

expert, professional, friendly...

j&p

judge&priestley
SOLICITORS • EST. 1889

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

SPRING
2011



INVESTOR IN PEOPLE

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

Judge & Priestley
LLP

Justin House
6 West Street
Bromley
Kent BR1 1JN

Many parents give children up to £10,000 to get on property ladder

More than a third of parents in the UK are prepared to give their children up to £10,000 to help them buy a home, according to new research.

A survey carried out by the Halifax found that 79% of parents thought today's conditions made it more difficult for their children to get on the property market than it was for them when they were young.

A total of 35% of parents with children aged between 18 and 24 had either given them or were willing to give them £10,000 to help with a deposit. A further 18% were willing to raise that figure to £15,000.

It is only natural that parents should want to help but they should consider all the legal implications before handing over large sums of money to help their children buy a home, especially if they expect the money to be paid back

at some time in the future. The Law Society recently issued a warning that families could be torn apart if things go wrong. Law Society spokesman Robert Heslett, said: "If parents are helping their children, they should see a solicitor beforehand in order to draw up a loan agreement.

"It is very important that all parties involved are comfortable with the arrangement and that everyone knows where they stand with regards to paying back the money.

"While it's unlikely your children will run off with your savings, handing over a large amount with no legal structure in place is a minefield. It could tear families apart if things went wrong."

The Society stresses that parents should seek legal advice to protect their



interests before handing over their life savings.

"A solicitor will also talk through all the options available, and provide alternatives, such as parents acting as loan guarantors or entering into a joint ownership agreement.

"Solicitors are trained experts and are highly experienced in navigating the maze of paperwork and dealing with house purchases. Not only will a solicitor offer the best advice and service, they will help to avoid some unforeseen hazards that may occur down the line."

For more details contact
Madelaine Henwood - 020 8290 7413
mhenwood@judge-priestley.co.uk

Plans to improve mortgage protection

The Government is introducing new measures to provide better mortgage protection for homeowners – particularly those with second charge mortgages.

It plans to transfer the regulation of new and second charge residential mortgages from the Office of Fair Trading to the Financial Services Authority.

Finance minister Mark Hoban said: "This will ensure that existing second

charge mortgage borrowers who fall into arrears or face repossession on both first and second charge mortgages benefit from being regulated by a single organisation, maximising consumer protection."

The new measures will also ensure that consumer protection is maintained when a mortgage lender sells on a mortgage to an unregulated firm.

It's expected that the new measures will be in place before the end of the year.

Gay bar worker wins discrimination claim against pub

A barman has won his claim of discrimination based on sexual orientation after his employer tried to discourage gay customers.

The barman worked at a pub that had regularly been used by gay people. The owners then decided to turn it into a gastro pub offering meals to a broader customer base including families.

The barman was instructed to put up a sign outside saying "this is not a gay pub". He was also told to seat families and mixed-sex groups in prominent places.

A new manager was brought in who dismissed several male staff and replaced them with women to create a more even

gender balance within the staff. He also made homophobic remarks about gay customers. The barman resigned and made a claim of sexual orientation discrimination. His claim was rejected at the first hearing but then he won when he took the case to the Employment Appeal Tribunal.

It held that the evidence, including the sign, the seating arrangements and the homophobic language of the manager, showed that gay customers were treated less favourably.

It followed, therefore, that the barman had been treated less favourably on the grounds of sexual orientation.

For more details contact
Paul Stevens - 020 8290 7422 pstevens@judge-priestley.co.uk

Father 'not obliged to force son to see mother'

The Court of Appeal has ruled that if a child did not want to see his estranged mother, then his father was not obliged to make him see her - even if there was a contact order in place.

The case involved a couple with two children. The father was granted custody of the son but the daughter lived with the mother. There was a court order in place granting the mother contact with her son. The mother claimed the father had breached the terms of the contact order by not making her son available to see her on certain dates.

An officer from CAFCASS, the organisation that protects children's interests, said the boy did not want to visit his mother. A judge held that the father was obliged to exercise parental control over his son. It was not a reasonable excuse

to maintain that the boy did not want to see his mother. When the father failed to comply with an enforcement order, the judge made a committal order which could have resulted in the father being sent to prison for contempt of court.

The father took the case to the Court of Appeal which ruled that the contact order merely required him to allow contact between his son and the mother. It did not require that he enforced contact against the boy's wishes. The court held that committal to prison would be counterproductive and so the committal order could not be allowed to stand.

For more details contact **Thowheetha Shaah** 020 8290 7331 tshaah@judge-priestley.co.uk



Progress on equal pay is shown to be 'grinding to a halt'

Progress on closing the pay gap between men and women appears to be "grinding to a halt" according to new research by the Equality and Human Rights Commission.

