues such as vegetarianism. He said he

would give her one last chance to comply with the court order on contact – otherwise the boy would be sent to live with his father.

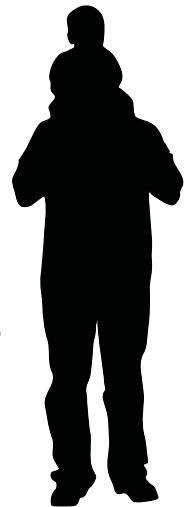
He said he wasn’t trying to punish the mother, but simply wanted to ensure that the boy grew up enjoying a positive relationship with his father.

Lord Justice Underhill said he recognised that allowing the father contact was “very painful and distressing” for the mother but that he hoped there would be “civilised interactions” between them. He hoped that issues such as diet could be dealt with sensibly through negotiation.

He said: “I do, for this five-year-old boy’s sake, wish the mother and father the best in doing their best for their son.”

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Homeowner compensated for tree root damage

A homeowner has been awarded compensation for damage caused to his property by the roots of a hedge belonging to his neighbour.

The issue first arose in 2006 when the homeowner noticed cracks in his property.

Structural engineers investigated and reported that the damage was most likely caused by the roots from a large cypress tree hedge on the neighbour’s land.

The neighbour agreed to remove the trees but the homeowner also sought

damages to cover the cost of repair work, plus compensation for distress and inconvenience.

The neighbour accepted that the damage had been partly caused by the hedge but argued that such problems were not reasonably foreseeable.

She also said the homeowner had been negligent in failing to alert her to the risks.

The court held that a reasonably prudent landowner with trees on her land ought to have been aware of the risk that they might cause subsidence and damage

to nearby properties. The neighbour’s failure to recognise and eliminate that risk meant she was liable to pay compensation.

However, the homeowner was also partly at fault for failing to alert the neighbour to the potential risk to his property.

It was therefore appropriate to reduce his damages figure by 15%, meaning he would receive £1,200 in total.

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Women win equal pay claim against NHS Trust

A group of female nursing assistants who were paid less than male maintenance workers have won an equal pay claim against an NHS Trust.

The pay of the two groups was based on wage structures established in 1987. More than 9 out of 10 maintenance workers were men and 8 out of 10 nursing assistants were women.

The two groups were in comparable pay bands yet the nursing assistants received only 91% of the salary paid to the maintenance staff.

When the women complained, the trust said that the maintenance workers' pay was set in line with private sector pay

rates. This was necessary to help recruit and retain suitably qualified staff.

The women refused to accept this and began legal proceedings.

The employment tribunal ruled in their favour. It said that the law sometimes allowed employers to pay some members of a team more than female employees if that was necessary to attract suitable staff. However, that did not apply in this case.

There was no evidence to show that the trust needed to pay a higher rate to recruit and retain maintenance workers. There was therefore no justification for paying the men a higher rate.



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Make sure your trust says what you think it says

Discretionary trusts are a great way to reduce inheritance tax but they must be drawn up properly to be effective.

A recent case before the High Court shows how problems can arise if the trust is not prepared correctly.

The case involved a man who made a will saying he wanted to leave as much of his estate as he could to his wife and children without incurring inheritance tax.

He created a discretionary trust fund to absorb some of his assets in order to keep the rest of his estate within the nil rate band for inheritance tax purposes.



This was intended to reduce the inheritance tax implications by £86,000.

It was his explicit intention that the trust would not fall within his wife's estate when she died. He appointed trustees who wrote to his wife explaining that the effect of the arrangement was that the

funds in the trust would be retained by the trustees on her husband's death.

The purpose of doing this was to reduce the inheritance burden on her estate when she died. She and her husband signed a deed of variation to their wills to bring this into effect.

Years later when both the husband and wife had died, their son noticed an error in the deed. The trust period had been defined as enduring only two years from the date of the husband's death and not for the whole of the wife's lifetime.

