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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.

Judge & Priestley  
LLP  
Justin House  
6 West Street  
Bromley  
Kent BR1 1JN

## Check your will after changes to inheritance law

The Law Society is urging people to consult their solicitor to check their will is accurate and up-to-date following changes made to inheritance laws.

It points out that if you die intestate – without having a valid will in place – or if your will has not been written to the required legal standards, then your assets could be divided up in a way that you did not intend.

For example, if you are separated but not divorced, then your estranged partner will be entitled to more of your estate than your children if you do not have a valid will that states otherwise. If you do not have children, your partner will inherit your entire estate. Your parents, siblings and other family members could end up with nothing.

The changes to the law mean you should check your will with a solicitor to ensure your intentions for the division of your estate are clearly in place.

Over the past few years, there has been a rise in the number of people turning to unqualified will writers and online do-it-yourself services. Wills written in this way are often not accurate enough to be legally enforced, and can cause stress and anguish for families when a loved one dies.



Law Society president Andrew Caplen said: "The changes to the intestacy rules serve as a reminder of the importance of having a will. We urge people to use a qualified, insured solicitor because they are trained to spot and address the issues that could lead to trouble later. For full consumer protection the only prudent choice is to instruct a solicitor."

For more details contact

**David Chandra** - 020 8290 7348 dchandra@judge-priestley.co.uk

## Stamp duty changes provide boost for 98% of homebuyers

Changes to stamp duty announced in the Autumn Statement by Chancellor George Osborne have helped stimulate the housing market, according to solicitors and estate agents.

Mr Osborne said 98% of people in England and Wales will now pay less duty when buying a property. Only those buying homes worth more than £937,000 will be worse off.

The changes, which came into effect on Dec 4, introduced more gradual increases in stamp duty rates. Under the previous system, the duty had been criticised for being what was described as a slab tax, meaning it suddenly jumped by large amounts between the different thresholds.

This meant that someone buying a home for £250,000 would pay a 1% stamp duty of £2,500. However, if the property went over the £250,000 threshold, even by only £1, then the rate would jump to 3%.



This 3% would apply to the whole purchase price meaning that the buyer would have to pay an extra £5,000, simply because of that £1 extra on the purchase price.

The new system is more progressive. The rates of stamp duty only apply to the amount of the purchase price that falls within each band.

This means that a person buying a house for £200,000 will pay nothing on the first £125,000, as that is zero rated. They will then pay 2% on the next £75,000, making a total tax bill of £1,500. Under the previous system

they would have paid 1% on the total purchase price, providing them with a bill of £2,000.

The new system therefore saves them £500.

The new rates are:

- Up to £125,000 : 0%
- £125,001 to £250,000 : 2%
- £250,001 to £925,000 : 5%
- £925,001 to £1.5m : 10%
- Above £1.5m : 12%.

Solicitors and estate agents have already reported increased activity in the housing market. For example, Haart's estate agency has seen a 15% increase in inquiries.

For more details contact

**Madelaine Henwood** - 020 8290 7413 mhenwood@judge-priestley.co.uk

# When is an employee not an employee?

For many employers this is an important question. There are a variety of ways workers are taken on and not all of them are defined as employees in law. There are casual workers, workers under zero hour contracts, self employed contractors, and agency workers. For many this is a riddle of sphinx-like dimensions.

The simple answer is that all of these people are workers and have some rights, but only employees (or people given an equivalent status) have all the rights under the Employment Rights Act 1996 and other relevant employee legislation. So how do we define employees?

This is hard. A basic definition might be that they are workers who contract their services to the control of another for remuneration, under an employment contract, on terms consistent with a contract of service. However, like all difficult cases the exceptions outnumber the rule.

In *Quashie v Stringfellow's Restaurants Ltd* [2012] the "table side dancer" worked on terms set down by her employer, in one place under his supervision, but negotiated her own remuneration with the patrons. The employer was thus under no obligation to pay her anything at all.

In *Saha v Viewpoint Field Services* [2014], the claimant worked on an ad-hoc basis between 7 and 43 hours almost every week as a telephone interviewer but was not obliged to work, nor was the employer obliged to offer her work. She was therefore held not to be an employee.

In neither of the above cases was there "an irreducible minimum of mutual obligation" necessary to create a contract of service. In *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968], this "irreducible minimum of mutual obligation" seems to be based on subordination of skill, subjugation to control, and consistent terms of service. However, this is not set in stone either (or concrete!).

