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

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House prices rising 'at fastest rate for 3 years'

Figures released by the Halifax suggest that house prices are rising at the fastest annual rate for three years.

Further research by the Royal Institution of Chartered Surveyors (RICS) suggests that the number of buyers entering the housing market is at its highest for four years.

The Halifax survey found that prices in the three months to the end of June were 2.1% higher than in the previous quarter and 3.7% higher than in the same period last year. Halifax spokesman Martin Ellis said the increases are the highest we've seen for three years.

Mr Ellis said: "Activity has also improved in recent months. Both home sales and mortgage approvals for house purchase – a leading indicator of sales – increased in May.

"Improved confidence in both the housing market and the economy, combined with a shortage of properties available for sale, appear to be pushing up house prices.

"The Funding for Lending Scheme is also likely to be boosting the market by helping to reduce mortgage rates. There are also early indications that the Help to Buy: equity loan scheme may be stimulating demand."

The Halifax figures are backed up by RICS which expects house prices to rise by 1.5% over the next 12 months. It also predicts a 4% a year average increase over the next five years.

RICS surveyed its members who reported that the number of buyers entering the market is at its highest level for four years.



The biggest increases in activity came in the West Midlands and the North East, which



Buyers return to the market

were among the areas worst affected by the market crash. However, every area of the country saw significant growth.

The RICS figures are based on buyer activity in July, when it says house prices across the country increased at their fastest rate since the market peak of November 2006.

RICS director Peter Bolton said: "These results are great news for the property market as it looks like at long last a recovery could be around the corner. Growth in buyer numbers and prices has been happening in some parts of the country since the beginning of the year but this is the first time that everywhere has experienced some improvement."

Looking ahead, RICS says it expects the upward trend to continue with both house sales and prices rising over the next three months.

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Driver's sacking over Facebook post ruled to be unfair

A driver who was sacked after criticising his employers on Facebook has won his claim of unfair dismissal.

Niall Kass was angry because he had been stopped by police while driving a vehicle for Perthshire company Gillies and Mackay Ltd.

He was issued with a £60 fixed penalty because the vehicle's MoT certificate had expired.

Mr Kass criticised the company over the incident on Facebook. He was later dismissed when company directors saw his comments.

However, the Employment Tribunal held that the dismissal was unfair because the correct procedures had not been followed and Mr Kass had not been given the chance to explain himself.

Furthermore, after Mr Kass appealed internally to the company against his dismissal, the review of his case had not been carried out independently in the correct manner.

In giving its ruling, the Tribunal said that the company had over-reacted because Mr Kass' comments could only be seen by his friends on Facebook and not by the general public.

It said that in the days before Facebook, he would have "vented his frustrations by telling his friends and family of the incident directly or on the telephone".

That would not have amounted to valid grounds for instant dismissal and so neither should his comments to a limited audience on social media. However, Mr Kass was held to be 20% responsible for his dismissal and so his compensation was reduced to £1,160.

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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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Power of attorney application fee cut by 15%

The Government has announced a 15% cut in the application fee for registering a Lasting Power of Attorney (LPA).

LPAs are legal documents that allow you to appoint someone you trust to make decisions about your welfare or financial affairs if you lose the ability to decide for yourself at some point in the future.

From 1 October this year, the application fee for registering LPAs will be cut from £130 to £110. The reduction also applies to the older Enduring Powers of Attorney (EPA).

Justice Minister Helen Grant said: "It is really important that people consider making a Lasting Power of Attorney – it means that as they get older, or if they have issues with their health, they have the peace of mind from knowing that the



important decisions about their life will be taken by someone they know and trust, if they ever lost capacity."

The fee reduction is the latest in a series of reforms to make LPAs, which have to be registered with the Office of the Public Guardian (OPG), more accessible to people. On 1 April this year, the statutory waiting period before LPAs

become effective was reduced from six weeks to four weeks.

The period in which interested parties can object to an LPA being registered was reduced from five weeks to three weeks.

Ministers say the changes have been made possible by increased efficiencies at the OPG, which manages both LPAs and EPAs.

