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

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More cohabiting couples lack legal protection

The number of unmarried couples in the UK has more than doubled in the last 20 years, according to figures released by the Office for National Statistics.

Many cohabitants believe that they have the same legal protection as married couples but, unfortunately for them, this is not the case. They have few automatic legal rights, which can leave them vulnerable if their relationship with their partner breaks down.

Jo Edwards, chair of the family lawyers group, Resolution, said: "The law doesn't give people in this type of relationship any meaningful legal protection if they separate. Even if one partner has given up work to care for children, or has contributed by supporting their partner in their career by running the home, often their contributions will not be recognised in law."

There are numerous pitfalls. For example, if your home is in your ex-partner's name then you will have no automatic right to stay there if you are asked to leave. Nor will you automatically be entitled to a financial share in the house, even if you helped to pay for it over several years.

Your former partner won't have to pay maintenance for you, even if you gave up your job to look after the children while he or she went out to build a lucrative career.

Resolution published a Manifesto for Family Law earlier this year calling on the government to give cohabiting couples more legal protection. So far, however, the government has shown little enthusiasm for changing the law. In the absence of any automatic legal protection, many couples draw up living



together agreements that state in advance how their assets should be divided if their relationship fails and they decide to separate.

Ownership of the family home is one of the most important issues. If it is in just one person's name then the other partner could lose out.

You may want to consider owning it as joint tenants or tenants in common which will make a huge difference to your rights.

If you don't already have a will then you should draw one up as soon as possible. Otherwise your estate will pass to your relatives rather than your partner.

For more details contact

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David Chandra ranked as a UK Top Rated Solicitor

David Chandra, Private Client Partner, has been ranked as a UK Top Rated Solicitor. David received glowing reviews from his clients on VouchedFor.co.uk, the leading review site for professionals. Judge & Priestley are the only firm of solicitors to be mentioned in the Bromley area.

David Chandra said "Being recognised as a Top Rated Solicitor on VouchedFor.co.uk is an achievement. There are many people in the area who might need help with legal matters but don't know how to find a good solicitor or how to get recommendations. It means a lot that my clients have gone out of their way to review me and I'd like to thank them all for their recommendations."

Please visit www.vouchedfor.co.uk to read the reviews.

Did you know we are now on Twitter? Please follow us on twitter @Judge-Priestley
You can keep up-to-date with all relevant legal updates and also keep track on our firm-wide activities. If you need any help please contact Nita on 0208 290 7425.



Deregulation Act 2015 - changes to section 21 notices

New legislation which came into force on 1 October 2015 introduced a number of changes which affect whether or not a Landlord can serve a Section 21 Notice on an assured shorthold tenancy in England.

These new rules will only apply to new assured shorthold tenancies entered into on or after 1 October 2015. In cases of assured shorthold tenancies which started before 1 October 2015, the old Section 21 regime will continue to apply, including those where the fixed term ends and becomes periodic after 1 October 2015.

The changes for assured shorthold tenancies which start on or after 1 October 2015 can be summarised as follows:-

1. The Landlord has to comply with prescribed legal requirements to:-
 - Provide with the tenant with the Energy Performance Certificate for the property;
 - Provide the tenant with a current Gas Safety Certificate;
 - Provide the tenant with a booklet called "How to Rent: The Checklist for Renting in England". In certain

circumstances this document will need to be supplied again to the tenant.

2. For assured shorthold tenancies that begin on or after 1 October 2015, a Landlord cannot serve a Section 21 Notice within the first four months of the tenancy.

3. Once a Section 21 Notice has been given, possession proceedings must be commenced within the 6 months of service of the Section 21 Notice. In other circumstances the period will be 4 months after the end date specified in the Notice.

4. There is now a prescribed form for a Section 21 Notice which must be used for all assured shorthold tenancies starting on or after 1 October 2015.

From 1 October 2015 Landlords also need to be aware of new regulations regarding the installation of smoke alarms and carbon monoxide detectors.

