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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.

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30% discounted homes for first time buyers

First time buyers are being offered discounted homes as part of a new government housing scheme.

The First Homes scheme will help local first-time buyers on to the property ladder by offering homes at a discount of at least 30% compared to the market price.

That same percentage will then be passed on with the sale of the property to future first-time buyers, meaning homes will always be sold below market value – benefiting local communities for generations to come.

The scheme will support local people who struggle to afford market prices in their area but want to stay in the communities where they live and work.

The first properties went on the market in Derbyshire on June 4. Further sites are set to launch across the country in the coming weeks. A further 1,500 will enter the market from the winter, with at least 10,000 homes a year being delivered in the years ahead and more if there is demand.

Major high-street lenders Halifax and Nationwide Building Society, along with local building societies and community lenders, announced that they will be offering high loan-to-value mortgages against First Homes to support the roll-out of the scheme.

First Homes follows on from the 95% mortgage guarantee scheme which helps first-time buyers secure a mortgage with

just a 5% deposit and the government's 'Own Your Home' campaign showcasing the range of flexible home ownership options available.

First-time buyers can find the right scheme for them via the Own Your Home website which provides a single gateway for all routes to home ownership.

Housing Secretary Robert Jenrick said: "These homes will be locked in for perpetuity to first-time buyers and key workers from their local area – making them an asset to both their owners and the wider local community."

Please contact us if you would like advice about the legal aspects of buying or selling a home.

Nurse dismissed over weekend working wins appeal

A nurse who was dismissed for refusing to work weekends has won a landmark ruling that could affect thousands of women with children.

Gemma Dobson was a community nurse with North Cumbria Integrated Care NHS.

She had worked fixed days because she had three children, including two with disabilities.

However, she was dismissed after the trust introduced weekend working. She said she was unable to work Saturdays and Sundays because of her childcare responsibilities.

Dobson brought claims to the Employment Tribunal, saying that she had been unfairly dismissed and been subjected to indirect sex discrimination.

The tribunal ruled against her saying that her dismissal was not unfair because, under the Equality Act, "being a female with caring responsibilities" was not a protected characteristic.

Dobson took the case to the Employment Appeal Tribunal (EAT), which ruled that the tribunal had failed to take into account the "childcare disparity" faced by women in the workplace.

Crucially, the EAT ruled that the tribunal was wrong to say the new policy did not create a group disadvantage because it failed to recognise the childcare burden that fell disproportionately on women.

The judge, Mr Justice Choudhury said: "The tribunal erred in not taking judicial notice of the fact that women, because of their childcare responsibilities, were less likely to be able to accommodate certain working patterns than men."

He added that weekend working was a policy "that was inherently more likely to produce a detrimental effect, which disproportionately affected women".

The case was remitted back to the Employment Tribunal so that it can be decided in light of the EAT's ruling.

Please contact us for more information about the issues raised in this article or any aspect of employment law.

Tests for delusional mindset when making a will

The High Court has outlined some tests for mental capacity and whether a person may have had delusional beliefs when making a will.

The issue arose following a family dispute involving a brother and sister.

Their parents had divorced in 1980 when their mother discovered letters written by her husband which revealed that he had sexually abused his daughter, the sister in this case.

When the mother died, she left the daughter out of her will because their relationship had deteriorated over the years.

The daughter responded by challenging the will.

The judge found that the mother had "taken against" the daughter and irrationally maintained that the daughter had cut her out of her life, rather than the other way around.

She made wills in 2010 and 2013. In the 2010 will she left a diamond ring to the daughter and her residuary estate to her son. In the 2013 will she left everything to her son and his family.

The daughter was to receive nothing. The mother had said that she would not give anything to the daughter as she was "a shopaholic and would just fritter it away".

She also believed that the daughter had never been sexually abused by her father and that there were no letters proving the abuse existed.

The judge found that the mother's beliefs were irrational to the point of being delusional.

He accepted the evidence of the daughter's expert that the mother was suffering from an affective disorder which included a complex grief reaction and depression which impaired her testamentary capacity.

The brother appealed but the High Court upheld the decision and outlined the correct tests for assessing delusional behaviour.

When considering whether a testator (person making a will) held delusional beliefs impairing their testamentary capacity, the relevant false belief had to be irrational and fixed in nature.

However, it was not essential to demonstrate that it would have been impossible to reason the testator out of the belief.

It would be sufficient to show that the belief was formed and maintained in the face of clear evidence to the contrary, of which the testator was aware and would not have forgotten.

The case was adjourned to allow the brother and sister time to reach an amicable agreement without the stress and cost of further court proceedings.

Please contact us for more information about the issues raised in this article or any aspect of wills and probate.

One in five couples are now starting their married life with a prenup

There's been a large rise in the number of married couples using 'prenups' over the last 20 years, according to a new survey.

The survey, carried out by Savanta ComRes for the Marriage Foundation, found that one in five couples married since 2000 have some form of a pre-nuptial agreement in place.

This compared to just 1.5% who were married in the 1970s, 5% in the 1980s and 8% in the 1990s.

Prenuptial agreements, or prenups – are legal arrangements signed before a marriage that are intended to plan for the division of assets should that marriage fail.

The survey found that prenups were most likely among couples who attended some form of marriage preparation class and were not associated with higher levels of divorce.

Sir Paul Coleridge, founder of the Marriage Foundation, said: "Couples who take time to confront potentially tricky financial (or other) issues before they marry are less likely to be derailed by them if and when they arise. It can be a sensible part of pre-marriage prep.

"Similarly with the increasing age at which couples marry, either for the first or second time, it is more likely that one or other will have established wealth which they feel they want to protect.

