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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

New partner recruit for residential conveyancing department at Judge & Priestley Solicitors

Judge & Priestley Solicitors are excited to announce the appointment of Kavitha Rajah as a partner in the busy Residential Conveyancing department, based in their Bromley office.

Kavitha is already well known and respected in the local area, having set up her own successful practice, in Shortlands in 2008.

Kavitha's unique style of service and leadership is an asset to her clients. Kavitha looks forward to providing legal services to her existing clients and to her new Judge & Priestley clients with her customary professionalism and enthusiasm.

Kavitha brings with her over 20 years' experience in all aspects of freehold and leasehold conveyancing including re-mortgages, transfers of equity transactions and lease extensions.

The appointment of Kavitha grows the J&P Residential Conveyancing team to 20-strong. The team is led by partner and Head of Residential Conveyancing, Madelaine Henwood who has been with the firm since 2008.

Madelaine commented "We are very proud to have Kavitha join us at Judge & Priestley. Her outlook and progressive vision of the future mirrors our own plans and we are pleased to welcome her here. Her positive, energetic and hardworking approach will fit in very well with the ethos of this firm and we are excited for the future.



L-R Kavitha Rajah, Partner and Madelaine Henwood, Partner and Head of Conveyancing at J&P.

Kavitha added "I am elated to be joining such an established and reputable Bromley practice. I now have the opportunity to realise my long term ambitions with a firm that has a similar vision to my own."

Kavitha can be contacted on 0208 290 7788 or email krajah@judge-priestley.co.uk

Cohabiting couples need more inheritance rights

A leading lawyers' association has criticised the government's refusal to give cohabiting couples automatic rights to inherit if one of the partners dies without making a will.

Under current law, a surviving partner must apply to the court to obtain financial provision or a share of the estate if their partner died intestate, that is, without having made a will. Married couples have an automatic right to inherit, although not necessarily all the estate in the case of intestacy.

The Faculty of Advocates in Scotland says cohabitation is widespread throughout the UK and so couples should be given more rights and greater protection.

At the very minimum, they should automatically be allowed to continue living in the family home. It said:



"Succession law is meant to be clear, straightforward and efficient. Requiring applications to the courts as a matter of course for cohabitants is undesirable.

"If the approach to intestate succession overall is to try and reflect what the deceased would have anticipated happening with their estate, it can probably be said, safely, that there would be a general expectation that

the survivor in a stable cohabiting relationship should be able to continue to live in the home shared with the deceased after his/her death and not suffer possible eviction at the instance of the deceased's children, siblings or parents (or other heirs) with the consequences that may bring."

So far, the government has been reluctant to give cohabiting couples more rights for fear of undermining marriage. It means that the only way cohabitants can control who inherits their money and assets is to make a will and keep it up to date. Failure to do so could mean that your partner loses out and your estate goes to family members you would not have chosen yourself.

For more details contact **David Chandra** - 020 8290 7348
dchandra@judge-priestley.co.uk

Digital signatures make it easier to re-mortgage

The Land Registry says its commitment to developing new digital services is making the process of buying a home simpler and quicker.

One of its main innovations is a system allowing homeowners to re-mortgage their property by signing their mortgage deeds online.

Lord Henley, the minister with responsibility for the Land Registry, said: "People are doing an ever-increasing amount online, from shopping to banking, e-learning to gaming. Now they can re-mortgage their home online as it's quicker, more convenient, and fits their busy lives."

The digital service enables people to sign their mortgage whenever and wherever they are, including on their phone or computer. It removes the need for 'wet' (pen-on-paper) signatures,

and witnesses no longer need to be present when the documents are signed. Homeowners no longer face delays from having to print out forms, find an independent third party to witness their signature or pay to return the forms by post.

Nationwide, HSBC, RBS and NatWest were among the first mortgage lenders to sign up, allowing their customers to use the new service.

To sign their deed, the borrower uses GOV.UK Verify to confirm their identity. This provides an additional level of identity assurance that does not exist when signing a paper deed.

