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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.

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.

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

Should Prince Harry and Meghan have a pre-nup?

The wedding of Prince Harry and Meghan Markle will be one of the main events of the year with millions of people across the world wishing them every happiness.

The romance between them is plain to see, but should they also be considering some more practical matters? Many couples now draw up a pre-nuptial agreement, so their marriage is based on a solid financial foundation right from the start.

Pre-nups, as they are commonly known, state how a couple's assets should be divided if the marriage doesn't work out.

It's easy to see how such an agreement would help Prince Harry and Meghan. Both have large personal fortunes to protect. From Harry's point of view, there would be both personal and public concern if royal assets were lost to a divorce settlement in the future.

Meghan too will be affected as she's curtailing her career as an actress to concentrate on the marriage and charity work with Prince Harry.

Until recently, pre-nups were mostly associated with the rich and famous. However, they are now being drawn up by couples from all income groups.

They are particularly popular with people entering second marriages who want to safeguard their assets for their children from a previous relationship. People who have inherited



money or perhaps been awarded compensation for an injury or employment claim are also using pre-nups to protect their interests.

These marital agreements are still not legally binding in the UK, but they are usually upheld by the courts if they are fair, and each partner agreed to them voluntarily.

One other possible reason for the increased interest in marital agreements is that people are becoming more pragmatic in their attitude to marriage.

There is a growing acceptance that relationships can break down and if that happens, a pre-nup can help reduce the stress and heartache of reaching a financial settlement.

For more details contact

Steve Johnston - 020 8290 7331 sjohnston@judge-priestley.co.uk

J&P Expert successfully challenges local authority's care fees

One of the most contentious issues for elderly clients facing mounting care home fees is the question of how their property should be considered when their care home fee contribution is being calculated by a local authority. Their property is often their most significant financial asset, but unlike a savings plan or other financial instrument, it is also an asset to which they are often deeply personally attached with memories of family and home making over the years. The prospect of potentially being forced to sell the property unnecessarily, to fund care home fees, can therefore be especially distressing for elderly individuals.

Judge & Priestley LLP (J&P) Partner and head of the Private Client team David Chandra was, therefore, most content with the outcome of a recent case, in which he successfully challenged a local authority's decision in relation to his



deputy to act on her behalf, he successfully challenged the local authority and had her property disregarded from their care fee calculations. The case took several months to resolve, but the Local Authority finally agreed to 'write off' in excess of £100,000.

David commented: "Persistence, expertise and knowledge go a long way, especially when dealing with a complex

client's care home fee contribution.

The client, who resides in a care home, was lacking capacity to advocate for herself, but after David was appointed as a professional

area like social care funding. I was delighted with the outcome in this case."

David also represents clients when challenging NHS continuing health care funding.

To find out more about J&P's highly respected Private Client team and the elderly client services they offer, please call David directly on 020 8290 7348 or visit the elderly client services pages on our website.

With offices in Bromley and Chislehurst J&P is one of the leading Private Client solicitor's practices in the South East, providing help and support when it is needed most, to customers in SE London, Kent, Surrey and Sussex.

For more details contact

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

Survey reveals the most common 'will blunders'

Nearly two out of three adults in Britain do not have a valid will, according to a survey carried out by MacMillan Cancer Support.

The charity surveyed more than 2,000 people and found that 63% had not made a will, including 42% of people over the age of 55.

The survey also uncovered various "will blunders" that people make. Under British law, a person's will becomes invalid once they marry, and a new one needs to be written.

Despite this, the survey suggested that 1.5 million people had failed to update their will following their marriage.

It also revealed that 20% of people still had their ex-partner on their will,

and 10% of people had not made any amendments to include their children or their grandchildren

A previous survey from MacMillan found that the most common reasons people gave for not making a will were 'not having had a chance to get around to it' and 'believing they had nothing of value to leave'.

If someone dies intestate, that is, without having made a will, then their estate is divided in a way laid down by law.

This means that the person's estate may not be shared among family and friends as they had intended and their loved ones could miss out on their inheritance.

Official guidance recommends people review their will every five years or after



any major life changes to make sure it still reflects their wishes.

