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

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Court of Appeal ruling seems to add a further potential point of contention into divorce proceedings

The recent Court of Appeal ruling in the case of Julie Therese Sharp v Robin Duncan Sharp is causing widespread debate among family and divorce lawyers.

In short, the Court of Appeal ruled that the combination of potentially relevant factors - a short marriage, no children, dual incomes and separate finances - was sufficient to justify departing from the equal sharing principle to achieve overall fairness between the two parties.

The High Court, in November 2015, awarded Robin Sharp £2.7m, which represented half of the total matrimonial assets. Julie Sharp argued that her ex-husband should receive only £1.3m, given that she had contributed the bulk of the combined assets.

The Court of Appeal ruled that Robin Sharp should be awarded £2m. In the judgment Lord Justice McFarlane said that Mrs Sharp received bonuses 'way beyond the level of her previous earnings purely as a result of her employment and...without any contribution, either domestic or business, from her husband'.

The case seems to highlight that, particularly in shorter marriages, fairness and meeting the needs of spouses after they divorce is becoming more important than the traditional principle of the equal sharing of assets. The problem though is that there is no legal definition of a "short" or "long" marriage and therefore no defined point after which wealth generated should be shared equally. The judgement therefore seems to serve to add a further potential point of contention into divorce proceedings.



It also further reinforces the potential benefit of entering into a pre-nuptial agreement in cases where the relative contributions of two working partners are widely at variance.

Commenting on the case, Steve Johnston the Head of Family law at Judge & Priestley said: "This case confirms that in a relatively short and childless marriage the court is likely to consider fairness means focusing on the parties' respective contributions during the marriage. It is a rare marriage indeed where both parties earn astronomically more than either of them needs (the wife bought the husband three Aston Martins in this case), but the general principle that flows down to the most humble is that in a short marriage it will be unfair to ignore the fact that one has put in so much more than the other, and the fair outcome is one that reflects those unequal contributions. The Court also notes that the wary would have considered a pre-nuptial agreement."

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Husband loses appeal against £4.25m divorce settlement

A judge was not at fault when he exercised his discretion to award a woman a £4.25m divorce settlement based on her "needs".

That was the decision of the Court of Appeal in a case involving a couple who had been married for two years but had a relationship stretching back over nine years. The husband was 65 and the wife was 38.

The husband had assets of £37m and the couple enjoyed a very high standard of living during the marriage. However, the wife had suffered serious psychological harm because of the marriage and its breakdown.

The judge's award of £4.25m included a term-of-years income fund of £1.34m

and £2.3m to enable the wife to buy a flat in Marylebone.

The husband argued that the judge had erred in the exercise of his discretion by going beyond an assessment of the wife's needs when making his award.

The Court of Appeal rejected this argument. It said the judge's decision was clearly based on the application of the "needs" principle, which granted an almost unbounded discretion.

The main drivers in the discretionary exercise were the scale of the payer's wealth, the length of the marriage, the wife's age and health, and the standard of living during the marriage. In a short marriage case, the discretion

when assessing needs was particularly broad and fact-sensitive. The judge's assessment of the wife's immediate capital needs, and of her future daily needs, was well within the discretion vested in him.

It was therefore a legitimate choice to allow the wife to buy a reasonable apartment in a part of London where she felt happy and comfortable. To deal with her future income requirements by the term-of-years method was also entirely conventional and uncontroversial.

The husband's appeal was dismissed.

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Homes for first-time buyers at 20% discount

The government has announced plans to build thousands of starter homes on brownfield sites across the country.

They will be built exclusively for first-time buyers between 23 and 40 years old and sold at a discount of at least 20% below market value.

The scheme will be run by the Homes and Communities agency in a series of partnerships with local authorities. The first wave of 30 partnerships – selected on the basis of their potential for early delivery – will spearhead schemes over the next 12 months.

These partnerships have been established under the government's £1.2 billion Starter Homes Land Fund.

A government spokesman said: "This first wave of partnerships shows the strong local interest to build thousands of Starter Homes on hundreds of brownfield sites in the coming years. One in three councils has expressed an interest to work with us so far.

