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

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2021/22

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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.

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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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House Prices rose by 10% over the last year

House prices across the UK increased by an average of 10.6% in the year to August 2021, according to the latest figures from the Land Registry.

It means the average property in the UK is now valued at £264,244.

On a non-seasonally adjusted basis, house prices increased by 2.9% between July and August 2021, compared with an increase of 1% during the same period a year earlier (July and August 2020).

The UK Property Transactions Statistics show that in August 2021, on a seasonally adjusted basis, the estimated number of transactions of residential properties with a value of £40,000 or greater was 98,300.

That is 20.9% higher than a year ago.

In England, the August data shows that, on average, house prices have risen by 3.2% since July 2021. The annual price rise of 9.8% takes the average property value to £280,921.

House price growth was strongest in the North East where prices increased by 13.3% in the year to August 2021. The lowest annual growth was in London, where prices increased by 7.5%.

The UK House Price Index (HPI) is based on completed housing transactions. Typically, a house purchase can take 6 to 8 weeks to reach completion.

The price data feeding into the August 2021 HPI will mainly reflect those agreements that occurred after the government measures to reduce the spread of Covid-19 took hold.

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

Court settles brothers' dispute over their mother's will

Wills and Probate

A man has been removed as an executor of his mother's will after his brother complained that he was obstructing the administration of the estate.

The case involved three brothers; two of them were executors of her will.

Following several years of disagreement, one of the brothers raised a petition seeking the removal of the other as an executor.

The petitioner and the respondent in the case lived in the Edinburgh area and the third brother lived in Berlin.

The deceased had lived for some time in a flat in London. In 2012, she decided to move to Scotland.

To provide her with funds to buy a flat in Edinburgh, the Berlin brother bought a half share of her London property. He and the mother rented the flat in London to tenants and divided the net proceeds equally.

Using the proceeds of sale of half of the London flat, the mother bought a flat in Edinburgh. She died in September 2017 and left a will appointing the petitioner and the respondent as her executors.

Initially, they had worked amicably together but in 2018, their relationship started to deteriorate.

The respondent took up residence at the mother's Edinburgh property from October 2018 to July 2020 without the brothers' agreement, and without paying rent to the estate.

He also unilaterally disposed of the contents of the Edinburgh property and attempted to divert proceeds of rent from the London property directly to himself.

The continuing disagreements between the brothers meant that the estate remained undistributed more than three years after the mother's death.

The court granted the petition.

It noted that the executors had been unable to make progress on distributing the estate due to ongoing disagreements between them.

The respondent was removed from office, and the petitioner would continue as sole executor.

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

Mediation voucher scheme to help more couples

The mediation voucher scheme is being expanded to help thousands more separating couples resolve disputes without having to go to court.

The scheme provides a £500 voucher for mediation services with the aim of finding amicable solutions to disagreements. It seeks to spare eligible families the trauma of going through often lengthy and costly courtroom battles.

Hundreds of people have already accessed this vital support with around 130 vouchers currently being used every week. Early data from the Family Mediation Council (FMC), which runs the programme, has shown that up to three-quarters of participants have been helped to reach full or partial agreement on their dispute.

An additional £800,000 is now being made available to expand the scheme, helping around 2,000 more families.

Information about the scheme and how it works is provided to parties at their Mediation Information and Assessment Meeting (MIAM), which all those involved in family cases are required to attend, unless they have a valid exemption.

On attendance of a MIAM, a trained mediator will assess the issues which you seek to resolve to see if they are suitable for mediation and meet the eligibility requirements for the voucher scheme.

Cases involving a dispute regarding a child, and family financial matters that also involve a child are eligible.

It is important to remember that mediation is only an option when both people agree to take part in it, so you and the other person will need to agree to mediate.

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

14-year-old wins age discrimination claim against café

A 14-year-old who was dismissed for being too young to cope with the 'severity' of her job has won her claim of age discrimination.

The case involved Miss H Cassidy, who had a Saturday job at Daimler Foundation's café.

Her duties included serving customers, working the till and cleaning.

After her first shift, which was described as being a 'form of trial, her front of house manager, Mr Easy, said that he was pleased with her work.