Complaint by Tenant/Retaliatory Eviction

A Section 21 Notice will be invalid if, prior to service of the Notice, the tenant made a complaint in writing to



the Landlord about the condition of the property. Upon receipt of a complaint the Landlord will have to comply with very strict timescales and procedures.

Although, at present, the provisions will only apply to assured shorthold tenancies in England granted on or after 1 October 2015, it is important to note that, from 1 October 2018, the provisions will apply to all assured shorthold tenancies in existence, irrespective of whether the tenancy began prior to 1 October 2015.

The new legislation is complex and the experts in our Housing Team can provide guidance to Landlords to ensure full compliance.

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Landmark Supreme Court ruling on cases of Sharland and Gohil; dishonesty will not be tolerated in financial proceedings

On 14 October 2015, the Supreme Court handed down landmark judgments, allowing two women to set aside their financial settlements due to their ex-husband's dishonesty and failure to disclose assets during the divorce and financial proceedings.

Whilst the two cases had differing circumstances, both women had learnt that their ex-husbands had dishonestly misled the Court in failing to disclose the extent of their wealth during the negotiations and Court proceedings, which lead to them agreeing financial settlements. In financial proceedings there is a clear ongoing duty on both parties to provide full and frank disclosure of their financial situation. The two women fought to re-open the proceedings on the basis that their ex-husbands had knowingly failed to comply with this duty. They maintained that, had their ex-husbands been truthful and transparent about the extent of their wealth, they would not have consented



to the financial settlements reached. The Supreme Court agreed that certain factors, such as non-disclosure of assets, may vitiate one party's consent to a financial agreement and justify the order being set aside.

Prior to the rulings the Court's stance

was that where there had been "material non-disclosure" the Court would only set aside financial orders if the wronged party could show that the disclosure would have resulted in a "substantially different" order. These rulings have however clarified that once it has been established that a party has deliberately and dishonestly misled the Court in failing to disclose their assets, the burden will shift to the dishonest party to demonstrate that the Court would have made the same order regardless of their deceit.

These rulings have brought a welcome and long awaited clarity to the issue of dishonest non-disclosure and send out a clear message that "fraud unravels all" and dishonesty in financial proceedings will simply not be tolerated any longer.

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Woman challenges mother's will to get £163,000

A woman who was written out of her mother's will because she eloped with her boyfriend when she was 17 has won her appeal to inherit a share of the family estate and been awarded £163,000.

It's considered an important ruling by legal experts and could influence the way some wills are drawn up in the future.

The case involved a woman who had been estranged from her mother for 26 years, since leaving home at the age of 17 to be with her boyfriend. She later married him and they now have five children.

The couple depend on state benefits and live in a housing association house which they have the right to buy. The woman has never had a holiday,

has difficulty affording clothes for the children, and is limited in the food she can buy.

When her mother died, she left all her net estate of £486,000 to various charities, even though she had little to do with them during her lifetime. The daughter took legal action to claim a share of the estate.

At the first hearing, the district judge found that the mother had not made reasonable financial provision for her daughter.

However, he decided that any financial award he made for her should be limited because she had managed for many years on limited resources and had a lack of expectation. He awarded her £50,000. The daughter appealed because she would lose a greater



Wills and Probate

amount in state benefits than she would gain from the award.

The main issue was how the court should set about determining the amount of an award if the effect of that award was to remove the state benefit.

The Court of Appeal held that the judge had made fundamental errors in his approach which meant that his award should be set aside.

It held that the daughter's present income was not sufficient for her maintenance given the restrictions which she had to impose on her spending and the lack of any provision to meet her future needs when she grew older or if she suffered any ill-health.

The court could and should make reasonable financial provision out of the mother's estate for her daughter's maintenance so that her living expenses were relieved without affecting the state benefits which she relied upon.

An award would therefore be made for £143,000, the cost of buying her home plus the reasonable expenses of acquiring it.

She would also be awarded an option to take a further maximum capital sum of £20,000 to provide an immediate fund from which further income needs could be met.