The digital deed is also more secure than a paper deed as it is always held on HM Land Registry's IT infrastructure so cannot be tampered with or lost. The service is currently available for



people applying for a re-mortgage on their house, with no immediate plans to expand to all mortgages until further testing is complete.

We shall keep clients informed of developments.

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

New £15m scheme to prevent families being separated

The government has introduced a new £15m scheme, *Supporting Families; Investing in Practice*, which will help families tackle issues such as domestic violence, substance abuse and addiction.

The overriding target is to keep children with their parents and avoid sending them into care, by creating a safe home environment.

The programme will be rolled out in up to 40 new council areas.

It is being modelled on the existing Family Drug and Alcohol Courts, which have been found to have a positive effect on family reunification. A government spokesman said: "Every



child, no matter what hand they have been dealt, deserves the opportunity to grow up in a stable, loving family so they can develop into confident adults equipped to take on life's challenges successfully.

"For too many children, this is not the reality, and we are seeing rising numbers of children going into care."

The project provides a problem-solving approach to care proceedings, where a team of substance misuse specialists, domestic violence experts and social workers carry out an assessment.

They then agree an intervention plan with parents who come before the court in care proceedings.

Once in proceedings, parents begin a "trial for change," supported by the specialist team and with regular meetings with the judge, who reviews the progress being made as well as adjudicating in the case.

For more details contact
Kelly Sharman - 020 8290 7331
ksharman@judge-priestley.co.uk

Court corrects costly tax error in family's trust fund

The High Court has allowed a family to correct an error in a trust fund that would have had costly tax implications.

The case arose out of financial arrangements outlined in the will of a man who died in 2015.

He bequeathed £4.2m to be held on trust for the benefit of his widow and his children, with a class of discretionary beneficiaries comprising of other family members.

The widow had a life interest in the income of the fund and the trustees had power to pay or apply the whole or

part of the capital for her benefit. After making some payments to family members, the trustees then executed a deed of appointment terminating the widow's life interest in the legacy fund and holding it on discretionary trust for the discretionary beneficiaries.

That was done following advice that there would be no inheritance tax implications. However, the appointment was immediately chargeable to inheritance tax at a rate of 20%.

The trustees then asked the court to rescind the deed of appointment on the

basis that they had not been properly advised.

The High Court granted their application. It held that such an application could be refused where the objective was tax avoidance, but this was a case where the trustees had been given wrong advice. They had simply been looking to end the widow's interest in possession on the basis that there would be no adverse tax consequences.

For more details contact
David Chandra - 020 8290 7348
dchandra@judge-priestley.co.uk

Government backs Lasting Powers of Attorney

The government has reaffirmed its commitment to ensuring that people taking out Lasting Powers of Attorney (LPA) are given the help and protection they need.

LPAs enable you to nominate someone such as a family member or trusted associate 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.

There are safeguards to prevent the system being abused so you can prepare for the possibility of ill health secure in the knowledge that you can leave important decisions in the hands of someone you trust.

If you don't have such arrangements in place, 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.

The Office of the Public Guardian, which looks after the interests of vulnerable people, and the Department for Business, Energy and Industrial Strategy have issued guidelines for businesses and the service industries on how to ensure they act correctly when dealing with people using LPAs.

The guide entitled, *Supporting customers who do not make their own decisions*, aims to help organisations understand what the law requires of them.

The foreword to the guide says: "Powers of attorney are a



valuable tool that helps some of our country's most vulnerable people have their affairs managed before or when they have lost mental capacity.

"This guide provides helpful information which can ease the stresses care givers face on a day-to-day basis, by making their transactions as smooth and problem free as possible."

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

No one can be sure what the future will bring them in terms of their health, but LPAs can at least ensure that their interests are protected should the worst happen.

[For more details contact](#)

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

Woman with diabetes was 'humiliated' by her employers

A woman who suffers from diabetes has been awarded £14,000 after being humiliated at work.

Holly Carr, who had type 1 diabetes, worked as a fleet administrator at Weston Homes for two months.

She told her line manager, Lauren Goodwin, and events co-ordinator Gaynor Impiazza about her condition at a staff lunch to welcome her. She said she wouldn't be drinking alcohol as she was diabetic.