Public Guardian Alan Eccles said: "More and more people are making the important decision to apply for a Lasting Power of Attorney and it is right they receive the best possible service."

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Taxman benefits from people who fail to make a will

The money that goes to the Treasury from people who don't make a will has nearly doubled in the space of just a year.

The Times newspaper has published research carried out by lawyers which shows that £38.5m flowed into the Treasury coffers last year from the estates of people who died without a will or an heir. That was a rise of 91% on the year before.

The reason for the sudden rise is uncertain. Researchers believe that many people mistakenly feel their assets are so small that they don't need to make a will. It could also be that as the pace of modern life increases, some people never get round to contacting their solicitor to make the arrangements.

If you die intestate - that is, without having made a will - your estate is divided up in a way laid down by law. This means that your assets will be divided between your family and relatives. Some of your money could therefore go to people you may not like, while those you do care about may get little or nothing at all.

If no surviving heirs can be found, your estate will usually pass to the Treasury. Few people would want to see their



life savings passed on in this way, yet research by the Legal Services Commission suggests one in six people in the UK die intestate. The best way to ensure your wealth goes to people of your choosing is to make a will and keep it up to date.

You should also remember that your will may need to be amended as your circumstances change, such as when you marry, cohabit, have children or divorce.

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Bipolar sufferer had capacity to decide on abortion

The Court of Protection is often called upon to decide whether a person suffering from a debilitating medical condition has the mental capacity to make important decisions.

A recent case involved a 37-year-old woman who suffered from bipolar disorder.

She became pregnant and for the first few months she showed every sign of wanting the baby, but then she stopped taking her medication and decided she wanted an abortion. Five months into her pregnancy, she was detained under the Mental Health Act. As the pregnancy



had lasted nearly 24 weeks, the hospital detaining her sought an urgent decision as to whether she had the capacity to decide for herself whether to go ahead with the abortion.

The Court of Protection ruled that she did. Even though she had some delusional thoughts, she gave many reasons for wanting a termination. She said she was extremely unhappy in detention and did not want to have her child there. She saw no reason to have

a child just to give it up for adoption. She was also worried about her ability to bring up a child.

The court held that this showed that she was able to describe and genuinely hold some rational reasons, even if they were not necessarily good reasons.

The Mental Health Act provides that a person is not to be treated as unable to make a decision merely because they make an unwise decision.

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Divorce rate among over-60s continues to rise

The divorce rate among the over-60s is continuing to rise, according to the latest figures from the Office for National Statistics (ONS).

The divorce rate for older people was relatively stable in the 1980s but then started to rise in the early 1990s. ONS figures show that 9,500 men over 60 were granted a divorce in 2011, the latest year for which figures are available. That was a rise of 73% compared with 1991.

Husbands tend to be older than their wives but the trend is similar for women. A total of 5,800 women over 60 divorced in 2011 compared with 3,200 in 1991.

There are thought to be a number of likely reasons for the increase. People are living longer, more active lives. Many couples find they have grown apart by the time they get to their sixties and their children have left home.

ONS also points out that women in their 60s are now more likely to be working than they were in the past. Many have built up their own pensions making them



less financially dependent on their husbands.

It's always sad to see a marriage come to an end but it seems particularly so when a couple have been together for 30 or 40 years.

Older people face the same general issues that confront all couples when they separate.

It's likely that before the divorce, the couple's wealth, including the house, was owned jointly by both partners. When one died, the estate would pass to the other without any inheritance tax issues.

Once they divorce, however, that automatic exemption no longer applies and so they may have to look closely at arrangements to protect their estate as much as possible.

Wills are an important issue for all divorcing couples but especially so for the elderly. If they already have a will in place, it's likely that they have left all or most of their estate to their partner. Do they still want that to happen once they divorce? Who do they want to benefit if



not their former spouse? They will need to draw up a new will to reflect their changing circumstances.

The couple will also have to reach a financial settlement.

All the couple's assets are taken into account when assessing the matrimonial pot. This can sometimes be complicated, especially when it involves pensions that may not become active until a few years down the line. Nevertheless, everything has to be calculated and taken into consideration before arriving at a final settlement.