Its latest figures show there was an average gender pay gap of 16.4% in 2009. The gap was wider in older age groups with women over 40 earning an average of 27% less than men of the same age.

People from ethnic minorities also earned less than the average for other workers. Pakistani men earned 13% less than what might be expected while Bangladeshi men earned 21% less.

The figures were compiled as part of a three yearly assessment introduced under the Equality Act.

The Act updates and streamlines legislation to prevent discrimination.

The Commission's figures show that while there have been major improvements in terms of equality, there is still a long way to go before women and some ethnic minority



groups enjoy the same pay rates as others in the workforce. Anyone who fears they are being paid less than they deserve simply because of their sex or their race is entitled to take legal action to enforce their rights.

For more details contact **Paul Stevens** - 020 8290 7422 pstevens@judge-priestley.co.uk

House seller ordered to pay £10,000 damages to agent

A woman must pay more than £10,000 damages to an estate agent after breaking a sole agency agreement when selling her house.

The woman had put her home on the market with several estate agents but then entered into an exclusive arrangement with just one. However, she subsequently sold the property through one of the original agents which meant that the agent with exclusive rights lost the commission.

He sued and has now won his case in the Court of Appeal.

The court held that the agreement made it clear that only one agent had the right to sell the property at that time. By allowing another agent to sell it, the woman was in breach of contract. She was ordered to pay damages of £10,883.

For more details contact **Mark Oakley** - 020 8290 7337 moakley@judge-priestley.co.uk

Son fails to overturn his father's will despite 'lack of capacity'

A man's will has been upheld by the courts even though he had lost mental capacity at the time he executed it.

The court heard how the man had drawn up a will leaving most of his estate to his carer. He told his solicitor that there were a few matters in the will that needed to be clarified but did not pursue them any further.

He then executed the will 17 months after he gave those first instructions.

When he died shortly afterwards, his son mounted a legal challenge saying that his father had lacked testamentary

capacity both when he drafted the will and then later when he executed it.

The court found that the man had testamentary capacity when he drew up the will but not at the time he executed it.

Nevertheless, that meant the will should still be considered valid based on a legal principle established in the case of Parker v Felgate in 1883.

That determined that a person did not have to have testamentary capacity at the time of executing a will as long as he understood that he was executing a will

for which he had given prior instructions and approval. The son appealed saying the Parker v Felgate decision was wrong in principle and should not be followed.

He argued that the law required that a person should have testamentary capacity at the time of executing a will.

However, the Court of Appeal ruled against him and so upheld the long established Parker v Felgate principle.

For more details contact **Paul Stevens** - 020 8290 7422 pstevens@judge-priestley.co.uk

Court allows woman to rectify mistake over trust

A court has set aside a discretionary trust for a woman after hearing that it did exactly the opposite of what she wanted and prevented her from accessing her money.

Following the death of her husband, the woman had been entitled to lump sum death benefits from some of his pension schemes. After taking financial advice, she set up a trust into which the benefits



could be paid. She believed that by doing so she could escape adverse tax provisions, benefit

from the income from the money and have access to the capital sums.

Unfortunately, the trust was set up in such a way that it had the opposite effect. It irrevocably excluded the woman as a beneficiary, thereby preventing her from having access to the capital and removing her entitlement to any of the income.

To make matters worse, the act of transferring the money into the trust amounted to a chargeable transfer as far as the Revenue was concerned and, following her death, would have further

adverse tax consequences. The court held that it was an established principle that a discretionary trust could be set aside providing that the person involved had been mistaken as to the effect it would have.

That principle applied in this case because the woman had not understood that she was executing a settlement that would confer no benefit on her and would actually be to her detriment.

For more details contact **Mark Oakley** - 020 8290 7337 moakley@judge-priestley.co.uk

Status of pre-nuptial agreements comes under scrutiny

The status of pre-nuptial agreements could be updated and clarified following a public consultation by the Law Commission.

Marital agreements between spouses, which can be made before or after a marriage, are not legally binding in the UK although the courts may take them into account.

In the recent Radmacher-Granatino case, the Supreme Court went further than ever before in strengthening the legal status of pre-nuptial agreements. It ruled that they should generally be upheld as long as they are fair and entered into freely by both parties.

However, the Law Commission says that the ruling was made in the context of existing legislation. As the law stands at the moment, it doesn't prevent either spouse asking a court to over-rule a pre-nup agreement and determine that property should be shared in a different way.

The Law Commission has begun a public consultation on how the law should regard such agreements in future. It wants views on such questions as: should pre-nups be legally binding or should it be left to the courts to decide?

If they are to be legally binding, what safeguards need to be put in place? Should the agreements only relate to wealth



acquired before the marriage? Should there be clauses stating that the pre-nup ceases to be effective after a certain number of years, or after a specific event such as the birth of a child?