For more details contact

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

House price growth across the UK slowed down in 2017

Growth in house prices in the UK slowed down in 2017, according to the latest figures from the House Price Index.

The annual growth rate for 2017 was 4.8%, compared with 7% in 2016. On a calendar year basis, that is the lowest rise since 2013.

The figures showed a wide variation in growth rates in different regions and counties across the UK.

The sharpest drop was in the south of England, which fell from a growth rate of 9.5% in 2016 to 5.1% in 2017.

The slowdown was most evident in London. The capital city has traditionally seen the highest growth rate. However, last year saw average growth across the UK exceed that of London.



Despite this, London remains the most expensive region of the UK, with an average house price of £484,000, compared to the UK average of £227,000. The average house price in the North East is £131,000.

The region with the highest annual growth was Tendring in Essex, where prices increased by 11.8%. This increase may be due to buyers

relocating to the coast following the sale of more expensive properties elsewhere.

The lowest annual growth was in Aberdeen where house prices fell by 6.1%. It's thought this could be due to the impact of falling oil prices on the local economy.

● Meanwhile, the government plans to create a new generation of town houses by making it easier to develop existing buildings.

The changes will reduce restrictions on building upwards on existing blocks of flats and houses, as well as shops and offices.

For more details contact

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

Teacher sexually assaulted by pupil awarded £52,000

A teacher who felt let down by her school after she was sexually assaulted by a pupil has been awarded £52,000 compensation.

The teacher, identified only as Ms C at the Employment Tribunal hearing, taught pupils with learning difficulties at Warren School in Suffolk.

In 2016, Ms C was providing deep tissue pressure therapy to a 17-year-old pupil when he put his hand up her dress and "flapped" it against her vagina.

She told him to stop but he slapped her several times on the arm. She hurried away but he ran after her and



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pushed himself into her back. Ms C felt traumatised by the incident and by the reaction of management at the school.

When she reported the incident, neither the school nor Suffolk County Council felt it should be classified as a sexual assault.

She was also upset by the Head Teacher's remark that it was "part of the job to deal with challenging behaviour". Another colleague suggested she

had brought the incident on herself by using deep tissue therapy. She was left feeling that the incident had been her fault because she had somehow acted inappropriately.

Ms C felt she could not continue at the school. She resigned and brought claims of indirect sex discrimination and constructive unfair dismissal.

The Employment Tribunal found in her favour and awarded her a total of £52,493 compensation.

For more details contact

Paul Stevens - 020 8290 7422
pstevens@judge-priestley.co.uk

Review of inheritance tax could help the young

A review of inheritance tax thresholds could make it easier for parents to give their children money to buy a home, fund their education or set up a business.

Currently, the maximum sum that can be gifted tax free is £3,000 a year. Any additional funds are subject to 40% inheritance tax if the donor dies within seven years of making the gift.

The threshold has been frozen since 1981, when £3,000 would have been enough for a deposit on the average home.

Today, it would take seven years of gifting £3,000 to save for an average deposit of £21,000 for first time buyers. Had the threshold risen in line with inflation, then it would stand at around £12,000.

Chancellor Philip Hammond has called for a review to bring inheritance tax thresholds up to date. It's estimated that a change to the threshold could benefit up to three million young people a year.

The review is part of an ongoing commitment to look at bringing inheritance tax thresholds up to date.

Figures released by the Office for Budget Responsibility show that the number of family estates liable to inheritance tax has risen fourfold since 2010 from 10,000 to more than 40,000.

Inheritance tax is set at 40% and is payable once the tax-free threshold of £325,000 has been passed.



The government has recognised that more and more families are being caught by the tax and has introduced an additional main residence allowance of £100,000.

It came into effect in April last year and only applies to a person's home, not the rest of their estate. It will rise gradually to £175,000 by 2020.

When added to the £325,000 nil-rate band for inheritance tax, this will provide a combined tax-free band of £500,000 by 2020.

Married couples can combine their allowances. When one partner dies, their share of the estate is passed on to their spouse free of any inheritance tax. This means that by 2020, a married couple could have a combined allowance of £1m.

Paul Morton, tax director of the Office of Tax Simplification who will carry out the review, said: "We know lots of people in the Bank of Mum and dad generation must be thinking very hard about the future.