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Court allows 'illegitimate' child to benefit from trust fund

Trusts set up many years ago can sometimes contain provisions which seem out of step with the way people live their lives today.

Thankfully, when problems arise, the courts can often help to correct any anomalies. A recent example involved

a child who would have been unable to benefit from a trust fund because his parents were not married.

The trust had been set up by two brothers in 1974. In 1983, they made provisions that income from the fund should be paid to the daughter of one

of the brothers once she reached the age of 25. The capital would then be held on trust for her children. The deeds stated that the trustees would have the power to apply the trust capital to or for the daughter's benefit and that the trustees should always act only in her interests.



The daughter then had a child while unmarried. This caused a problem because the way the trust had originally been set up meant that "illegitimate" children would not be able to benefit.

The family sought help in the High Court, which held that the trust required the trustees to act in the daughter's best interests. It would not be in her interests to suffer anxiety because she could not provide for her child in the way she wished.

Therefore, it would be in her best interests if the trust was amended to allow her child to benefit.

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Diabetes sufferer unfairly dismissed

A bus driver has been awarded nearly £60,000 compensation after an employment tribunal found that he was unlawfully dismissed when he developed diabetes.

David Hoggett had worked at Abellio London Ltd for eight years. In April 2012, he was diagnosed with Type 2 Diabetes and took several months off work as he responded to his medication.

When he returned, he suffered a setback and needed more time off to recover.

His doctors said that his condition amounted to a disability. Diabetes is recognised as a disability under the Equality Act 2010. Mr Hoggett was starting to recover and had not had his

driving licence withdrawn by the DVLA. However, a staff manager at Abellio dismissed Mr Hoggett on "medical grounds of capability". Mr Hoggett said: "I was getting close to returning to work and was simply waiting for my doctor to confirm this.

"I believe that I was unfairly dismissed by my employer and that the reason for my dismissal related to my disability."

He took the case to an employment tribunal which found in his favour. He was awarded £10,000 for injury to his feelings plus two years salary, making a total of £57,000.

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More children being abducted by their parents

There has been a large increase in the number of children being abducted by their parents and taken to or from the UK following the breakdown of relationships.

Figures released in the annual report by the Office for International Family Justice for England and Wales show that there were only three such cases in 2007. The figure rose to 65 in 2008 and then to 253 in 2012. The report says the increase is partly due to the "ever-increasing number of international family cases coming before the courts".

It says: "The increased movement of persons from all backgrounds, brought on by globalisation, has undoubtedly led to an increasing number of family law cases with an international dimension."

It is quite common for couples to move to another country as part of their work. If the relationship breaks down, one partner may want to stay living abroad while the other wants to return home.

This can create enormous difficulties if children are involved. In some extreme circumstances, parents resort to abducting



their children. The Hague Convention on the Civil Aspects of International Child Abduction provides a framework for resolving these disputes. It is an international treaty recognised by more than 80 countries. It's designed to protect children from abduction and to secure their quick return to the country the courts decide is most suitable for them.

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Brothers win fight to get their rightful inheritance

Two brothers have won a legal battle to receive their full inheritance from their mother's will.

The case involved a family dispute between the brothers and their sister.

Their mother had made a will leaving substantial sums to all her three children.

However, before she died she transferred a large amount of her money to her daughter and son-in-law so they could buy a property.

The property was in the daughter and son-in-law's names. The mother lived there with them in the weeks before she died.

The transaction amounted to more than 90% of the mother's estate which meant there was very little left for the two sons.

The men brought the case to court claiming their sister had exerted undue influence over their mother causing them to lose out on their inheritance.

The court heard that the mother had become dependent on the daughter who did more for her than her sons did. The daughter denied that she had poisoned her mother's mind against the sons.

However, because of the nature and timing of the transactions, the court held that it was the daughter's duty to prove there had been no undue influence.

The daughter failed to do this or to explain why the mother hadn't sought independent advice, or why the property wasn't in her mother's name.

The court wasn't satisfied that the mother had acted independently when making the transaction. She hadn't updated her will and there was no evidence that she had intended to reduce her sons' inheritance.

The court ruled that the daughter and son-in-law must provide the brothers with their share of the estate as outlined in the will.

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