As seen in *White and Carter (Councils) Ltd v McGregor* [1962] there were



## Employment Law



a series of contracts which, despite the fact that there was no consistent day to day control, there was nevertheless a contractual right to control, sufficient to preclude their independent status as subcontractors with their own organisation and working arrangements.

So back to our hapless "table side dancer" - How does the restaurant/leisure industry cope with such uncertainty? Perhaps by making decisions about what they want from their workers. Waiting/kitchen staff etc, who work by mutual agreement on an ad-hoc basis, are almost certainly casual workers and there is no irreducible minimum of obligation to be found in an employment contract.

Managers who work minimum hours on an established contract (which must be in writing) and are paid an established remuneration are most likely to be employees. The chef who works zero hours contracts is more complicated: the actual terms of employment will have to be examined to determine whether there are sufficient elements of subordination of his skills, control and contractual obligation to create an irreducible minimum.

What about the lap dancer? She or he will either have to be very good at table side dancing, or negotiate a much more certain 'employment contract' for their services.

If you would like more information about employment status or employment law, contact Paul Stevens - 0208 2907422, [pstevens@judge-priestley.co.uk](mailto:pstevens@judge-priestley.co.uk).

## Woman entitled to a share of her ex-partner's house

A man has been ordered to pay £28,500 to his former partner after he had assured her that she would have a home for life.

The couple began living together in 2002. The woman had been living in a secure tenancy and had limited resources.

They bought a house with the man's capital and he made monthly payments on the mortgage. The woman claimed that the house was solely in his name because it was more

convenient. She said they had always intended to become joint owners.

The man said that it had always been understood that it was his house and he had only intended for her to live there for as long as the relationship lasted.

When the relationship ended in 2012, the woman claimed that her partner held the house on a constructive trust for both of them in equal shares. The judge dismissed this argument but upheld a separate claim that she should receive £28,500 from the equity of the property.

This was because the man had given her reason to believe that he was

making a commitment to providing her with a secure home. It was unfair of him to give her that impression and then fail to follow it through when the relationship ended.

The judge said that the woman wouldn't have given up her secure tenancy without those assurances. She lost security and money by moving in with her partner. The court valued that loss at £28,500.

The Court of Appeal upheld the decision.

For more details contact **Thowheetha Shaah** - 020 8290 7331 [tshaah@judge-priestley.co.uk](mailto:tshaah@judge-priestley.co.uk)





# Father is denied contact with son at son's request

A father has been denied direct contact with his estranged son after the court heard that the boy didn't want to see him.

The boy's parents had been married but separated shortly after he was born. Initially, the father maintained regular contact with his son. However, this stopped when the mother became suspicious that the boy had been injured during a contact visit.

The mother applied to have the contact order suspended but the court ruled that the allegations were unfounded.

However, the son maintained a negative view of his father and believed that he had injured him. They tried family therapy but it was unsuccessful.



The judge said that the father hadn't realised the complexity of the situation and lacked insight and empathy towards his son. He also said that the mother hadn't made any effort to reduce her son's concerns.

He ruled that the father should have no direct contact with his son as it would cause distress to the boy to force visits on him against his will.

The Court of Appeal ruled that refusing direct contact wasn't unreasonable. The son's negative mind-set towards his father was so strong that it wasn't in his best interests to allow his father direct contact.

For more details contact **Thowheetha Shaah**  
020 8290 7331, [tshaah@judge-priestley.co.uk](mailto:tshaah@judge-priestley.co.uk)

## Government shelves online lasting powers of attorney

The government has shelved its controversial plans for an online system for creating lasting powers of attorney (LPA).

The decision follows concerns raised by the Law Society and others that a fully digital system could be open to fraud and abuse.

LPAs enable you to nominate someone in advance to look after your affairs should you become incapable of doing so yourself at some point in the future. They have become increasingly popular in recent years as people plan to protect their interests as they get older.

Ministers wanted to streamline the process of setting up an LPA by creating a fully online service. A digital system was introduced last year but it still required users to print out and physically sign the appropriate forms. The Ministry of Justice (MoJ) had planned to remove



this requirement so the whole process could be done online with the use of electronic signatures.

However, the Law Society and several leading lawyers expressed concern that this would leave the process open to abuse.

The MoJ has now decided to shelve the proposals for the time being so that more research can be done to see if a secure and reliable online system can be developed.

The President of the Law Society, Andrew Caplen, welcomed the decision. He told the Law Gazette: "There are real problems to be overcome to ensure that vulnerable people are properly protected before electronic signatures can be accepted and we do not believe that government should move further until these have been satisfactorily addressed."