Goodwin then told Carr she must attend a HR meeting where she was asked questions about her medication and her strategy for keeping her condition under control.

She said she kept an 'emergency' bottle of orange juice, which she handed to another member of staff, Mrs Moorcroft, to see.

Goodwin also took Carr around the office so she could tell first aiders about



her condition. At a site visit, Carr didn't join her colleague in getting food from a food van and was quizzed by another colleague about her sugar levels.

She later discovered that Goodwin and Impiazza had discussed her condition in an email conversation.

Impiazza had said: "Let's hope so... as long as she doesn't go into hypoglycaemic [low blood sugar level] shock anytime soon!!!" followed by a 'shocked face' emoji.

There were similar incidents before Carr was let go by Weston Homes in a meeting where she was told her 'employment was not going to work out' after a car wasn't cleaned on time. Carr asked for further information but

the company was reluctant to give her more details, so she brought a disability discrimination claim.

The Employment Tribunal ruled that while Carr's work was not perfect, the allegations were not substantial enough to warrant her dismissal.

The questioning that Carr faced at the meeting had been "excessive, invasive and heavy handed".

The judge said that being taken around the office and made to announce that she was diabetic must have been 'highly embarrassing' for Carr and that the incident at the food van amounted to harassment.

The tribunal ruled that the main reason for Carr's dismissal had been her disability and awarded her £14,000 compensation.

[For more details contact](#)

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

It's not you, it's me: ending the blame game in divorce

After fifty years, divorce regulation is ready to change. The government announced that new legislation will be introduced and published a consultation paper on 15 September 2018, which ran until the 10 December 2018. The government's response was published in April 2019, and marks a landmark change in divorce law.

The proposed changes are based on a sole objective: reduce family conflict. The government understands that to achieve this objective, couples should not be required to blame one another during the divorce proceedings. Under current legislation, the person starting the divorce proceedings (the petitioner) must give evidence of one of the established facts, even if the divorce is a mutual decision. Thereby, the couples need either to have been separated for two years if both spouses agree or separated for five years if one spouse does not agree, or the petitioner must make allegations in regard to the respondent's conduct; adultery, unreasonable behaviour or desertion. By removing these requirements the government is reflecting popular belief that there does not need to be unnecessary stress or upset for divorcing couples and, most importantly, the children of divorcing couples. The only requirement would be to provide a statement of irretrievable breakdown.

The removal of the facts is not the only proposed change. The new legislation will also include the introduction of a joint application for divorce and the introduction of a minimum timeframe of six months between the divorce petition and the finalising of the divorce. The new regulation would retain the



irretrievable breakdown of the marriage as a sole ground and the two-stage legal process – decree nisi and decree absolute (as currently) with at least six weeks between each application. The ability to contest a divorce would also be removed. There is, also, an intention to modernise some of the terms used within the divorce, such as 'petitioner', 'decree nisi', 'decree absolute'.

Giving time to the divorcing couples to think about the decision that they have made or, even to reconcile, is the reason behind the minimum timeframe of six months. David Guake, Secretary of State for Justice, says that the law should help to ensure that the relationships are saved if there is a possibility before they are legally ended. He also says that an opportunity to repair their relationship should be provided to divorcing couples, even when the decision has been mutually agreed. This 'proof' that the decision to divorce has been properly considered

by the spouses has been introduced as an objective for the reformed law, that ensures the reflection upon future arrangements. One of the conclusions that the government reached from the consultation is that the people find that the current system marks against reconciliation, offering little opportunity for repair, which in turn can be damaging for the children of a marriage.

This is not the first time that the government has tried to modify the law. The Family Law Act 1996 intended to modernise the divorce proceedings in England and Wales but it was a too complex reform and failed to provide the reform it had intended. With the new reforms, English law could now fall more in line with other more forward thinking jurisdictions.

For more details contact **Laura Gonzalez** - 020 3928 7101
lgonzalez@judge-priestley.co.uk



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Meet the team



Mark Oakley



Kelly Sharman



Nitika Singh



David Chandra



Madelaine Henwood



Brian Tan



Steve Taylor



Tony Clarke



Paul Stevens



Louise Hyland

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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