"If marriage is to retain its appeal to future generations couples of all ages should be allowed to fashion a bespoke level of financial commitment which suits their own circumstances and not be forced to rely only upon the state designed model."

Harry Benson, the Marriage Foundation's Research Director, said: "Prenups do not appear to be akin to organising the divorce in advance.

"If anything the direction of travel is that they may even be slightly protective of marriage."

Please contact us for more information about the issues raised in this article or any aspect of family law.

Start of no-fault divorce delayed until next year

The introduction of no-fault divorces, which was due to take place this autumn, has been postponed until next year.

The courts minister Chris Philp made the announcement in response to a parliamentary question.

He said the provisions of the Divorce, Dissolution and Separation Act 2020 must be put back because not enough progress had been made in making the necessary preparations. The Ministry of Justice (MoJ) is now hoping to go ahead by 6 April 2022.

The cautious approach reflects the concerns expressed by critics of the bill that it will make it too easy for couples to end their marriage before exploring every avenue to find a way to stay together.

Under current law, one spouse must allege adultery, unreasonable behaviour or desertion in order to start divorce proceedings immediately.

Under the new law, they will only have to state that the marriage has broken down irretrievably.

The Act also allows couples to jointly apply for a divorce, where the decision to separate is mutual.

As a safeguard against couples rushing too quickly into ending their marriage, there must be a minimum six-month period between the lodging of a petition to the divorce being made final.

The MoJ is working with the family procedure rule committee to identify what amendments are needed and to create new practice directions.

Philp said: “The Ministry of Justice is committed to ensuring that the amended digital service allows for a smooth

transition from the existing service which has reformed the way divorce is administered in the courts and improved the service received by divorcing couples at a traumatic point in their lives.

“Following detailed design work, it is now clear that these amendments, along with the full and rigorous testing of the new system ahead of implementation, will not conclude before the end of the year.”

Law Society president I. Stephanie Boyce said: “While we’re disappointed at the delay to the reforms, we welcome the continued commitment to ensuring the reforms are fit for purpose. It is better to have a working system in place rather than forging ahead when there are known issues.”

We shall keep clients informed of developments.

Please contact us if you would like more information about the issues raised in this article or any aspect of family law.

Children entitled to a share of estranged father’s estate

Two teenage brothers have been granted a share of their father’s estate even though they were estranged from him and had been excluded from his will.

The two boys, referred to only as J and H in court, were aged 16 and 15 respectively at the date of their father’s death in 2018.

Their parents had divorced in 2012.

The mother re-married and the boys relocated with her and her husband to Scotland. The father, who had been diagnosed with incurable lung disease in 2004, had weekly telephone contact with the boys but only for a short time.

He paid no maintenance or child support. The mother and her husband bore the cost of continuing the boys’ private education.

The father recorded that he did not wish the boys to benefit from his will because he had been unable to contact

them for more than three years. His will left everything to his parents and to his partner of seven years.

The net value of the estate depended on certain share valuations but would be a minimum of £519,000.

The boys both applied for a share of the estate and the High Court ruled in their favour despite opposition from the father’s partner.

It held that where the beneficiaries under a will were faced with an application for family provision by the deceased's child, they could not generally rely on the fact that the deceased had paid no child support to defeat the claim. The father’s estate was ordered to pay 50% of the boys’ living expenses at home from the date of issue of the claim until their respective 21st birthdays.

The cost of J’s final year at school would be borne 100% by the estate given that the mother had funded the entire schooling cost before then.

The estate would also fund 100% of H’s past fees as a day pupil in fifth form, plus 80% of his two-year future boarding fees during sixth form.

The remaining 20% and any extra school costs would be met by the mother.

The estate would also fund 50% of the cost of providing each child with a reliable second-hand car.

Please contact us for more information about the issues raised in this article or any aspect of wills and probate.

Powers of Attorney to be made safer and simpler

The process of managing a loved one's affairs using a Lasting Power of Attorney (LPA) is to be made simpler and safer.

An LPA is a legal document that allows people to appoint someone else (an attorney) to make decisions about their welfare, money or property.

They are often used by older people to choose someone they know and trust to make decisions for them should they lose capacity in the future - but can be made by anyone over the age of 18.

The number of registered LPAs has increased enormously in recent years to more than five million, but the process of making one retains many paper-based features that are over 30 years old.

The Office of the Public Guardian (OPG), which administers the system, has begun a public consultation to examine the entire process – with a view to improving measures to prevent fraud and abuse while introducing a mainly digital service.

It will examine how technology can be used to update methods of witnessing, improve access and speed up the service.

The consultation will propose widening the OPG's legal powers to check identities and stop or delay any registrations that raise concern.

It will also look at making the process for objecting to the registration of an LPA simpler to help stop potentially abusive LPAs.

While the service will become predominantly digital, alternatives such as paper will remain for those unable to use the internet. Any substantial changes will require amendments to the Mental Capacity Act 2005 which brought in the current system.

Justice Minister Alex Chalk said: "A lasting power of attorney provides comfort and security to millions of people as they plan for old age."

Nick Goodwin, Public Guardian for England and Wales, said: "More people are taking the vital step to plan for the future by

applying for lasting powers of attorney, and we want to make sure that it is as safe and simple as possible to do so."

The consultation will look at:

- How witnessing works, and whether remote witnessing or other safeguards are desirable
- How to reduce the chance of an LPA being rejected due to avoidable errors
- Whether the OPG's remit should be expanded to have the legal authority to carry out further checks such as identification verification
- How people can object to an LPA and the process itself
- Whether a new urgent service is needed to ensure those who need an LPA granted quickly can get one
- How solicitors access the service and the best way to facilitate this.

Please contact us if you would like more information about Lasting Powers of Attorney.