During her second shift, her employer's partner came into the café and said that Cassidy was too young to be working behind the till.

Shortly afterwards, Easy phoned Cassidy to tell her that she would not be able to continue working as the accountant had said she was too young to work there for health and safety reasons.

Cassidy was upset and brought a claim of age discrimination.

She told the Employment Tribunal that she had been enjoying her work. Easy said that the work had been too severe and stressful, and that Cassidy wasn't coping with the demands of the job. He said he had not realised how young she was. This assertion was undermined by the fact she had provided her age on her initial application form.

The tribunal ruled in Cassidy's favour. Easy had mentioned that her age was a factor when dismissing her and had failed to prove that her dismissal was not due to her age.

Cassidy was awarded £3,000 compensation for injury to feelings and direct discrimination.

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

Court refuses to return child under Hague Convention

The Family Court has refused to return a four-year-old boy to his father in the United States even though his mother had taken him to England unlawfully.

The case involved a mother who had emigrated to the United States. The father was a US citizen.

The couple had separated before their son's birth in June 2017. The father began divorce proceedings in his local county circuit court, and for orders in respect of the son, referred to as M.

In April 2019, the mother travelled to England with M and then deliberately went into hiding for two years.

Family Law

The father applied to the Family Court in England for M to be returned to the US under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.12.

The court heard evidence from a psychiatrist that M appeared to have traits in keeping with an autism spectrum disorder (ASD) diagnosis.

This meant that changes to his routine and living arrangements would result in increased anxiety levels and that he would suffer emotional and behavioural problems if he was separated from his mother, who refused to return to the US as she feared she would be arrested.

The court rejected the father's application because if M were separated from his mother there was a grave risk, if not a certainty, that he would be exposed to psychological harm and placed in an intolerable situation.

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

Leaseholders freed from unfair contract terms

Leaseholders with Countryside Properties will no longer be subjected to ground rents that double every 10 or 15 years.

The effect of these increases is that people often struggle to sell or mortgage their home and their property rights can be at risk, for example, if they fall behind on their rent.

Countryside will also remove terms that were originally doubling clauses but were converted so that the ground rent increased in line with the Retail Prices Index (RPI). The Competition and Markets Authority (CMA) believes the original terms were potentially unfair and should therefore have been fully removed, instead of being replaced with another term that still increases the ground rent.

The move comes after the CMA launched enforcement action against four housing developers in September 2020.

These were Countryside and Taylor Wimpey, for using possibly unfair contract terms, and Barratt Developments and Persimmon Homes over the possible mis-selling of leasehold homes. The CMA has already secured commitments from Persimmon and Aviva as part of this action, helping thousands of leaseholders.

Countryside Properties – one of the UK's leading housing developers – has now voluntarily given formal commitments to the CMA to remove terms from leasehold contracts that cause ground rents to double in price.

Due to the CMA's action, affected Countryside leaseholders will now see their ground rents remain at the original amount – i.e. when the property was first sold – and this will not increase over time.

Countryside also confirmed to the CMA that it has stopped selling leasehold properties with doubling ground rent clauses.

The CMA points out that these undertakings have been provided voluntarily and without any admission of wrongdoing or liability. It should not be assumed that Countryside has breached the law – only a court can decide whether a breach has occurred.

Andrea Coscelli, Chief Executive of the CMA, said: "No one should feel like a prisoner in their home, trapped by terms that mean they can struggle to sell or mortgage their property. We will continue to robustly tackle developers and investors – as we have done over the past 2 years – to make sure that people aren't taken advantage of.

"Other developers, such as Taylor Wimpey, and freehold investors now have the opportunity to do the right thing by their leaseholders and remove these problematic clauses from their contracts. If they refuse, we stand ready to step in and take further action."

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

Tribunal rules on menopausal symptoms as a disability

An employment tribunal was wrong to hold that an employee's menopausal symptoms did not amount to a disability for the purposes of a discrimination claim.

That was the ruling of the Employment Appeal Tribunal (EAT) in a case involving Leicester City Council and one of its social workers, Ms Rooney.

Rooney had worked for the authority from 2006 to 2018. Her case was that she had been suffering severe menopausal symptoms since 2017, she was struggling physically and mentally at work and the local authority had treated her unfairly to the point that she had no option but to resign.