"These new developments will also support the wider growth and regeneration of local areas, including some town centre sites.



"The Starter Homes Land Fund was set up to prepare suitable land for quality starter home developments that can be built on by developers or through accelerated construction by 2020.

"Each local authority partnership will work closely with the Homes and Communities Agency to identify and take forward further land opportunities for the fund. This will see up to 15,000 homes started on surplus public sector land this Parliament."

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Mother told she can't take her daughter to live in Canada

A mother has been told by the High Court that she cannot take her two-year-old daughter to live with her in Canada.



Aspects of International Child Abduction. She claimed the child had acquired habitual residence in Canada after the move in October 2015.

The case involved a couple who began their relationship in England in 2013. The father was British and the mother had dual British/Canadian nationality.

They never married and it appeared that they had a volatile and unstable relationship. The father said they had separated and reconciled many times.

Their daughter was born in April 2014. In September 2015, the couple separated again. A month later, they decided to see if they could make their relationship work by moving to

Canada as they were struggling to make ends meet in England. They travelled to Saskatchewan, where the mother's father and stepmother, and her grandparents, lived. The couple entered the country on six-month holiday visas.

In April 2016, the father returned to England with the daughter without the mother's agreement.

The mother then sought an order to have her daughter returned to her under the Hague Convention on the Civil

The court refused the application and ordered that the daughter should remain with her father in England. It held that there was no evidence that the girl had integrated socially in Canada.

She had established roots in England, having been born and raised here. Her paternal relatives and maternal grandmother continued to live here.

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Daughter wins family dispute over mother's lost will

A woman has won a dispute with her siblings over the validity of their mother's will, which had been mislaid shortly after being made.

Following the mother's death, the siblings claimed there was no will and so were granted letters of administration enabling them to dispose of her estate and share the proceeds.

When a person dies intestate, that is, without having made a will, their estate is divided in a way laid down by law. In this case it would involve each of the siblings getting a share of the assets, which amounted to £920,000. However,

the siblings proceeded to divide the estate among themselves without giving their sister her rightful share.

The sister then discovered that there was a will, and that it made her the sole executor and main beneficiary of the mother's estate.

She took legal action to have the letters of administration revoked and for the will to be declared valid.

The High Court found in her favour.

It held that there were a number of troubling factors about the case: the

siblings had sent a letter to the sister in 2012, which showed that they had been aware of a strong likelihood that their mother had made a will.

There was also evidence that one of the siblings had seen a copy of the will at the time of the funeral yet had failed to bring it to anyone's attention.

The siblings were ordered to transfer to her all the money raised from the estate and to also pay her costs.

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Now it costs less for a lasting power of attorney

The increasing demand for powers of attorney have enabled the government to reduce costs.

It means the fee for applying to register a lasting power of attorney (LPA) or an enduring power of attorney (EPA) has been reduced from £110 to £82. The fee for resubmitting an LPA for registration has been cut from £55 to £41.

The fee reduction has been made possible by the high number of applications being processed by the Office of the Public Guardian, which administers the system. This has created efficiencies, which have driven down the cost of providing the service.

Ministers hope that cutting fees will encourage even more people to take out LPAs, providing peace of mind for themselves and their families.

One of the main reasons for the popularity of powers of attorney is that they offer you protection in case your health deteriorates to such a point in



the future that you are no longer able to make decisions for yourself.

Sufferers may have to rely on their families to make important decisions for them, but this can be difficult if legal arrangements have not been made in advance. Families may have to go through complicated court procedures to be granted authority to manage the sufferer's affairs.

An LPA enables you to nominate someone in advance to make decisions

on your behalf if you ever lose the ability to do so yourself 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 medical treatment.

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'Bullied and victimised' teacher awarded £346,000

A teacher with bipolar disorder has been awarded £346,000 compensation in a disability discrimination case in which she says she was "bullied and victimised".

Nicola Sinclair was forced to resign from the Bishop of Llandaff Church in Wales High School after developing mental health issues. She had worked there for 23 years.