The responses to the consultation and the Law Commission's subsequent report and proposals could lead to new legislation relating to marital agreements.

For more details contact **Thowheetha Shaah** - 020 8290 7331 tshaah@judge-priestley.co.uk

Mother wins fight to have children returned to United States

A mother has won her legal battle to have her children returned to the United States so that she can see them and maintain contact.

The case involved an American mother and a British father. They had married in the United States and had two children. They lived in the US while they were married.

Following the break-up of the marriage, the children continued living with the father but were visited often by the mother. The father was then charged with assault on a former girlfriend.

He also found himself in severe financial difficulties. To avoid facing the charge and to be closer to his family because of his financial problems, he

decided to return to the UK taking the children with him. He did not tell the mother he was leaving or give her a forwarding address.

As soon as the mother discovered what had happened, she began legal proceedings under the Hague Convention to have the children returned to the United States.

The father claimed that she had consented to the removal of the children. He also submitted that the risk of imprisonment and his financial difficulties could expose the children to psychological harm if he were forced to return to the US.

The court, however, granted the mother's application to have the children returned.

It held that the father had failed to show that she had consented to the removal of the children.

As for the assault charge, the court was not convinced that the father would be arrested or that if he was, the children would not be sufficiently cared for by the mother.

In any case, the father had to accept responsibility for his situation. To accept his arguments would give a signal to would-be abductors that they could improve their case by breaking the law and by giving up their employment so they had no money.

For more details contact **Thowheetha Shaah** - 020 8290 7331 tshaah@judge-priestley.co.uk

A Lasting Power of Attorney means peace of mind

Higher living standards and better health care mean that on average people are living longer than ever before.

While many will enjoy extra years of active life, others unfortunately may begin to suffer from age related dementia which affects their mental capacity and prevents them from making life affecting decisions.

Uncertainty about the future prompts thousands of people each year to consider the use of Lasting Powers of Attorney (LPA) to protect their interests in case their health and their mental capacity should start to deteriorate.

LPAs enable you to nominate someone to make decisions on your behalf if you ever lose the ability to do so yourself in the future 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.

LPAs have to be registered with the Court of Protection before they can be used. This is one of the safeguards in place to prevent the system being abused. It means you can prepare for the possibility of ill health secure in the knowledge that you



can delegate decisions to someone you trust. If you don't have such arrangements in place then your family may have to go through complicated and time-consuming legal processes just to get the authority to help run your affairs for you. That is the last thing they want at a time when they will already be worried about you and your failing health.

LPAs should be drawn up with the help of a solicitor to ensure that they accurately express your wishes and protect your interests.

For more details contact

Ralph Stanger - 020 8290 7348 rstanger@judge-priestley.co.uk

Husband must pay more after failing to disclose shares

A husband has been ordered to pay his former wife an extra £481,000 after failing to disclose that he owned share options when the couple divorced in 2005.

The original settlement was on a clean break basis after assessing each party's known assets. However, in 2008 the wife discovered that her husband had failed to disclose that he had also held share options which he later sold to earn a net gain of £1,268,000.

The wife applied for the 2005 order to be set aside so a new settlement could be reached taking the new

information into account. The judge held that it was unnecessary to set aside the original order.

It was sufficient to divide the newly discovered assets in the same way that the court would have done in 2005 had it known of their existence. On that basis, he ordered that the wife should receive 35% of the money made from the sale of the shares. This amounted to £481,000 including interest.

The husband appealed saying the judge was wrong to conclude that his failure to disclose the share option was material to the case. He also submitted that having found the non-disclosure to be

material, the judge was wrong to award the wife 35% and should have instead ordered a new hearing to reconsider the whole settlement which could take into account each side's current income and assets.

The Court of Appeal has now ruled against him. It held that the judge was right to conclude that there was no need for a new hearing. It was sufficient to amend the original order so the wife got the full amount to which she was entitled.

For more details contact

Thowheetha Shaah - 020 8290 7331 tshaah@judge-priestley.co.uk

j&p

Lexcel
Practice Management Standard
Law Society Accredited



INVESTOR IN PEOPLE

Services

- Disputes
- Employment
- Family & Mediation
- Residential Property
- Road Traffic Claims
- Wills, Inheritance & Trusts

Meet the team



Mark Oakley



Thowheetha Shaah



Pamela Bachu



Ralph Stanger



Madelaine Henwood



Neil Cuffe



Steve Taylor



Tony Clarke



Anne Nurse



Paul Stevens

For further information T. 020 8290 0333 F. 020 8464 3332

Justin House, 6 West Street, Bromley, Kent BR1 1JN

E. info@judge-priestley.co.uk

www.judge-priestley.co.uk

This newsletter is intended merely to alert readers to legal developments as they arise. The articles are not intended to be a definitive analysis of current law and professional legal advice should always be taken before pursuing any course of action.