She submitted a claim giving details of disability, harassment and victimisation.

She provided a disability impact statement and medical evidence. At a preliminary hearing, the Employment Tribunal allowed the unfair dismissal

and non-payment claims to proceed but dismissed the other claims. It found that Rooney did not have a disability for the purposes of the Equality Act 2010.

The EAT overturned that decision. It held that the tribunal had erred in holding that she was not a disabled person at the time.

The tribunal stated that she had not relied on physical symptoms associated with the menopause. That statement was inconsistent with the Rooney's description of her menopausal symptoms. The tribunal also stated that any physical symptoms were not physical impairments that were long standing or had a substantial effect on her ability to carry out day-to-day activities.

That was contrary to Rooney's evidence of significant impairments caused by her physical symptoms since 2017 that were still ongoing when she resigned over a year later.

It followed that the tribunal had erred in dismissing the disability discrimination claim on the basis that Rooney was not disabled.

The question of whether she was a disabled person required a careful factual analysis and was remitted to be considered again by a fresh tribunal.

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

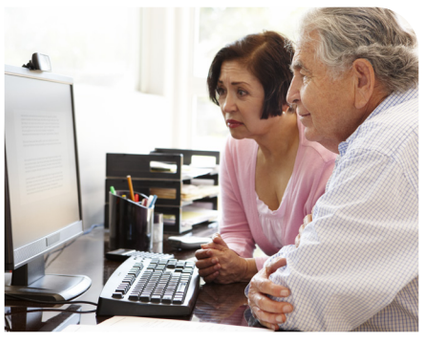
Online wills could lead to surge in family disputes

The increasing use of unregulated online will writing services could lead to a surge in family disputes over a loved one's estate, researchers have warned.

Online services have become more popular over the last few years, particularly during the Covid lockdown periods.

The consultancy firm, Funeral Solution Expert (FSE), analysed 26 online will writers. It found several problems with some of the services offered. For example, some firms offer cheap will writing services for clients whose affairs are simple and straightforward.

However, many people mistakenly think their affairs are simple but later discover that they are in fact quite complex, and their wills have to be rewritten at extra cost. Some people never get the chance



to correct ineffective wills before they die, leaving their families to resolve difficult inheritance issues at a time when they may be upset and grieving.

Part of the problem is that most people don't realise that will writers are not regulated and there is little comeback against them if things go wrong. By contrast, solicitors are strictly regulated and must have insurance to cover liability for any mistakes that may occur. This means you have legal redress if something goes wrong, unlike with an unregulated will writer.

A recent survey by Will Aid found that more than 6 out of 10 people prefer a qualified solicitor to write their will so they can be confident that it's done properly.

A spokesman for Will Aid, said: "It is evident that the public prefer to use a solicitor to write their will, wherever possible. They are aware that with a solicitor you can be assured of a valid will and if anything does go wrong there is proper insurance and redress."

Please contact us if you would like more information about making or updating a will.

Divorcing husband too extreme in closing family firm

A judge has ordered that a divorce settlement should include an unequal split in the wife's favour after her husband had behaved in an extreme and unacceptable way when he sold the family business.

The couple had been married for 24 years and had three children, aged 22, 20 and 15.

In 2010, they had started a business which operated vessels providing services in the construction of offshore wind farms and oil and gas sub-sea operations.

When they divorced, both husband and wife embarked on protracted proceedings in which they incurred costs disproportionate to their assets. The proceedings were made more complex by the fact that the husband had sold the business to another company that he owned.

After examining the evidence, the Family Court held that for the husband to have closed the family business, of which the wife was a joint owner, and transferred all assets to a new business owned by him, was egregious conduct which was so extreme that it could not be ignored.

The wife lost the opportunity to share in income subsequently received by the new company. The court noted that the couple's net assets were £738,375.

The husband's earning capacity far exceeded the wife's and, as principal carer of the youngest child, her needs were greater.

There should therefore be a clean break and an unequal split in the wife's favour with the net effect that the husband should receive £77,414 and the wife £660,961.

The court added that the husband was guilty of litigation misconduct during the complex proceedings and should therefore pay 25% of the wife's costs.

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

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