This would have the effect of bringing the funds sheltered in the trust back into his wife's estate and so therefore liable for inheritance tax.

The trustee who had helped draft the deed could not recall why such an error had occurred but confirmed that it had been the intention of both the husband and wife that the trust should endure throughout her lifetime.

The trustees had to apply to the High Court to have the error corrected to ensure the trust remained in place as originally intended.

The family were fortunate in this case that the courts were able to come to their rescue. This is not always possible as the rules are quite strict.

It is, of course, far better to ensure that trusts are set up correctly in the first place by experts and carefully designed to meet all your requirements.

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Wife loses appeal over clean break divorce settlement

A wife who wanted to receive periodic payments from her husband as part of a divorce settlement has lost her appeal against a court's decision that there should be a clean break instead.

The case involved a couple who had lived together for several years but then separated only eight months after marrying. They had two children.

The husband was a self-employed plumber. The wife had worked for a bank before being made redundant. She then worked as a contractor in the insurance industry but had been unemployed for six of the twelve months before the divorce hearing. Both had substantial debts.

Between them they owned four flats which were let to tenants. The wife applied for a periodical payments order until their children were aged 18. However, the judge made an order for

a clean break after finding that the wife had a greater earning capacity than the husband.

The husband was ordered to make a lump sum payment to the wife, and they both undertook to transfer their shares in the flats so that their ownership was separated.

The wife appealed saying the judge had failed to take into account the fact that she might have periods without work.

However, the Court of Appeal ruled against her saying it was impossible to conclude that the judge's decision was wrong in principle.

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15,000 new homes bought under Help to Buy scheme

More than 15,000 people have signed up to buy a home under the government's Help to Buy: equity loan scheme.

Housing Minister Kris Hopkins said the figures showed there was a renewed confidence in the housing market.

The scheme came into effect on 1 April 2013 and applies to new build properties only. To qualify you need a minimum deposit of 5%. The government will then lend you up to 20% of the value of the property through an equity loan. This is interest free for five years and can be repaid at any time within 25 years or on the sale of the home.

It means you could buy a property with just a 75% mortgage from a bank or building society. The scheme is run in partnership with building companies



across the country. It has helped to create jobs and provided a boost to businesses near the major development sites. Mr Hopkins urged more builders to get on board. He said: "The Help to Buy: equity loan scheme is not just helping thousands of buyers on to

the property ladder, but is making an important contribution to people's lives, creating jobs, boosting local business and stimulating the economy."

The housing market is expected to get a further boost with the introduction of the £12billion Help to Buy: mortgage guarantee, which came into effect in October.

Potential buyers have to provide a minimum deposit of 5%. The government will then provide a guarantee for up to 15% of the purchase price. This is designed to encourage lenders to offer 95% mortgages, secure in the knowledge that the government guarantee minimises any risk.

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Woman wins right to remain in deceased partner's home

A woman has won the right to remain in her deceased partner's home despite a legal challenge from his son.

The case involved a couple who were not married but had lived together for 12 years. The man had made a will leaving all his estate to his son.

However, he later added notes to the will saying that when he died, his partner was to receive £1,000 a month from his estate and be allowed to continue living in the home they shared. When she died, the house would pass to the son.

The man then became seriously ill and it was brought to his attention that the notes he had added to the will had not been drawn up in a way that was legally binding. He then contacted his solicitor who drafted a codicil, an amendment to the will, in line with the wishes expressed in the notes.

When the man died, his son challenged the codicil. He claimed his father had lacked testamentary capacity – that

is, the clarity of mind needed to fully understand what he was doing when altering the will.

The court rejected the son's claims and upheld the revised will. There was no evidence to back up claims that the man had been confused when he made the changes. On the contrary, he had shown he had full capacity by engaging a solicitor to make sure everything was done correctly. The fact that the will had been prepared by an independent solicitor made it difficult to challenge its validity.

Many witnesses had also said that he had told them that his partner could stay in the house indefinitely.

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