The provision of funds to allow her to acquire her house would relieve her of rent liability and allow her to keep her tax credits. If those benefits were not preserved, there was little or no financial provision for maintenance at all.

Lawyers believe the ruling could lead to an increase in the number of people challenging their parents' will if they feel they have not been provided for adequately, especially if they are in financial difficulties.

It also means that parents wishing to leave their children out of their will may have to give explicit reasons for their actions and outline why they want their estate to go to other people or organisations instead.

Government plans housebuilding boom to increase home ownership

The government is introducing a series of measures to boost housebuilding so more young people can own their own home.

The key measures include building discounted homes for first time buyers on all "reasonable-sized" developments, unlocking public land for hundreds of thousands of new homes and supporting small building firms with planning changes.

Prime Minister David Cameron said: "For too long an entire generation has been locked out of home ownership, with home ownership levels amongst 25 to 34-year-olds falling from 59% to 36% over the last 10 years."

To address the problem, various housing schemes, which have already proved successful, will be extended. These include:

- **Help to Buy.** This has already helped more than 100,000 people into their own homes by helping with the cost of a deposit. It will be extended until 2020.
- **Starter Homes.** These are exclusively for first time buyers under 40 and are sold at a 20% discount. The government says all reasonable-sized housing developments must now include starter homes. It wants 200,000 properties to be built over the next five years.



- **Right to Buy.** Housing association tenants are being given the opportunity to buy their own home and ensuring that, like local authority tenants, they will get a discount of up to 70% – bringing them on a par with the benefits already enjoyed by council tenants across the country.

The government also wants to help small firms to build more houses by obliging local authorities to make more plots available. In addition, there will be a series of planning reforms, with local people being given more say on where new homes should go and what they should look like.

The measures will be outlined in the Housing Bill to be introduced in the autumn. We shall keep clients informed of developments.

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Lasting power of attorney forms are becoming simpler and easier

Lasting power of attorney (LPA) forms have been updated to make them simpler and clearer.

The Office of the Public Guardian (OPG), which administers LPAs, says the move is in response to feedback from users.

LPAs enable you to protect your interests in the future in case you ever lose mental capacity through injury or ill health.

They allow you to nominate someone you trust, such as a relative, to make decisions on your behalf if you ever lose the ability to manage your affairs properly.

You can use LPAs to cover financial matters or health care, or both. They have to be registered with the OPG and there are safeguards in place

to ensure they are not abused.

One of the major changes in the new streamlined system is the removal of the requirement for a second certificate provider, as this was making it difficult for some people who wanted to make an LPA.

An OPG statement says: "Having listened through our consultation, we haven't combined the forms for health and welfare and property and finance. "Nor are we removing the requirement for a signature and witness for the life sustaining treatment section.



"Other safeguards remain the same, such as the need for an independent witness to sections of the LPA and someone you know certifying that, in their judgement, you have capacity."

The changes came into effect on 1 July.

LPAs can provide peace of mind by enabling you to plan for the future. However, they are important documents and need to be drawn up with the help of solicitor to ensure they are legally watertight and meet your requirements.

The OPG says it will accept both the old and new versions of LPA forms until January.

No changes are being made to enduring powers of attorney (EPA) forms at this time. These will still be able to be registered after the introduction of the new LPA forms.

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J&P welcomes Rachel Gregory

Judge & Priestley's growing Private Client team has been boosted by the arrival of Probate Executive, Rachel Gregory. Rachel is a Fellow of the Chartered Institute of Legal Executives and has over 6 years of Private Client experience.

Rachel who is originally from Sheffield joined Judge & Priestley from a top Legal 500 firm in Newcastle. Rachel specialises in all aspects of wills and probate work.

David Chandra, Head of Private Client says "We are delighted that Rachel has joined our expanding team. Rachel's experience in wills and probate will definitely bring value to our bank of expertise. We offer a warm welcome to our new team member."

Rachel can be contacted on 0208 290 7357 or rgregory@judge-priestley.co.uk.



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Meet the team



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