However, the government remains committed to the value of LPAs. Justice Minister Simon Hughes said: "LPAs give people the peace of mind of knowing that if they ever lose capacity, the important decisions about their life can be taken by someone they have chosen and can trust. We are keeping the right safeguards in place to protect the public at what can be a vulnerable time in a person's life."

## Right to Buy discounts to increase

Council house tenants can now receive higher Right to Buy discounts following a government move to improve the scheme.

Tenants in London can qualify for discounts of up to £102,700 off the value of their home. In other parts of the country the discount can be as high as £77,000.

The discount caps will now increase in line with the Consumer Price Index level of inflation. The maximum percentage discount on houses has also increased from 60% to 70%, which is the discount level for flats.

The Right to Buy scheme was updated in 2012 when the discount was

£75,000. The following year it was raised to £100,000 in London.

Housing Minister Brandon Lewis said: "We have reinvigorated the Right to Buy, increasing the discounts available to open it up to more tenants. Since the changes came into effect we have helped more than 19,500 people to buy their own home, generating £420 million in receipts for new additional affordable housing."

The government will use the money generated from sales to build new houses to provide more homes to rent.

For more details contact  
**Madelaine Henwood** - 020 8290 7413  
[mhenwood@judge-priestley.co.uk](mailto:mhenwood@judge-priestley.co.uk)

For more details contact  
**David Chandra** - 020 8290 7348  
[dchandra@judge-priestley.co.uk](mailto:dchandra@judge-priestley.co.uk)

# Law Society: 'Use a Professional. Use a Solicitor'

The Law Society has launched a media campaign to highlight the importance of using a professional solicitor when seeking legal advice.

'Use a Professional. Use a Solicitor' is the tagline, and adverts will be appearing on numerous media outlets including television, railway stations and public buses.

In recent years, various unregulated advisers and do-it-yourself legal services have emerged, particularly online.

For example, anyone can set up a business providing will writing services - even if they have no qualifications and no insurance. This has led to thousands of people being overcharged, or having wills drawn up that are not legally watertight.

Solicitors, on the other hand, have to be highly qualified and must abide by a strict code imposed by the Solicitors Regulation Authority

Law Society president Andrew Caplen warned: "The growth of unregulated and do-it-yourself legal services means consumers are exposed to non-professional advice, which can be more of a hindrance than a help. Our latest campaign reminds the public that highly-qualified, professionally-trained



solicitors are the best people to speak to for legal advice. Using a solicitor gives you the assurance you are dealing with a professional who is properly regulated and insured."

The campaign centres on six key aspects of law; conveyancing, personal injury, wills and probate, business law, family law and criminal law. Use a Professional. Use a Solicitor will include case studies on each of these areas provided by members of the Law Society.

If you require legal advice of any kind please contact **Judge & Priestley LLP** - 020 8290 0333, [www.judge-priestley.co.uk](http://www.judge-priestley.co.uk)

## Golf club unfairly dismissed bar manager over deficit

A manager of a golf club bar has won an unfair dismissal claim after his bosses said he had falsified weekly bar statements.

The manager was suspended from his job when annual accounts showed a deficit of around £5,300. His bosses claimed that the deficit was due to him making handwritten alterations and deducting the 'chip and pin' amount before the total cash was banked.

The manager denied the accusation. He said that he had been told to

deduct the chip and pin amount by the treasurer, who signed the statement every week.

He said the real reason he had been dismissed was because the club felt it couldn't afford a manager because it was in a poor financial state. The club secretary had stated that the club couldn't afford a bar manager more than a year earlier.

However, the secretary told the court that he had only made the point as "one option" to discuss.

The tribunal ruled in the manager's favour. Employment judge Philip Davies said it was 'puzzling' that the treasurer had signed bar statements every week for several months without noticing the issue. He added: "There was not a grasp really by the respondent (the club) of what misconduct had been carried out by the claimant. There was no full and further investigation."

For more details contact **Paul Stevens** - 020 8290 7422 [pstevens@judge-priestley.co.uk](mailto:pstevens@judge-priestley.co.uk)



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### Meet the team



Mark Oakley



Thowheetha Shaah



Pam Bachu



David Chandra



Madelaine Henwood



Neil Cuffe



Steve Taylor



Tony Clarke



Paul Stevens



Lucy Rudd

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](mailto:info@judge-priestley.co.uk)

[www.judge-priestley.co.uk](http://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.

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