Three months after losing her job, Ms Sinclair was sectioned under the Mental Health Act and diagnosed with bipolar disorder. Her marriage has since broken down and she now lives alone in a caravan.

Last April, the Employment Tribunal upheld her claims of constructive dismissal and disability discrimination. A further hearing has now been held to decide the level of compensation.

Psychiatrist, Dr Gary Jenkins, said Ms Sinclair suffered severe stress as a result of the way she was managed in the autumn term in 2014 after several months off with mental health problems.

Following complaints about her from some pupils, she was told she would be formally observed during lessons. She was also asked to meet new head teacher Marc Belli to discuss concerns.



Dr Jenkins told the tribunal: "I think the end result was that she felt psychologically shattered when there was a change in management.

"She felt victimised and bullied and certain things she was asked to do were not really fair and she psychologically crumbled as a result of ongoing work-related stress and the behaviour of management towards her."

Ms Sinclair's barrister, Christopher Howells, said she was told by Mr Belli at a meeting in December, 2014 to accept a settlement or agree to capability proceedings.

Mr Howells said: "Victimisation and bullying were the major stresses that ultimately caused the breakdown.

"Being brought into a room in December she was told to accept

settlement or be put through capability proceedings that only one in 10 teachers pass. That was outrageous behaviour. She should have been treated with kid gloves. Instead she was treated with an iron fist."

The barrister for the school, Kerry Gardiner, said Ms Sinclair's health was deteriorating before she started having problems at work. "It's clear the respondent's treatment is not on its own what caused her ill health."

The tribunal awarded her £346,175 compensation to cover a number of factors including loss of earnings, notice pay, future loss of earnings, injury to feelings and pension loss.

Judge Sian Davies said: "The purpose of performance management is to improve performance. We must consider what would have happened if a supportive programme had been put in place.

"It seems that had performance management been dealt with support and sensitivity the claimant may well have been able to sustain a long career with performance at an adequate level."

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Family lawyers urge switch to 'no-fault' divorce

The family lawyers group, Resolution, is calling on the government to introduce a no-fault divorce system as soon as possible.

It says the momentum gathering for change should not be delayed because ministers may be preoccupied by major issues like Brexit.

The move follows the high-profile case involving Tina Owens and her husband Hugh. Mrs Owens was refused a divorce because her husband's behaviour was not considered to be unreasonable.

Resolution says the current divorce system effectively encourages couples to engage in conflict and blame to get the divorce they want.

Nigel Shepherd, the national chair of Resolution, said no fault divorce has received increasing levels of support from the public and leading members of the family law community. He said: "It's simply wrong in this day and age that someone should be forced to stay in a loveless marriage because the behaviour in the divorce petition wasn't deemed 'unreasonable' enough".

Mr Shepherd said it is time to "end the blame game" and said



the government must not let Brexit get in the way of it acting quickly to ensure there are no more cases like the Owens. "In the face of this overwhelming support for a change in the law to allow for no fault divorce, it does beg the question, what is the government waiting for?"

"There are more than 110,000 divorces each year – every day the government delays, more than 300 couples get a divorce. That's 600 people, every day, running the gauntlet of a system that actively encourages conflict and blame."

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Woman sacked after becoming pregnant receives £25,000

A woman who was sacked by an employment agency after becoming pregnant has been awarded £25,000 compensation.

Daniella Lewandowski started working for the Bradford District Apprenticeship Training Agency in 2015.

She had a minor role at first but was then employed on a £33,000 a year fixed contract.

She said the agency told her that the contract would be extended when it expired on 31 March, 2016. She would be promoted to apprenticeship



manager and given a pay rise. However, the offer was withdrawn when she later told her manager that she was pregnant and would need to take maternity leave.

She brought claims of unfair dismissal and discrimination because of pregnancy.

The agency denied that there was any discrimination and said she lost her

job through redundancy because her fixed-term contract had expired.

The Employment Tribunal found in favour of Ms Lewandowski. Tribunal Judge John Robertson agreed that she had suffered "a year of hell" after she was unfairly dismissed.

She was awarded a total of £25,000 compensation to cover the discrimination due to pregnancy and the unfair dismissal.

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