"We are going to be looking at technical aspects and the experiences people have when planning for inheritance tax."

We shall keep our clients informed of any developments.

The best way to reduce inheritance tax is to start planning ahead as early as possible. A little effort now could save your family thousands of pounds in the future.

[For more details contact](#)

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

Wife loses appeal against unequal divorce settlement

A wife has lost her appeal against an unequal divorce settlement that gave her less than half the money awarded to her husband.

The couple had been married for 23 years and had two adult children. At the start of the marriage, the husband had considerable wealth, while the wife had very little.

During their marriage they increased their combined capital resources to £9.4m. The judge concluded that an equal division would be unfair because of the husband's pre-marital wealth.

In considering how their assets were to be divided, he sought to apply the "formulaic approach" taken in previous landmark cases including Jones v Jones in 2011.



Family Law

However, he was unable to apply that approach because there was no reliable evidence of the husband's pre-marital worth, resulting partly from his obstructive approach and deficient disclosure.

The judge therefore took a "multi-faceted" approach, involving four alternative analyses of the basis for a settlement.

The approach calculating the wife's needs produced the lowest figure, but the judge held that it was the most cogent and so used it to calculate that she should be awarded £3.56m.

The Court of Appeal has upheld that decision. It said the judge had been entitled to find that the husband had substantial wealth at the start of the relationship and that an equal division would be unfair to him.

Moreover, the judge had not made a mistake in basing the award on a needs analysis. He considered the alternative calculations to be unreliable, and he had performed the exercise endorsed in Jones as a "cross-check".

He was entitled to conclude that anything higher than a needs-based award would not be fair.

[For more details contact](#)

Steve Johnston - 020 8290 7331
sjohnston@judge-priestley.co.uk

Disappointment for leaseholders at the Court of Appeal decision in Mundy v the Sloane Stanley Estate

Earlier this year in January, the Court of Appeal dismissed the eagerly anticipated appeal in the case of Mundy v the Sloane Stanley Estate.

Had the result gone the other way, it would potentially have had quite a dramatic impact on the prices of the premiums that leaseholders would have to pay their Landlords in exchange for lease extensions.

The case concerned one of the components of the formula for how lease extension premiums are calculated. In simple terms this has to do with assessing the difference between the value of the lease compared to its value, had there been no legislation entitling leaseholders to claim a lease extension under the Leasehold Reform, Housing and Urban Development Act 1993. This is known as "relativity".

There has been some debate as to whether some of the current graphs, which have been widely used in the industry as the basis to calculate relativity are fit for purpose in the 21st century. It has been argued that they lead to bias in the favour of supporting higher valuations for landlords.

An alternative relativity graph developed by James Wyatt of Parthenia Valuations (known generally as the Parthenia model) has been argued by leaseholder representatives to be the more accurate method, which results in premium calculations which reflect favourably on leaseholders. Had the appeal been successful, this would have potentially led to the widespread adoption of the Parthenia model and ultimately to



significant reductions on premiums payable for all lease extensions across the country.

The reasoning behind the decision is essentially one of judicial policy and limitations, as opposed to the merits of the alternative methods of calculation, with The Court of Appeal citing that it was well within the Upper Tribunal's function within its rulings to provide definitive guidance to tribunals on valuation matters and that it is empowered to rule out future use of the Parthenia model in its current form.

There is some hope for leaseholders, as the Court of Appeal has ruled that as only its current form has been decided upon, it follows that it remains open for the Upper Tribunal to approve an upgrade or variation to the Parthenia model, which could one day become generally adopted.

Moreover, the government's most recent white paper contains numerous references to leasehold reforms, in particular addressing what it agrees to be the unfair practices and imbalances between leaseholders and their landlords. It would therefore appear that there is mounting pressure on the government to more clearly define relativity in a way that would benefit leaseholders.

Indeed, contained within appeal judgment itself, is reference to the invitation of the government to the Law Commission, to reconsider the simplification of valuations under this particular legislation. So, there may yet be changes on the horizon that could redress the perceived leaseholder imbalance. Watch this space.

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



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Meet the team



Mark Oakley



Steve Johnston



Nitika Singh



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

www.judge-priestley.co.uk

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